

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Rep. Hughes

ENROLLED HOUSE BILL No. 5441

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending section 5305 (MCL 700.5305), as amended by 2000 PA 464.

The People of the State of Michigan enact:

Sec. 5305. (1) The duties of a guardian ad litem appointed for an individual alleged to be incapacitated include all of the following:

- (a) Personally visiting the individual.
- (b) Explaining to the individual the nature, purpose, and legal effects of a guardian’s appointment.
- (c) Explaining to the individual the hearing procedure and the individual’s rights in the hearing procedure, including, but not limited to, the right to contest the petition, to request limits on the guardian’s powers, to object to a particular person being appointed guardian, to be present at the hearing, to be represented by legal counsel, and to have legal counsel appointed for the individual if he or she is unable to afford legal counsel.
- (d) Informing the individual of the name of each person known to be seeking appointment as guardian.
- (e) Asking the individual and the petitioner about the amount of cash and property readily convertible into cash that is in the individual’s estate.
- (f) Making determinations, and informing the court of those determinations, on all of the following:
 - (i) Whether there are 1 or more appropriate alternatives to the appointment of a full guardian or whether 1 or more actions should be taken in addition to the appointment of a guardian. Before informing the court of his or her determination under this subparagraph, the guardian ad litem shall consider the appropriateness of at least each of the following as alternatives or additional actions:
 - (A) Appointment of a limited guardian, including the specific powers and limitation on those powers the guardian ad litem believes appropriate.
 - (B) Appointment of a conservator or another protective order under part 4 of this article. In the report informing the court of the determinations under this subdivision, the guardian ad litem shall include an estimate of the amount of cash and property readily convertible into cash that is in the individual’s estate.
 - (C) Execution of a patient advocate designation, do-not-resuscitate declaration, or durable power of attorney with or without limitations on purpose, authority, or duration.

(ii) Whether a disagreement or dispute related to the guardianship petition might be resolved through court ordered mediation.

(iii) Whether the individual wishes to be present at the hearing.

(iv) Whether the individual wishes to contest the petition.

(v) Whether the individual wishes limits placed on the guardian's powers.

(vi) Whether the individual objects to a particular person being appointed guardian.

(2) The court shall not order compensation of the guardian ad litem unless the guardian ad litem states on the record or in the guardian ad litem's written report that he or she has complied with subsection (1).

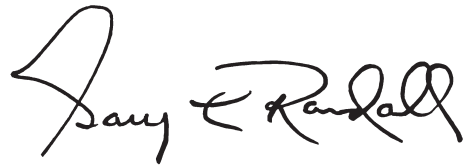
(3) If the individual alleged to be incapacitated wishes to contest the petition, to have limits placed on the guardian's powers, or to object to a particular person being appointed guardian and if legal counsel has not been secured, the court shall appoint legal counsel to represent the individual alleged to be incapacitated. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(4) If the individual alleged to be incapacitated requests legal counsel or the guardian ad litem determines it is in the individual's best interest to have legal counsel, and if legal counsel has not been secured, the court shall appoint legal counsel. If the individual alleged to be incapacitated is indigent, the state shall bear the expense of legal counsel.

(5) If the individual alleged to be incapacitated has legal counsel appointed under subsection (3) or (4), the appointment of a guardian ad litem terminates.

Enacting section 1. This amendatory act takes effect October 1, 2012.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor