

# HOUSE BILL NO. 5975

March 24, 2022, Introduced by Reps. Pohutsky, Whiteford, Green, Wakeman, Brann, Kahle, Brenda Carter, Young, Tyrone Carter, Anthony and O'Malley and referred to the Committee on Families, Children, and Seniors.

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.

1 (b) To serve as the independent representative for the child's  
2 best interests, and be entitled to ~~full and active participation~~  
3 **fully and actively participate** in all aspects of the litigation and  
4 access to all relevant information regarding the child.

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

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

20 (i) Before the pretrial hearing.

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

23 (iii) Before a dispositional review hearing.

24 (iv) Before a permanency planning hearing.

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

26 (vi) At least once during the pendency of a supplemental  
27 petition.

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

1 by the court.

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

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

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

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

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

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

1 (k) Consistent with the rules of professional responsibility,  
2 to identify common interests among the parties and, to the extent  
3 possible, promote a cooperative resolution of the matter through  
4 consultation with the child's parent, foster care provider,  
5 guardian, and caseworker.

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

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

11 **(n) To participate in trauma-informed training provided by the**  
12 **supreme court.**

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

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