

SUBSTITUTE FOR
HOUSE BILL NO. 5975

A bill to amend 1939 PA 288, entitled
"Probate code of 1939,"
by amending section 17d of chapter XIIA (MCL 712A.17d), as amended
by 2012 PA 115.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 CHAPTER XIIA
- 2 Sec. 17d. (1) A lawyer-guardian ad litem's duty is to the
- 3 child, and not the court. The lawyer-guardian ad litem's powers and
- 4 duties include at least all of the following:
- 5 (a) The obligations of the attorney-client privilege.
- 6 (b) To serve as the independent representative for the child's
- 7 best interests, and be entitled to ~~full and active participation~~
- 8 **fully and actively participate** in all aspects of the litigation and

1 access to all relevant information regarding the child.

2 (c) To determine the facts of the case by conducting an
3 independent investigation including, but not limited to,
4 interviewing the child, social workers, family members, and others
5 as necessary, and reviewing relevant reports and other information.
6 The agency case file ~~shall~~**must** be reviewed before disposition and
7 before the hearing for termination of parental rights. Updated
8 ~~materials shall~~**material must** be reviewed as provided to the court
9 and parties. The supervising agency shall provide documentation of
10 progress ~~relating~~**that relates** to all aspects of the last court
11 ordered treatment plan, including copies of evaluations and therapy
12 reports and verification of parenting time not later than 5
13 business days before the scheduled hearing.

14 (d) To meet with or observe the child and assess the child's
15 needs and wishes with regard to the representation and the issues
16 in the case in the following instances:

17 (i) Before the pretrial hearing.

18 (ii) Before the initial disposition, if held more than 91 days
19 after the petition has been authorized.

20 (iii) Before a dispositional review hearing.

21 (iv) Before a permanency planning hearing.

22 (v) Before a post-termination review hearing.

23 (vi) At least once during the pendency of a supplemental
24 petition.

25 (vii) At other times as ordered by the court. Adjourned or
26 continued hearings do not require additional visits unless directed
27 by the court.

28 (e) The court may allow alternative means of contact with the
29 child if good cause is shown on the record.

1 (f) To explain to the child, taking into account the child's
2 ability to understand the proceedings, the lawyer-guardian ad
3 litem's role.

4 (g) To file all necessary pleadings and papers and
5 independently call witnesses on the child's behalf.

6 (h) To attend all hearings and substitute representation for
7 the child only with court approval.

8 (i) To make a determination regarding the child's best
9 interests and advocate for those best interests according to the
10 lawyer-guardian ad litem's understanding of those best interests,
11 regardless of whether the lawyer-guardian ad litem's determination
12 reflects the child's wishes. The child's wishes are relevant to the
13 lawyer-guardian ad litem's determination of the child's best
14 interests, and the lawyer-guardian ad litem shall weigh the child's
15 wishes according to the child's competence and maturity. Consistent
16 with the law governing attorney-client privilege, the lawyer-
17 guardian ad litem shall inform the court ~~as to~~ **of** the child's
18 wishes and preferences.

19 (j) To monitor the implementation of case plans and court
20 orders ~~—~~and **to** determine whether services the court ordered for
21 the child or the child's family are being provided in a timely
22 manner and are accomplishing their purpose. The lawyer-guardian ad
23 litem shall inform the court if the services are not being provided
24 in a timely manner, if the family fails to take advantage of the
25 services, or if the services are not accomplishing their intended
26 purpose.

27 (k) Consistent with the rules of professional responsibility,
28 to identify common interests among the parties and, to the extent
29 possible, promote a cooperative resolution of the matter through

1 consultation with the child's parent, foster care provider,
2 guardian, and caseworker.

3 (l) To request authorization by the court to pursue issues on
4 the child's behalf that do not arise specifically from the court
5 appointment.

6 (m) To participate in ~~training in~~ early childhood, child, and
7 adolescent development **training**.

8 **(n) To participate in trauma-informed training if provided by**
9 **the state court administrative office.**

10 (2) If, after discussion between the child and his or her
11 lawyer-guardian ad litem, the lawyer-guardian ad litem determines
12 that the child's interests as identified by the child are
13 inconsistent with the lawyer-guardian ad litem's determination of
14 the child's best interests, the lawyer-guardian ad litem shall
15 communicate the child's position to the court. If the court
16 considers the appointment appropriate considering the child's age
17 and maturity and the nature of the inconsistency between the
18 child's and the lawyer-guardian ad litem's identification of the
19 child's interests, the court may appoint an attorney for the child.
20 An attorney appointed under this subsection serves in addition to
21 the child's lawyer-guardian ad litem.

22 (3) The court or another party to the case shall not call a
23 lawyer-guardian ad litem as a witness to testify regarding matters
24 related to the case. The lawyer-guardian ad litem's file of the
25 case is not discoverable.