

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 480

6  
7 H.P. 397

House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the  
9 Committee on Judiciary, and ordered printed pursuant to Joint Rule 14.

10 EDWIN H. PERT, Clerk

Presented by Representative Hobbins of Saco.

Cosponsors: Representative Higgins of Scarborough, Senator Gill of  
11 Cumberland and Representative Soule of Westport.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Make Joint Custody the First  
18 Order of Preference in Child Custody Cases.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 19 MRSA §214, as amended by PL 1981, c.  
23 174, §1, is repealed and the following enacted in its  
24 place:

25 §214. Custody and support decreed when parents live  
26 apart

27 1. Legislative findings and purpose. The Legis-  
28 lature finds and declares that it is the public  
29 policy of this State to assure minor children of fre-  
30 quent and continuing contact with both parents after  
31 the parents have separated and to encourage parents  
32 to share the rights and responsibilities of child  
33 rearing in order to effect this policy.

1           2. Definition. As used in this section, "joint  
2 custody" means custody of a minor child by both par-  
3 ents so that physical custody is shared by the par-  
4 ents in such a way as to assure the child of frequent  
5 and continuing contact with both parents and so that  
6 decision-making rights, responsibilities and author-  
7 ity relating to the health, education and welfare of  
8 the child are shared by the parents.

9           3. Jurisdiction. If the father and mother of a  
10 minor child are living apart, the Probate Court,  
11 Superior Court or District Court in the county or  
12 division where either resides, on complaint of either  
13 and after such notice to the other as the court may  
14 order, may make an order awarding custody of the  
15 minor child.

16 The right to file a complaint shall not be denied any  
17 person for failure to meet any residency requirement  
18 if the person is a member of the Armed Forces of the  
19 United States on active duty stationed in this State  
20 or a parent of a child of such a member. Such a  
21 member shall be deemed to be a resident either of the  
22 county in which the military installation or  
23 installations, or other place at which he has been  
24 stationed, is located or of the county in which he  
25 has sojourned.

26 The jurisdiction granted by this section shall be  
27 limited by the Uniform Child Custody Jurisdiction  
28 Act, sections 801 to 825, if another state may have  
29 jurisdiction as provided in that Act.

30           4. Custody order. An award of custody shall be  
31 made in the following order of preference according  
32 to the best interest of the child.

33           A. The court shall, unless waived by the court  
34 for good cause shown, require the parents to  
35 submit a plan for implementation of the custody  
36 order, or the parents acting individually or in  
37 concert may submit a custody implementation plan  
38 to the court prior to issuance of a custody  
39 decree.

40           B. In making an order of custody to either  
41 parent, the court shall consider, among other

1 factors, which parent is more likely to allow the  
2 child frequent and continuing contact with the  
3 noncustodial parent and shall not prefer a parent  
4 as custodian because of that parent's sex. The  
5 court may require the parents to submit a plan to  
6 the court for implementation of the sole custody  
7 order.

8 5. Presumption; burden of proof; reasoning. There  
9 shall be a presumption affecting the burden of proof  
10 that joint custody is in the best interest of a minor  
11 child, unless:

12 A. The parents have agreed to an award of custody  
13 to one parent or so agree in open court at a  
14 hearing for the purpose of determining the cus-  
15 tody of a minor child of the parents; or

16 B. The court finds that joint custody would be  
17 harmful to the child.

18 The burden of proof that joint custody is not in a  
19 child's best interest shall be upon a parent request-  
20 ing sole custody.

21 If the court does not order joint custody, it shall  
22 state in its decision the reasons for denial of a  
23 joint custody award.

24 6. Abandonment of family residence. The court  
25 shall not consider abandonment of the family resi-  
26 dence as a factor in determining custodial rights  
27 when the abandoning parent has been physically harmed  
28 or seriously threatened with physical harm by the  
29 other parent and that harm or threat of harm was  
30 causally related to the abandonment, or when one  
31 parent has left the family residence at the request  
32 or insistence of the other parent.

33 7. Support order. The court may order either  
34 parent of a minor child to contribute, to the support  
35 of that child, reasonable and just sums payable  
36 weekly, monthly or quarterly. The court may enforce  
37 obedience of the order by appropriate decrees, execu-  
38 tion issuing for those sums when payable and for  
39 costs. The decrees shall be in force until further  
40 order of the court.

1       8. Appeal. An appeal shall lie from decrees  
2 awarding custody or ordering support to the Supreme  
3 Judicial Court where originating in the Probate Court  
4 or the Superior Court, or to the Superior Court where  
5 originating in the District Court.

6       9. Modification or termination. Any order for  
7 custody of a minor child may be modified or termi-  
8 nated upon the petition of one or both of the par-  
9 ents, if it is shown that the best interest of the  
10 child requires modification or termination of the  
11 order. The court shall state in its decision the  
12 reasons for modification or termination of a joint  
13 custody order, if either parent opposes the modifi-  
14 cation or termination petition. Any order for custody  
15 of a minor child may be modified at any time to an  
16 order of joint custody in accordance with this  
17 section.

18       Any order for support of a minor child may be modi-  
19 fied or terminated from time to time as circumstances  
20 require upon petition of one or both of the parents.

21       10. Records and information. Access to records  
22 and information pertaining to a minor child, includ-  
23 ing, but not limited to, medical, dental and school  
24 records, shall not be denied to a parent because that  
25 parent is not the child's custodial parent.

26       Sec. 2. 19 MRSA §752, as amended by PL 1981, c.  
27 174, §2, is repealed and the following enacted in its  
28 place:

29       §752. Custody of children; change of names; compul-  
30 sory process; support and maintenance

31       1. Legislative findings and purpose. The Legis-  
32 lature finds and declares that it is the public  
33 policy of this State to assure minor children of fre-  
34 quent and continuing contact with both parents after  
35 a divorce or annulment and to encourage parents to  
36 share the rights and responsibilities of child  
37 rearing in order to effect this policy.

38       2. Definition. As used in this section, "joint  
39 custody" means custody of a minor child by both par-  
40 ents so that physical custody is shared by the par-

1 ents in such a way as to assure the child of frequent  
2 and continuing contact with both parents and so that  
3 decision-making rights, responsibilities and author-  
4 ity relating to the health, education and welfare of  
5 the child are shared by the parents.

6 3. Custody order. The court making an order of  
7 nullity or of divorce may make an order concerning  
8 the custody of any minor children of the parties. An  
9 award of custody shall be made in the following order  
10 of preference according to the best interest of the  
11 child:

12 A. The court shall, unless waived by the court  
13 for good cause shown, require the parents to  
14 submit a plan for implementation of the custody  
15 order, or the parents acting individually or in  
16 concert may submit a custody implementation plan  
17 to the court prior to issuance of a custody  
18 decree;

19 B. In making an order of custody to either  
20 parent, the court shall consider, among other  
21 factors, which parent is more likely to allow the  
22 child frequent and continuing contact with the  
23 noncustodial parent and shall not prefer a parent  
24 as custodian because of that parent's sex. The  
25 court may require the parents to submit a plan to  
26 the court for implementation of the sole custody  
27 order;

28 C. Custody to a 3rd person deemed by the court to  
29 be suitable and able to provide adequate and  
30 proper care and guidance for the child;

31 D. Custody to some suitable society or institu-  
32 tion for the care and protection of children; and

33 E. Custody to the Department of Human Services in  
34 accordance with subsection 6.

35 Before the court makes any order awarding custody to  
36 a person or persons other than a parent without the  
37 consent of the parents, it shall make a finding that  
38 an award of custody to a parent would be harmful to  
39 the child and the award to a nonparent is required to  
40 serve the best interest of the child.

1           4. Presumption; burden of proof; reasoning. There  
2 shall be a presumption affecting the burden of proof  
3 that joint custody is in the best interest of the  
4 minor child, unless:

5           A. The parents have agreed to an award of custody  
6 to one parent or so agree in open court at a  
7 hearing for the purpose of determining the cus-  
8 tody of a minor child of the parents; or

9           B. The court finds that joint custody would be  
10 harmful to the child.

11 The burden of proof that joint custody is not in a  
12 child's best interest shall be upon a parent request-  
13 ing sole custody. If the court does not order joint  
14 custody, it shall state in its decision the reasons  
15 for denial of a joint custody award.

16           5. Abandonment of family residence. The court  
17 shall not consider abandonment of the family resi-  
18 dence as a factor in determining custodial rights  
19 when the abandoning parent has been physically harmed  
20 or seriously threatened with physical harm by the  
21 other parent and that harm or threat of harm was  
22 causally related to the abandonment, or when one  
23 parent has left the family residence at the request  
24 or insistence of the other parent.

25           6. Department of Human Services. An original  
26 order made under this section granting custody of a  
27 minor child to the Department of Human Services shall  
28 not extend beyond the time when the child reaches 18  
29 years of age, except that, upon application by the  
30 department, the court, for sufficient cause, may  
31 extend the order to the time when the child reaches  
32 21 years of age.

33 The expense of maintenance and education of children  
34 committed to the custody of the department under this  
35 section shall be borne in accordance with Title 22,  
36 section 4061. The department shall have all the  
37 powers that a guardian has to a ward as to the  
38 person, property, earnings and education of each  
39 child committed to its custody under this section  
40 during the term of commitment.

1           7. Support order. An order of the court for sup-  
2 port of a minor child may run against the father or  
3 the mother in whole or in part or against both, irre-  
4 spective of the fault of the father or mother in the  
5 divorce action. When the order is to run against  
6 both, the court shall specify the amount each shall  
7 pay.

8           An order for child support may include an order for  
9 the payment of part or all of the medical expenses,  
10 hospital expenses and other health care expenses of  
11 the child or an order to provide a policy or contract  
12 for coverage of these expenses.

13           Availability of public welfare benefits to the family  
14 shall not affect the decision of the court as to the  
15 responsibility of a parent to provide child support.

16           8. Name change. Upon the request of the wife  
17 during the action for divorce or annulment or at any  
18 time thereafter, the court may change the name of the  
19 wife. The name of a minor child shall not be changed  
20 without the consent of both parents.

21           9. Alteration of orders; enforcement of support  
22 orders; compulsory process. Upon the motion of one  
23 or both of the parents, any person granted custody  
24 under subsection 3, paragraphs C and D, the Depart-  
25 ment of Human Services, or any blood relative of or  
26 any person standing in loco parentis to the minor  
27 child, the court may alter its order concerning cus-  
28 tody of a minor child if it is shown that the best  
29 interest of the child requires the alteration. The  
30 court shall state in its decision the reasons for  
31 alteration of a joint custody order if either parent  
32 opposes the alteration motion. Any order for custody  
33 of a minor child may be altered at any time to an  
34 order of joint custody in accordance with this  
35 section.

36           Any order for support of a minor child may be altered  
37 from time to time as circumstances require upon  
38 motion of any of those persons who may seek altera-  
39 tion of a custody order under this subsection. The  
40 court may enforce a support order as provided in  
41 chapter 14-A.



1 In execution of the powers given it under this Title,  
2 the court may employ any compulsory process it deems  
3 proper, by execution, attachment or other effectual  
4 form, on which costs shall be taxed as in other ac-  
5 tions.

6 10. Uniform Child Custody Jurisdiction Act. The  
7 jurisdiction granted by this section to make or alter  
8 an order concerning custody shall be limited by the  
9 Uniform Child Custody Jurisdiction Act, sections 801  
10 to 825, if another state may have jurisdiction as  
11 provided in that Act.

12 11. Records and information. Access to records  
13 and information pertaining to a minor child, includ-  
14 ing, but not limited to, medical, dental and school  
15 records, shall not be denied to a parent because that  
16 parent is not a custodial parent of the child.

17 **Sec. 3.** 19 MRSA §753 is enacted to read:

18 §753. Grandparents' visitation rights upon parent's  
19 death

20 If, subsequent to an order of custody under  
21 section 214 or 752, one of the parents of a minor  
22 child subject to the order of custody dies and is  
23 survived by the minor child, the parents of the  
24 deceased parent may petition a court having jurisdic-  
25 tion of the custody of the child for an order estab-  
26 lishing reasonable visitation rights with the child  
27 during his minority. The court shall order these vis-  
28 itation rights if it finds them to be in the best  
29 interest of the child.

30 STATEMENT OF FACT

31 The purpose of this bill is to revise child cus-  
32 tody laws to make joint custody the first order of  
33 preference in separation, annulment or divorce cases  
34 where a court is asked to make a custody award. The  
35 bill retains much of the substance of the current law  
36 dealing with child custody and support in separation,  
37 annulment or divorce. Revisions are made in the form  
38 of the statutes for clearer and easier reading. Added  
39 provisions are aimed at implementing the policy of

1 encouraging frequent and continuing contact between a  
2 parent and his or her children and encouraging par-  
3 ents to share child-rearing responsibilities. These  
4 arrangements are found to be generally in a child's  
5 best interest and reflect a legislative recognition  
6 that the relationship of a child with both parents is  
7 of such fundamental importance that its continuation  
8 should be encouraged. The bill also adds a new provi-  
9 sion to give grandparents visitation rights with  
10 grandchildren when the parent of the child who is  
11 subject to a custody order dies.

12 Section 1 revises the statute concerning child  
13 custody and support in a case of separation.

14 Title 19, section 214, subsection 1 states legis-  
15 lative findings and purpose.

16 Title 19, section 214, subsection 2 provides a  
17 definition of "joint custody" that includes both the  
18 concept of joint physical custody and the concept of  
19 joint legal custody.

20 Title 19, section 214, subsection 3 contains  
21 provisions already found in the current statute  
22 relating to jurisdiction and who may file a com-  
23 plaint.

24 Title 19, section 214, subsection 4 establishes  
25 joint custody as the first order of preference for a  
26 custody award, with sole custody to one parent as the  
27 2nd order of preference. This subsection maintains  
28 the custody options currently available to the court  
29 under the statute, but places them in an order of  
30 priority.

31 Title 19, section 214, subsection 5 adds a pre-  
32 sumption in favor of joint custody as being in a  
33 child's best interest. The presumption is applied by  
34 the court, unless the parents desire a sole custody  
35 award or the court finds that joint custody would be  
36 harmful to the child.

37 Title 19, section 214, subsection 6 contains  
38 provisions currently in the statute concerning aban-  
39 donment of the family residence where one parent is  
40 forced out by violence or threat of violence. It adds

1 a new provision to insure that a parent who leaves  
2 the family residence by agreement with the other  
3 parent, or where the other parent insists upon the  
4 departure of a parent, will not be placed in an  
5 unfavorable light before the court in a contested  
6 custody case.

7 Title 19, section 214, subsection 7 retains the  
8 statute's provisions for support orders.

9 Title 19, section 214, subsection 8 retains the  
10 provisions for appeal of a court order.

11 Title 19, section 214, subsection 9 explicitly  
12 states that custody or support orders may be modified  
13 or terminated. If a joint custody award is changed  
14 with the opposition of a parent, the court must give  
15 its reasons for the change.

16 Title 29, section 214, subsection 10 provides  
17 that access to records and information concerning a  
18 child are not to be denied to a parent because that  
19 parent is not the child's custodial parent.

20 Section 2 revises the statute concerning child  
21 custody and support in cases of annulment or divorce.

22 Title 19, section 752, subsection 1 contains the  
23 legislative purpose and findings.

24 Title 19, section 752, subsection 2 contains the  
25 definition of "joint custody."

26 Title 19, section 752, subsection 3 establishes  
27 joint custody as the first order of preference for a  
28 custody award. Sole custody is placed as the 2nd  
29 order of preference, with other custody options cur-  
30 rently available in the statute placed in a succeed-  
31 ing order of priority. A new provision is added to  
32 require that the court first make a finding that harm  
33 to the child may occur if custody is given to one or  
34 both parents before awarding custody to a person or  
35 entity other than a parent.

36 Title 19, section 752, subsection 4 creates the  
37 presumption in favor of joint custody as in a child's  
38 best interest, unless the parents agree to a sole

1 custody award or the court finds that joint custody  
2 would be harmful to the child.

3 Title 29, section 752, subsection 5 retains  
4 provisions currently in the statute relating to abandon-  
5 ment of the family residence and adds new provi-  
6 sions concerning a parent's departure at the request  
7 of the other parent.

8 Title 29, section 752, subsection 6 sets forth  
9 stipulations currently found in the statute concern-  
10 ing custody awards to the Department of Human Ser-  
11 vices.

12 Title 29, section 752, subsection 7 contains  
13 provisions for support orders currently in the stat-  
14 ute.

15 Title 19, section 752, subsection 8 retains the  
16 statutory authorization for the court to change the  
17 wife's name and specifically prohibits the changing  
18 of a child's name without the consent of both par-  
19 ents.

20 Title 19, section 752, subsection 9 retains the  
21 statute's provisions concerning alteration of custody  
22 and support orders and enforcement of support orders.  
23 The bill adds to these provisions the standard of the  
24 best interest of the child for altering a custody  
25 order. If the court alters a joint custody order, it  
26 must state its reasons for the change.

27 Title 19, section 752, subsection 10 retains a  
28 cross reference to the Uniform Child Custody Juris-  
29 diction Act.

30 Title 19, section 752, subsection 11 prevents ac-  
31 cess to a child's records and other information from  
32 being denied a noncustodial parent.

33 Section 3 adds a provision protecting the rela-  
34 tionship between a child subject to a custody order  
35 and his grandparents after the death of the child's

1 father or mother. In this circumstance, the grandpar-  
2 ents may petition the court to establish visitation  
3 rights for them.

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