

# MAINE STATE LEGISLATURE

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# 132nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2025

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Legislative Document

No. 504

S.P. 222

In Senate, February 11, 2025

### An Act to Improve Family Court Procedure

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Received by the Secretary of the Senate on February 7, 2025. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read "D M Grant".

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator CARNEY of Cumberland.  
Cosponsored by Representative HENDERSON of Rumford and  
Senators: BAILEY of York, STEWART of Aroostook, Representatives: BABIN of Fort  
Fairfield, CARUSO of Caratunk, KUHN of Falmouth, O'HALLORAN of Brewer, POIRIER of  
Skowhegan.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 19-A MRSA §1653, sub-§3, ¶O**, as amended by PL 2021, c. 647, Pt. B,  
3 §46 and affected by §65, is further amended to read:

4 O. A parent's prior willful misuse of the emergency parental rights and responsibilities  
5 order process in section 1653-B or the protection from abuse process in former chapter  
6 101 or chapter 103 in order to gain tactical advantage in a proceeding involving the  
7 determination of parental rights and responsibilities of a minor child. Such willful  
8 misuse may be considered only if established by clear and convincing evidence and if  
9 it is further found by clear and convincing evidence that, in the particular circumstances  
10 of the parents and child, that willful misuse tends to show that the acting parent will in  
11 the future have a lessened ability and willingness to cooperate and work with the other  
12 parent in their shared responsibilities for the child. The court shall articulate findings  
13 of fact whenever relying upon this factor as part of its determination of a child's best  
14 interest. The voluntary dismissal of a motion for an emergency parental rights and  
15 responsibilities order or a protection from abuse petition may not, taken alone, be  
16 treated as evidence of the willful misuse of the emergency parental rights and  
17 responsibilities order process or the protection from abuse process;

18 **Sec. 2. 19-A MRSA §1653-B** is enacted to read:

19 **§1653-B. Emergency parental rights and responsibilities order**

20 **1. Motion.** A party to an action under this Title concerning parental rights, including  
21 actions for divorce, legal separation, parentage or parental rights and responsibilities and  
22 post-judgment proceedings arising out of these actions, may file a motion requesting that  
23 the court issue an emergency parental rights and responsibilities order with respect to a  
24 child on an ex parte basis upon a showing of immediate and present risk of substantial harm  
25 to the physical or emotional health or safety of the child. A motion may not be filed under  
26 this section as part of a protection from abuse proceeding under chapter 103.

27 **2. Affidavit required.** A motion for an emergency parental rights and responsibilities  
28 order must be accompanied by an affidavit made under oath alleging:

29 A. The conditions establishing an immediate and present risk of substantial harm to  
30 the physical or emotional health or safety of the child; and

31 B. The actions taken by the party filing the request to inform the other party or parties  
32 to the proceeding of the motion or the reasons why the court should consider the request  
33 without requiring notice to the other party.

34 **3. Temporary relief.** The court may, in an ex parte proceeding, enter an emergency  
35 parental rights and responsibilities order containing any relief that the court considers  
36 necessary to address the immediate and present risk of substantial harm to the physical or  
37 emotional health or safety of the child. An order issued under this subsection may include:

38 A. An allocation of parental rights and responsibilities between the parties;

39 B. Conditions governing parent-child contact, including but not limited to prohibiting  
40 parent-child contact;

41 C. Directives regarding the residence of the child, including but not limited to  
42 authorizing or prohibiting relocation of the child; and

1           D. Any other relief determined appropriate in the discretion of the court.

2           **4. Denial of motion.** Before denying a motion for an emergency parental rights and  
3 responsibilities order, the court shall:

4           A. Allow the moving party to be heard, accompanied by a person of the party's choice;  
5 and

6           B. Advise the moving party of the reasons for the denial.

7           **5. Service.** A party who files a motion for an emergency parental rights and  
8 responsibilities order under this section shall:

9           A. If the court issues an order under subsection 3, arrange for the motion, affidavit and  
10 order to be personally served on the other party in a manner allowed by the applicable  
11 rule of civil procedure along with the original complaint or post-judgment motion that  
12 accompanied the motion, if any; or

13           B. If the court denies the motion under subsection 4, arrange for the motion, affidavit  
14 and order denying the motion to be served on the other party in a manner allowed by  
15 the applicable rule of civil procedure along with the original complaint or post-  
16 judgment motion that accompanied the motion, if any.

17           **6. Hearing.** If the court enters an order under subsection 3, the court shall hold a  
18 hearing within 21 days of the issuance of the order. The scope of the hearing is limited to  
19 the necessity of continuing the temporary relief granted in the emergency parental rights  
20 and responsibilities order. This section does not limit the court's discretion to continue the  
21 hearing upon the court's own motion or upon the motion of either party. If the court denies  
22 the motion under subsection 4, the parties are not entitled to a hearing under this subsection  
23 and the court may enter a scheduling order or any other order that the interests of justice  
24 require.

25           **7. Dissolution or modification.** A party whose parental rights are affected by an  
26 emergency parental rights and responsibilities order issued under subsection 3, other than  
27 the party who requested the order, may appear and move for the dissolution or modification  
28 of the order before the scheduled hearing. The motion must be accompanied by a sworn  
29 affidavit. The court shall schedule a hearing on the motion as expeditiously as the interests  
30 of justice require.

31           **8. Jurisdiction; procedure.** A motion for an emergency parental rights and  
32 responsibilities order under this section may be reviewed and an order may be issued by a  
33 District Court Judge or a family law magistrate. The clerk shall present the motion to a  
34 District Court Judge or family law magistrate upon docketing. If no judge or family law  
35 magistrate is available at the courthouse in which the request is made, the clerk shall  
36 forward the motion to any available judicial officer within the State.

37           **Sec. 3. Working group.** The Maine Commission on Domestic and Sexual Abuse,  
38 established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 74-C, shall  
39 convene a working group of stakeholders including commission members, representatives  
40 of the judicial branch, family law practitioners, members of the Family Law Advisory  
41 Commission established in Title 5, section 12004-I, subsection 52-A, representatives of a  
42 statewide coalition to end domestic violence and any others that the commission determines  
43 to be necessary participants. To the extent possible, the members of the working group

1 must be the same as the members of the working group established pursuant to Resolve  
2 2021, chapter 99.

3 **1. Duties.** The working group shall review data provided by the judicial branch for at  
4 least 2 years following implementation of this Act, including data on the number of requests  
5 for emergency parental rights and responsibilities orders filed, the number of emergency  
6 parental rights and responsibilities orders issued, the average time between the filing of a  
7 request and the hearing on that request, if any, and any other data determined by the judicial  
8 branch to be useful for evaluating efficacy of the new process.

9 **2. Report; legislation.** The commission shall submit a report to the joint standing  
10 committee of the Legislature having jurisdiction over judiciary matters no later than  
11 November 1, 2028. The report must identify the working group's participants, summarize  
12 the activities of the working group and include any conclusions made by the working group  
13 regarding the effectiveness of the emergency parental rights and responsibilities order  
14 process established in Title 19-A, section 1653-B. The report may include the working  
15 group's recommendations for further improving the family court response to families with  
16 urgent safety concerns. The joint standing committee of the Legislature having jurisdiction  
17 over judiciary matters may report out legislation to the 134th Legislature in 2029 based on  
18 the report.

19 **Sec. 4. Effective date.** This Act takes effect January 1, 2026.

## 20 SUMMARY

21 Beginning January 1, 2026, this bill authorizes a party to a divorce, legal separation,  
22 parentage or parental rights and responsibilities proceeding or a post-judgment motion  
23 arising out of one of these actions to file a motion requesting that the court issue an ex parte  
24 emergency parental rights and responsibilities order on the basis that there is an immediate  
25 and present risk of substantial harm to the physical or emotional health or safety of a child.  
26 The order may be issued by a District Court Judge or a family law magistrate and may  
27 include a temporary allocation of parental rights and responsibilities between the parties in  
28 the underlying action, conditions of parent-child contact and directives regarding the  
29 residence of the child. If a judge or magistrate issues an emergency parental rights and  
30 responsibilities order ex parte, the court must hold a hearing within 21 days to determine  
31 the need for continuation of the temporary relief granted in the order. A party affected by  
32 the emergency parental rights and responsibilities order, other than the party that requested  
33 the order, may file a motion to modify or to dissolve the order, which the court must hear  
34 as expeditiously as the interests of justice require.

35 The bill also directs the Maine Commission on Domestic and Sexual Abuse to convene  
36 a working group of stakeholders, similar to the working group established by Resolve 2021,  
37 chapter 99, to review data from the judicial branch gathered for at least 2 years following  
38 implementation of the emergency parental rights and responsibilities order process  
39 established in this legislation to evaluate the efficacy of the process. The bill directs the  
40 commission to submit a report regarding the working group's findings to the joint standing  
41 committee of the Legislature having jurisdiction over judiciary matters by November 1,  
42 2028. The committee may report out legislation to the 134th Legislature in 2029 in  
43 response to the report.