

MAINE STATE LEGISLATURE

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(New Draft of H.P. 397, L.D. 480)
(New Title)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1657

H.P. 1243

House of Representatives, May 23, 1983

Reported by Representative Foster from the Committee on Judiciary and printed under Joint Rule 2.

Original bill presented by Representative Hobbins of Saco. Cosponsored by Representative Higgins of Scarborough, Senator Gill of Cumberland and Representative Soule of Westport.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Provide that Joint Custody
be Awarded when the Parents Agree to it in
Child Custody Cases.

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

Sec. 1. 19 MRSA §214, first ¶, as amended by PL 1983, c. 195, §1, is further amended to read:

If the father and mother of a minor child are living apart from each other, the judge of probate or the Superior Court Justice or the District Court in the county where either resides, on complaint of either and after such notice to the other as he may order, may decree which parent shall have the exclusive care and custody of the person of that minor, may apportion the care and custody of the minor

1 between the parents or may decree that the parents
2 shall have joint custody of the minor, as the good of
3 the child may require. Where the parents have agreed
4 to an award of joint custody or so agree in open
5 court, the court shall award joint custody unless
6 there is substantial evidence that joint custody
7 should not be awarded. If the court elects not to
8 award joint custody when the parents have agreed to
9 it, the court shall state in its decision the reasons
10 for denial of a joint custody award. The court may
11 order reasonable rights of visitation with the minor
12 child to a parent of the child, to any 3rd persons,
13 or to both. The court shall not consider abandonment
14 of the family residence as a factor in determining
15 custodial rights when the abandoning party has been
16 physically harmed or seriously threatened with physical
17 harm by his spouse, when that harm or threat of
18 harm by his spouse was causally related to the abandonment.
19 He may order either parent of the minor
20 child or children to contribute to the support of
21 that minor child or children sums payable weekly,
22 monthly or quarterly as are deemed reasonable and
23 just and may enforce obedience by appropriate
24 decrees, execution issuing for those sums when payable
25 and for costs, which decrees shall be in force
26 until further order of the judge or justice. An
27 appeal shall lie from such decree or decrees to the
28 Supreme Court of Probate, where originating in the
29 Court of Probate, or to the Supreme Judicial Court
30 where originating in the Superior Court, or to the
31 Superior Court where originating in the District
32 Court, but the original decrees shall be in force
33 until reversed.

34 Sec. 2. 19 MRSA §752, first ¶, as amended by PL
35 1983, c. 195, §3, is further amended to read:

36 The court making an order of nullity or of
37 divorce may make an order concerning the care, custody
38 and support of the minor children of the parties
39 and may decree which parent shall have exclusive care
40 and custody of any of the minor children, may apportion
41 the care and custody of any of the minor children
42 between the parents, may decree that the parents
43 shall have joint custody of any of the minor children,
44 or may grant the care and custody of those
45 children to a 3rd person or to some suitable society

1 or institution for the care and protection of chil-
2 dren or to the Department of Human Services. Where
3 the parents have agreed to an award of joint custody
4 or so agree in open court, the court shall award
5 joint custody unless there is substantial evidence
6 that joint custody should not be awarded. If the
7 court elects not to award joint custody when the par-
8 ents have agreed to it, the court shall state in its
9 decision the reasons for denial of a joint custody
10 award. The court may order reasonable rights of vis-
11 itation to a parent of any of the minor children, to
12 any 3rd persons, or to both. The court shall not
13 consider abandonment of the family residence as a
14 factor in determining custodial rights when the aban-
15 doning party has been physically harmed or seriously
16 threatened with physical harm by his spouse, when
17 that harm or threat of harm by his spouse was
18 causally related to the abandonment. An order for
19 child support under this section may include an order
20 for the payment of part or all of the medical
21 expenses, hospital expenses and other health care
22 expenses of the children or an order to provide a
23 policy or contract for coverage of those expenses.
24 Availability of public welfare benefits to the family
25 shall not affect the decision of the court as to the
26 responsibility of a parent to provide child support.
27 It may alter its order concerning the care, custody
28 and support of the minor children from time to time
29 as circumstances require, whether or not either
30 parent be then living, upon motion of either party,
31 such society or institution as aforesaid, the Depart-
32 ment of Human Services, any 3rd person to whom care
33 or custody has been granted, any blood relative or
34 any person standing in loco parentis to the minor
35 children; change the name of the wife, at her
36 request; and in execution of the powers given it
37 under this Title may employ any compulsory process
38 which it deems proper, by execution, attachment or
39 other effectual form, on which costs shall be taxed
40 as in other actions. The court may enforce an order
41 as provided under chapter 14.

1 STATEMENT OF FACT

2 This new draft completely replaces the original
3 bill. The original bill set an order of priority
4 among various court-ordered child custody alterna-
5 tives in situations of separation or divorce. The
6 original bill established joint custody as the first
7 order of preference, with a presumption in favor of
8 joint custody.

9 This new draft amends current law to say that,
10 when parents agree to a joint custody arrangement,
11 the court must award joint custody unless there is
12 substantial evidence indicating joint custody should
13 not be awarded.

14 The many remaining questions about the domestic
15 relations law of Maine raised by the original bill
16 will be addressed in a study of this subject. The
17 findings of the study will be reported to the next
18 session of the 111th Legislature.

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