

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 245, L.D. 292)
2 (New Title)

3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 1433

9 H.P. 1091

House of Representatives, April 8, 1983

10 Reported by Representative Benoit from the Committee on Judiciary and
11 printed under Joint Rule 2.

12 EDWIN H. PERT, Clerk

Presented by Representative Ketover of Portland.

Cosponsors: Speaker Martin of Eagle Lake, Representative Theriault of
13 Fort Kent and Representative Baker of Portland.

14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-THREE
18

19 AN ACT Concerning Visitation Rights for
20 Parents and 3rd Persons with Children Involved
21 in Divorce or Custody Proceedings.
22

23 Be it enacted by the People of the State of Maine as
24 follows:

25 Sec. 1. 19 MRSA §214, first ¶, as amended by PL
26 1981, c. 174, §1, is further amended to read:

27 If the father and mother of a minor child are
28 living apart from each other, the judge of probate or
29 the Superior Court Justice or the District Court in
30 the county where either resides, on complaint of
31 either and after such notice to the other as he may
32 order, may decree which parent shall have the exclu-
33 sive care and custody of the person of such that
34 minor, may apportion the care and custody of the said

1 minor between the parents or may decree that the par-
2 ents shall have joint custody of the minor, as the
3 good of the child may require. The court may order
4 reasonable rights of visitation with the minor child
5 to a parent of the child, to any 3rd persons, or to
6 both. The court shall not consider abandonment of
7 the family residence as a factor in determining cus-
8 todial rights when the abandoning party has been
9 physically harmed or seriously threatened with phys-
10 ical harm by his spouse, when that harm or threat of
11 harm by his spouse was causally related to the aban-
12 donment. He may order either parent of the minor
13 child or children to contribute to the support of
14 that minor child or children sums payable weekly,
15 monthly or quarterly as are deemed reasonable and
16 just and may enforce obedience by appropriate
17 decrees, execution issuing for those sums when pay-
18 able and for costs, which decrees shall be in force
19 until further order of the judge or justice. An
20 appeal shall lie from such decree or decrees to the
21 Supreme Court of Probate, where originating in the
22 Court of Probate, or to the Supreme Judicial Court
23 where originating in the Superior Court, or to the
24 Superior Court where originating in the District
25 Court, but the original decrees shall be in force
26 until reversed.

27 Sec. 2. 19 MRSA §581, as repealed and replaced
28 by PL 1979, c. 540, §30, is amended to read:

29 §581. Spouse deserted or living apart

30 If a married person, without just cause, deserts
31 his spouse or if his spouse, for just cause, is actu-
32 ally living apart from him, and if such that deser-
33 tion or living apart has continued for a period of at
34 least 60 days immediately prior to the filing of the
35 petition, the court may, upon the spouse's petition,
36 or if he is mentally ill, upon the petition of his
37 guardian or next friend, enter a decree that such the
38 spouse is so deserted or is so living apart and may
39 prohibit the other spouse from imposing any restraint
40 on the petitioner's personal liberty during such time
41 as the court shall by order direct. Upon the petition
42 of either spouse, or of the guardian or next friend
43 of either who may be mentally ill, the court may make
44 further orders relative to the care, custody and sup-

1 port of the minor children of the parties, may deter-
2 mine with which of their parents such the children or
3 any of them shall remain, may order either spouse to
4 pay to the court for the other spouse sufficient
5 money for the prosecution of such that petition, and
6 may from time to time, upon a similar petition,
7 revise or alter any such order and make a new order
8 in lieu thereof, as the circumstances of the parties
9 or such the minor children or any of them may re-
10 quire, and may enforce obedience by appropriate pro-
11 cess. The court may order reasonable rights of vis-
12 itation with the minor children or any of them to a
13 parent of the child or children, to any 3rd persons,
14 or to both. An order for child support under this
15 section may include an order for the payment of part
16 or all of the medical expenses, hospital expenses and
17 other health care expenses of the children or an
18 order to provide a policy or contract for coverage of
19 such those expenses. Availability of public welfare
20 benefits to the family shall not affect the decision
21 of the court as to the responsibility of a parent to
22 provide child support. Nothing in this section ~~shall~~
23 may preclude the court from incarcerating a spouse
24 for nonpayment of child support, alimony or attor-
25 ney's fees in violation of a court order to do so.

26 Sec. 3. 19 MRSA §752, first ¶, as amended by PL
27 1981, c. 174, §2, is further amended to read:

28 The court making an order of nullity or of
29 divorce may make an order concerning the care, cus-
30 tody and support of the minor children of the parties
31 and may decree which parent shall have exclusive care
32 and custody of any of the minor children, may appor-
33 tion the care and custody of any of the minor chil-
34 dren between the parents, may decree that the parents
35 shall have joint custody of any of the minor chil-
36 dren, or may grant the care and custody of those
37 children to a 3rd person or to some suitable society
38 or institution for the care and protection of chil-
39 dren or to the Department of Human Services. The
40 court may order reasonable rights of visitation to a
41 parent of any of the minor children, to any 3rd per-
42 sons, or to both. The court shall not consider aban-
43 donment of the family residence as a factor in deter-
44 mining custodial rights when the abandoning party has
45 been physically harmed or seriously threatened with

1 physical harm by his spouse, when that harm or threat
2 of harm by his spouse was causally related to the
3 abandonment. An order for child support under this
4 section may include an order for the payment of part
5 or all of the medical expenses, hospital expenses and
6 other health care expenses of the children or an
7 order to provide a policy or contract for coverage of
8 ~~such~~ those expenses. Availability of public welfare
9 benefits to the family shall not affect the decision
10 of the court as to the responsibility of a parent to
11 provide child support. It may alter its order con-
12 cerning the care, custody and support of the minor
13 children from time to time as circumstances require,
14 whether or not either parent be then living, upon
15 motion of either party, such society or institution
16 as aforesaid, the Department of Human Services, any
17 3rd person to whom care or custody has been granted,
18 any blood relative or any person standing in loco
19 parentis to ~~said~~ the minor children; change the name
20 of the wife, at her request; and in execution of the
21 powers given it under this Title may employ any com-
22 pulsory process which it deems proper, by execution,
23 attachment or other effectual form, on which costs
24 shall be taxed as in other actions. The court may
25 enforce an order as provided under chapter 14.

26 STATEMENT OF FACT

27 The purpose of this new draft is to provide for
28 possible court-ordered visitation rights for grand-
29 parents with their grandchildren, stepparents with
30 their stepchildren, or any 3rd persons who a court
31 finds should have rights to visit a child. The vis-
32 itation rights could only be ordered in a case where
33 the court is making or has made a child custody order
34 in the context of the separation of the parents or
35 their divorce or annulment.

36 This new draft also refers to visitation rights
37 for parents. While courts have been granting visita-
38 tion rights to parents, a specific expression of a
39 court's authority to do so does not currently appear
40 in the statutes. Such an expression is added for
41 purposes of clarity.

1 With these provisions in the law, it is possible
2 that a court making child custody decisions may also
3 grant visitation rights so that a parent, a grand-
4 parent and perhaps others may all have rights to
5 spend some time with a child.

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