

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 2230

6
7 H.P. 1696

House of Representatives, March 15, 1984

8 Submitted pursuant to Public Law 1983, chapter 564.

9 Reported by Representative Foster for the Commission to Study the
10 Matter of Child Custody in Domestic Relations Cases pursuant to Public Law
1983, chapter 564 and printed under Joint Rule 18.

EDWIN H. PERT, Clerk

11
12 STATE OF MAINE
13

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

17 AN ACT to Create the Office of
18 Domestic Relations.
19

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

22 Sec. 1. 19 MRSA c. 17 is enacted to read:

23 CHAPTER 17

24 MARITAL DISSOLUTION, ANNULMENT OR SEPARATION

25 §901. Legislative findings and purpose

26 The Legislature finds that marital dissolution,
27 annulment or separation should not be determined
28 through an adversary process where strict court pro-
29 cedures apply, where damaging delay can occur and
30 where great costs may be incurred. The Legislature
31 finds that a more informal, nonadversarial forum,
32 where facts and attitudes can be fully explored, is

1 preferred for dispute resolution and decision making
2 in cases of marital dissolution, annulment or separa-
3 tion. This forum will encourage mediated resolu-
4 tions, discourage antagonism, permit less strict pro-
5 cedures to apply, limit the costs of these cases and
6 produce faster and more complete resolutions.

7 A primary purpose in changing the system for de-
8 termining marital dissolution, annulment or separa-
9 tion is concern for the best interest of minor child-
10 ren involved. The Legislature recognizes that it is
11 not in the best interest of minor children for their
12 parents to seek a marital dissolution, annulment or
13 separation in a system that exacerbates conflict be-
14 tween the parents. The Legislature recognizes that
15 it is in the best interest of minor children to en-
16 courage frequent and continuing contact with both
17 parents. The Legislature further recognizes that
18 children and parents are entitled to continue as
19 close a relationship as possible despite changes in
20 the family relationship.

21 §902. Definitions

22 As used in this chapter, unless the context oth-
23 erwise indicates, the following terms have the fol-
24 lowing meanings.

25 1. Allocated parental rights and responsibili-
26 ties. "Allocated parental rights and responsibili-
27 ties" means that responsibilities for the various as-
28 pects of a child's welfare are divided between the
29 parents, with the parent allocated a particular re-
30 sponsibility having the right to control that aspect
31 of the child's welfare. Responsibilities may be di-
32 vided exclusively or proportionately. Aspects of a
33 child's welfare for which responsibility may be di-
34 vided include primary physical residence,
35 parent-child contact, support, education, medical and
36 dental care, religious upbringing, travel boundaries
37 and expenses, and any other aspect of parental rights
38 and responsibilities. A parent allocated responsi-
39 bility for a certain aspect of a child's welfare may
40 be required to inform the other parent of major
41 changes in that aspect.

1 2. Child support. "Child support" means money
2 to be paid directly to a parent for the support of a
3 child, and may include the provision of health or
4 medical insurance coverage for a child.

5 3. Director. "Director" means the Director of
6 the Office of Domestic Relations.

7 4. Jeopardy. "Jeopardy" has the meaning set
8 forth in Title 22, section 4002, subsection 6.

9 5. Office. "Office" means the Office of Domes-
10 tic Relations.

11 6. Original petition. "Original petition" means
12 a petition for martial dissolution, annulment or sep-
13 aration under this chapter.

14 7. Post-marital support. "Post-marital support"
15 means the payment of support or maintenance to a
16 former spouse over a period of time, or a payment of
17 a lump sum of money instead of a periodic payment.

18 8. Shared parental rights and responsibili-
19 ties. "Shared parental rights and responsibilities"
20 means that most or all aspects of a child's welfare
21 remain the joint responsibility and right of both
22 parents, so that both parents retain equal parental
23 rights and responsibilities, and both parents must
24 confer and make joint decisions regarding the child's
25 welfare.

26 9. Sole parenting. "Sole parenting" means that
27 one parent is granted exclusive parental rights and
28 responsibilities with respect to all aspects of a
29 child's welfare, with the possible exception of the
30 right and responsibility for support.

31 §903. Office of Domestic Relations

32 1. Office. The Office of Domestic Relations
33 shall be established in the judicial department. The
34 judicial department shall provide office space for
35 the director and for each domestic relations concili-
36 ator. The District Court shall be the place of fil-
37 ing of petitions to be heard by the office for marit-
38 al dissolution, annulment or separation, of modifi-

1 cation or enforcement petitions and of orders arising
2 from these petitions. The office shall provide ad-
3 ministrative support to all domestic relations con-
4 ciliators. The office shall provide educational and
5 informational materials to the public and to peti-
6 tioners on the functions of the office, the issues to
7 be addressed by parties seeking marital dissolution,
8 annulment or separation and the best interests of
9 children involved in these cases.

10 2. Director. The Governor shall appoint a Di-
11 rector of Domestic Relations, subject to review by
12 the joint standing committee of the Legislature hav-
13 ing jurisdiction over judiciary and to confirmation
14 by the Senate, who shall serve for a 6-year term.
15 The salary of the director shall be \$37,000. The di-
16 rector may be removed and replaced as conciliators
17 may be removed and replaced under subsection 3. The
18 director shall be responsible for the administration
19 of the office and for appointment of personnel, other
20 than domestic relations conciliators. The director
21 shall provide training for conciliators so that they
22 meet the requirements of subsection 3, paragraphs C
23 to F.

24 In January 1985, the director shall report to the
25 Legislature any further statutory changes needed to
26 implement this chapter.

27 3. Conciliators. The Governor shall appoint 7
28 domestic relations conciliators, subject to review by
29 the joint standing committee of the Legislature hav-
30 ing jurisdiction over judiciary and to confirmation
31 by the Senate, to be distributed by the director
32 among the prosecutorial districts established in Ti-
33 tle 30, section 553-A. The salary of a conciliator
34 shall be \$35,000. The conciliators shall participate
35 in the Maine State Retirement System. A person ap-
36 pointed as a conciliator shall have the following
37 minimum qualifications:

38 A. A law degree or a masters degree in psycholo-
39 gy, social work, marriage, family and child coun-
40 seling or other behavioral science substantially
41 related to marriage and family interpersonal re-
42 lationships;

1 B. At least 2 years' experience with domestic
2 relations law or in counseling or psychotherapy,
3 preferably in a setting related to the areas of
4 responsibility of the office;

5 C. Knowledge of the laws affecting marital prop-
6 erty, spousal rights and responsibilities, and
7 parent and child rights and responsibilities;

8 D. Knowledge of adult psychopathology and the
9 psychology of families;

10 E. Knowledge of child development, clinical is-
11 ssues relating to children, the effects of divorce
12 on children and child custody research; and

13 F. Knowledge of other resources in the community
14 to which families, spouses, parents and children
15 may be referred for assistance.

16 The requirements of paragraphs C to F may be met by
17 training provided by the office.

18 The conciliators shall serve for 4-year terms, except
19 that upon the first appointment of conciliators, the
20 terms shall be staggered, with 3 conciliators ap-
21 pointed for 2 years and 4 conciliators appointed for
22 4 years. The Governor may remove a conciliator, with
23 the review and concurrence of the joint standing com-
24 mittee of the Legislature having jurisdiction over
25 judiciary, for cause prior to the expiration of the
26 conciliator's term. If a vacancy occurs, the Gover-
27 nor shall appoint a conciliator to complete the term
28 of the vacating conciliator.

29 4. Other personnel. The director may appoint
30 one clerical assistant for the director and one cler-
31 ical assistant for the conciliators in each
32 prosecutorial district. If the director determines
33 that the amount of work required of the clerical as-
34 stants by the conciliators is sufficiently limited
35 so that they may take on other assignments, the di-
36 rector shall make the clerical assistants available
37 to the District Courts to aid with court clerical
38 work. The director may employ by private contract
39 investigators, counselors or other consultants to as-
40 sist the conciliators. The director may, upon demon-

1 strated need, appoint part-time personnel to serve as
2 conciliators. These part-time personnel shall have
3 the qualifications required of conciliators under
4 subsection 3, and may serve for no more than 2 years.

5 §904. Powers and duties of conciliators

6 1. Equitable agreement or decision. The duty of
7 the conciliator is to help the parties reach an equi-
8 table agreement on property disposition, post-marital
9 support and payment of fees related to the petition,
10 and an agreement on child support, residence of minor
11 children, parent-child contact and decision making
12 regarding minor children that is equitable and is in
13 the best interest of the children. When all reason-
14 able efforts to achieve an agreement fail, the duty
15 of the conciliator is to make a decision on the dis-
16 puted issues. Where a child is involved, the concil-
17 iator shall seek an agreement that:

18 A. Provides parental direction, living arrange-
19 ments and financial support which is in the best
20 interest of the child;

21 B. Preserves a relationship of frequent and con-
22 tinuing contact between the child and each par-
23 ent;

24 C. Promotes responsible communication between
25 the separated parents regarding the welfare of
26 the child; and

27 D. Achieves stability for the child in parental
28 contacts, living arrangements, educational ser-
29 vices and relationships with friends and rela-
30 tives.

31 2. Best interest of children. The conciliator
32 shall, in all cases involving children, safeguard the
33 best interest of the children. In cases where an
34 agreement is not reached on issues involving a child
35 and the conciliator must decide these issues, the
36 conciliator shall apply the standard of the best in-
37 terest of the child. In applying this standard, the
38 conciliator shall consider the following factors:

39 A. The age of the child;

- 1 B. The relationship of the child with the
2 child's parents and any other persons who may
3 significantly affect the child's welfare;
- 4 C. The preference of the child, if old enough to
5 express a meaningful preference;
- 6 D. The duration and adequacy of the child's cur-
7 rent living arrangements and the desirability of
8 maintaining continuity;
- 9 E. The stability of any proposed living arrange-
10 ments for the child;
- 11 F. The motivation of the parties involved and
12 their capacities to give the child love, affec-
13 tion and guidance;
- 14 G. The child's adjustment to the child's present
15 home, school and community;
- 16 H. The capacity of each parent to allow and en-
17 courage frequent and continuing contact between
18 the child and the other parent, including physio-
19 cal access;
- 20 I. The capacity of each parent to cooperate or
21 to learn to cooperate in child care;
- 22 J. Methods for assisting parental cooperation
23 and resolving disputes and each parent's willing-
24 ness to use those methods;
- 25 K. The effect on the child if one parent has
26 sole authority over the child's upbringing; and
- 27 L. All other factors having a reasonable bearing
28 on the physical and psychological well-being of
29 the child.

30 3. Equal consideration of parents. In all cases
31 involving children, the conciliator may not apply a
32 preference for one parent over the other in determin-
33 ing parental rights and responsibilities because of
34 the parent's sex or the child's age or sex.

35 4. Order. Every final order issued under this
36 chapter shall contain:

1 A. Where a child is involved, a provision for
2 child support or a statement of the reasons for
3 not ordering child support;

4 B. Where a child is involved, a statement that
5 each parent shall have access to records and in-
6 formation pertaining to a minor child, including,
7 but not limited to, medical, dental and school
8 records, whether or not the child resides with
9 the parent, unless that access is found not to be
10 in the best interest of the child or is found to
11 be sought for the purpose of causing detriment to
12 the other parent; and

13 C. A statement as to how the costs and fees, in-
14 cluding attorneys' fees, associated with the pe-
15 tion, are to be paid.

16 5. Preliminary orders. The conciliator may is-
17 sue preliminary orders on any of the issues of
18 post-marital support, property disposition, child
19 support, residence of minor children, parent-child
20 contact and decision making, regarding minor chil-
21 dren, at the first meeting of the conference on the
22 petition. These orders shall remain in effect as
23 specified by the conciliator or until the issuance of
24 an order under section 907, whichever is the shorter
25 period of time.

26 §905. Bringing a petition

27 1. Jurisdiction. The Office of Domestic Rela-
28 tions shall have jurisdiction over all petitions for
29 marital dissolution, annulment or separation filed on
30 or after July 1, 1985. The office shall have juris-
31 isdiction over the parties to the petition and all per-
32 sons having any relation to the petition.

33 2. Filing the petitions; 3rd persons. On or af-
34 ter July 1, 1985, any spouse, or both spouses, seek-
35 ing marital dissolution, annulment or separation
36 shall file with the District Court a petition, on
37 forms provided by the office, invoking the jurisdic-
38 tion of the office. The District Court shall inform
39 the office of a petition within one day of its fil-
40 ing. The director or his designee shall within 7
41 days from the filing of the petition assign the peti-

1 tion to a conciliator, provided that if minor chil-
2 children are affected by the petition and the minor chil-
3 dren reside with one of the parties in a district,
4 the petition shall be assigned to a conciliator in
5 that district.

6 Where minor children are involved, any interested 3rd
7 person may give notice to the District Court request-
8 ing the granting of rights of contact with the minor
9 children to the 3rd person. The notice shall be on
10 forms provided by the office. The 3rd person shall
11 submit the notice to the District Court at the time
12 of the filing of the petition or at any subsequent
13 time prior to the first meeting of the conference on
14 the petition. The District Court shall inform the
15 office of the filing of a notice within one day of
16 its filing. The notice shall be sent to the concili-
17 ator assigned to the petition.

18 3. Petition contents. The petition shall con-
19 tain, at a minimum:

20 A. The order sought, whether for marital disso-
21 lution, annulment or separation;

22 B. The grounds upon which marital dissolution,
23 annulment or separation is sought;

24 C. The name and address of the petitioner or pe-
25 titioners;

26 D. The name and address of the other spouse, if
27 the petition is filed by one spouse only;

28 E. The name, age and address of any minor child
29 whose welfare may be affected by the petition;

30 F. A statement as to whether or not any minor
31 child affected by the petition is receiving pub-
32 lic assistance;

33 G. A statement as to whether or not any minor
34 child affected by the petition is currently in
35 jeopardy;

36 H. The following facts:

1 (1) The occupation of each spouse; and

2 (2) The date of the marriage and place at
3 which it was registered;

4 I. The date and place of any prior marital liti-
5 gation or of any petition for marital dissolu-
6 tion, annulment or separation under this chapter;
7 and

8 J. The arrangements sought, if known, with re-
9 gard to post-marital support, property disposi-
10 tion, child support, residence of minor children,
11 parent-child contact and decision making regard-
12 ing minor children.

13 4. Fees. A fee of \$75 shall accompany each pe-
14 tion filed under subsection 2, unless the petiti-
15 oner files with the petition, on a form provided by the
16 office and signed and sworn to by the petitioner, in-
17 formation demonstrating an inability to pay the \$75
18 fee. In such a case, the fee for filing a petition
19 shall be based on ability to pay according to a fee
20 schedule established by the director.

21 §906. Conducting the conference

22 1. Place, date, notice of conference. Upon as-
23 signment to a petition for marital dissolution, an-
24 nulment or separation, the conciliator shall set the
25 place of the conference on the petition. The confer-
26 ence shall occur at an office of the conciliator or,
27 if more convenient or greater space is needed, in a
28 meeting room provided in the place for holding court,
29 established under Title 4, section 115, in the appro-
30 priate county. The conciliator shall set a reason-
31 able date for the conference, not sooner than 30 days
32 nor later than 45 days after notice of the conference
33 is sent, except that, if the petition contains a
34 statement that a minor child is currently in jeopar-
35 dy, the date set for the conference shall be as soon
36 as possible. If the petition contains a statement
37 that a minor child is receiving public assistance,
38 the conciliator shall notify the Department of Human
39 Services of the petition and the department shall be
40 treated as a party to the petition, if the department
41 so requests. The conciliator shall send a notice in

1 writing, within 7 days from assignment of the peti-
2 tion, to each party of the date, time and place of
3 the conference. Notice shall be by certified mail,
4 return receipt requested. With the notice the con-
5 ciliator shall send forms, including forms seeking a
6 statement of resources, prepared by the office, to
7 assist the parties in planning for the conference and
8 to provide the conciliator with information. The
9 parties shall return these forms to the conciliator
10 within 7 days from their receipt. The conciliator
11 may request the parties to bring other materials to
12 the conference. The conciliator shall also send with
13 the notice a statement that the parties are required
14 to attempt to reach an agreement on post-marital sup-
15 port, property disposition, child support, residence
16 of minor children, parent-child contact and decision
17 making regarding minor children prior to the confer-
18 ence. The conciliator shall send with the notice ma-
19 terials and information to help the parties reach an
20 agreement. The parties shall bring any agreement
21 reached or any agreement proposed by a party to the
22 conference.

23 2. The conference. The conference shall be con-
24 ducted informally by the conciliator as a private
25 meeting or series of private meetings to resolve dis-
26 putes between the parties and procure an agreement on
27 post-marital support, property disposition, child
28 support, residence of minor children, parent-child
29 contact and decision making regarding minor children.
30 The conciliator shall review any agreement reached by
31 the parties prior to the conference. The conciliator
32 may meet separately with a party if necessary. The
33 conciliator shall seek a parenting agreement that
34 provides for the most possible sharing of rights and
35 responsibilities according to the best interest of
36 the child, and shall make a substantial effort to
37 help the parties reach an agreement. The concilia-
38 tor:

39 A. Shall not apply the Maine Rules of Evidence
40 at the conference, but shall observe the rules of
41 privilege recognized by law. Evidence shall be
42 admitted if it is the kind upon which reasonable
43 persons are accustomed to rely in the conduct of
44 serious affairs. Evidence which is incompetent,
45 irrelevant, immaterial or lacking in probative
46 value may be excluded;

1 B. May administer oaths and affirmations, take
2 and authorize depositions, certify to official
3 acts and issue subpoenas to compel the attendance
4 of persons and the production of books, papers,
5 correspondence, memoranda and other records when
6 required by the interests of any party. Subpoe-
7 nas shall be issued under the procedures estab-
8 lished in the Maine District Court Civil Rules.
9 Depositions may be taken for any of the following
10 causes:

11 (1) When the deponent resides out of, or is
12 absent from, the State;

13 (2) When the deponent is bound to sea or is
14 about to go out of the State;

15 (3) When the deponent is so infirm or sick
16 as to be unable to attend at the place of
17 the conference; and

18 (4) When the conciliator otherwise finds a
19 deposition to be necessary;

20 The depositions shall be taken by written inter-
21 rogatories prepared and compiled by the concilia-
22 tor. The depositions shall be signed and sworn
23 to by the deponent;

24 C. May meet with any minor child affected by the
25 petition or any 3rd person having a relation to
26 the petition; and

27 D. Shall tape record the conference, including
28 any meeting of the conciliator with one party,
29 children or 3rd persons. At the expense of a
30 party requesting it, unless the party demon-
31 strates on forms provided by the office and
32 signed and sworn to by the party that the party
33 is unable to pay the expense, a transcript of the
34 tape recording shall be made. The record shall
35 consist of the petition, the tape recording, oth-
36 er evidence received and considered, any written
37 agreement entered into by the parties that be-
38 comes an order and any written findings and deci-
39 sion by the conciliator that becomes an order.

1 3. Attorneys. An attorney representing a party
2 may be present at the conference if the party so re-
3 quests. Attorneys shall not cross-examine persons
4 present at the conference, unless permitted to do so
5 by the conciliator. Attorneys may submit questions
6 to be asked during the conference to the conciliator.

7 4. Investigations or referrals. The concilia-
8 tor, upon his own initiative or the request of a par-
9 ty, may order an investigator contracting with the
10 office to investigate the circumstances of a child
11 and his parents. The investigator shall submit a
12 written report to the conciliator and the parties by
13 the date set by the conciliator. The conciliator,
14 upon his own initiative or the request of a party,
15 may refer the parties and their children to a coun-
16 selor contracting with the office. The counselor
17 shall, if requested by the conciliator on his own
18 initiative or at the request of a party, submit a
19 written report to the conciliator and the parties by
20 the date set by the conciliator. The conciliator may
21 use the services of any other office personnel in any
22 case.

23 §907. Order

24 1. Agreement. If, upon conclusion of the con-
25 ference, as determined by the conciliator, the par-
26 ties have reached an agreement which meets the re-
27 quirements of section 904, subsection 1, on any of
28 the issues of post-marital support, property disposi-
29 tion and, if minor children are involved, child sup-
30 port, residence of minor children, parent-child con-
31 tact and decision making regarding minor children,
32 the conciliator shall cause the agreement to be re-
33 duced to writing and shall obtain the signatures of
34 both parties on the agreement. An agreement must al-
35 so contain the provisions required by section 904,
36 subsection 4. The signed agreement, after the con-
37 ciliator's signature is attached, shall become a fi-
38 nal order of the conciliator.

39 2. Decision without agreement. If any issues
40 concerning post-marital support, property disposition
41 and, if minor children are involved, child support,
42 residence of minor children, parent-child contact and
43 decision making regarding minor children are not

1 agreed upon by the parties at the conclusion of the
2 conference, as determined by the conciliator, the
3 conciliator shall issue written findings and a writ-
4 ten decision on the issues not agreed to. The deci-
5 sion shall be equitable and where property disposi-
6 tion is involved shall be based on the law of marital
7 property. Where minor children are involved, the de-
8 cision shall be based on the best interest of the
9 children under section 904, subsection 2. The con-
10 ciliator shall order shared parental rights and re-
11 sponsibilities, allocated parental rights and respon-
12 sibilities or sole parenting, according to the best
13 interest of the child. The decision shall contain
14 written findings. The decision must also contain the
15 provisions required by section 904, subsection 4.
16 This decision when written and signed by the concili-
17 ator shall become a final order of the conciliator.

18 3. Report and effect of order. The conciliator
19 shall report the order to the office. The order
20 shall be filed in the District Court. The concilia-
21 tor shall also cause copies of the order to be given
22 to the parties. The order shall have the same force
23 and effect, and shall be given the same full faith
24 and credit, as a court order.

25 4. Modification or termination. Any party to
26 the order may petition for modification or termina-
27 tion of the order upon a substantial change of cir-
28 cumstances. The petition shall be on forms provided
29 by the office and available at the District Court.
30 The petition shall contain the information required
31 under section 905, subsection 3, paragraphs C to J,
32 plus the date of the order to which the petition un-
33 der this subsection relates and a statement of the
34 alleged reason for modification or termination. The
35 petition shall be filed with the District Court. The
36 District Court shall inform the office of a petition
37 within one day of its filing. The office shall as-
38 sign the petition to the conciliator who issued the
39 original order, if possible, or as original petitions
40 are assigned. The procedures for a conference on the
41 modification or termination petition shall be the
42 same as those for an original petition.

43 Modification or termination of an order established
44 under chapter 5 or 13 shall, on or after July 1,

1 1985, be sought under the procedures established in
2 this subsection, provided that there has been no ac-
3 tion to modify or terminate the order by the party
4 seeking the modification or termination under this
5 subsection within 3 years from the date of the order.
6 If there has been such action, modification or termi-
7 nation of the order shall be sought under chapter 5
8 or 13.

9 5. Enforcement. Any party to the order, includ-
10 ing 3rd persons granted rights of contact with minor
11 children in the order, may petition for its enforce-
12 ment. The petition shall be on forms provided by the
13 office and available at the District Court and shall
14 contain the information required under subsection 4,
15 except that in place of the alleged reason for modi-
16 fication or termination the petition shall state the
17 alleged violation of the order. The petition shall
18 be filed with the District court. The office shall
19 be informed and a petition shall be assigned as a pe-
20 tition under subsection 4.

21 If the alleged violation is a failure to pay child
22 support, the person to whom the support is owed may,
23 at any time, seek relief by resort to any criminal,
24 civil or administrative remedies available at law.
25 Nothing in this chapter may be construed to limit the
26 remedies available for failure to pay child support
27 under this Title or Title 17-A.

28 If, upon a petition for enforcement, the conciliator
29 finds any party to be in violation of the order, the
30 other party may enforce the conciliator's order in
31 District Court as contempt or in any other manner
32 that decrees for equitable relief may be enforced.
33 If the court finds a party in violation of the order,
34 it may order that party to pay the prosecuting party
35 the costs of enforcing the order, including attor-
36 neys' fees.

37 §908. Appeals

38 Any party to a final order may appeal the deci-
39 sion of the conciliator under section 907, subsection
40 2, to the Superior Court. The court shall review the
41 decision for abuse of discretion or error of law.
42 Appeals to the Supreme Judicial Court may be taken as
43 in other civil matters.

1 §909. Rules

2 The Supreme Judicial Court may adopt rules under
3 Title 4, section 8, to carry out the provisions of
4 this chapter. These rules may not be incompatible
5 with the findings and purposes set forth in section
6 901.

7 Sec. 2. Effective date. The Revised Statutes,
8 Title 19, section 901, shall be effective 90 days af-
9 ter adjournment of the Legislature. Title 19, sec-
10 tions 902 to 909, shall be effective on July 1, 1985.

11 STATEMENT OF FACT

12 The purpose of this bill is to remove actions for
13 divorce, annulment or separation from the traditional
14 court process. These actions, when children are in-
15 volved and when they are not , will be heard by a new
16 office, connected to the courts, established to as-
17 sist persons seeking divorce, annulment or separation
18 to reach agreements on the financial, property, and
19 child-care issues facing them. The primary goal of
20 this bill is to remove these issues, especially when
21 children are involved, from the adversary process re-
22 quired by strict court procedures.

23 A 2nd goal of the bill is to change the terminol-
24 ogy of what are now called child custody decisions.
25 Terms such as "custody," "visitation" and "joint cus-
26 tody" cause 2 problems: When custody is given to one
27 parent, with visitation rights given to the other,
28 the implication is that the visiting parent is no
29 longer a parent, but a visitor; and when custody or
30 joint custody are decreed, parties often remain con-
31 fused as to how parental rights and responsibilities
32 are to be exercised. This bill seeks to promote, in-
33 stead, as much sharing of parenting as possible, ac-
34 cording to the best interests of the child. Both
35 parents remain equally responsible for child care
36 when shared parental rights and responsibilities are
37 ordered. Various aspects of child care, such as pri-
38 mary physical residence, child support, parent-child
39 contact and medical or educational decisions, may,
40 where sharing of these aspects is impossible, be al-
41 located between the divorcing parents based on the

1 best interest of the child. As much involvement as
2 possible of both parents in and as much responsibili-
3 ty as possible on both parents for the lives of their
4 children is in the best interest of children. Sole
5 parenting, where one parent is given full rights and
6 responsibility for a child, except, perhaps, for
7 child support obligations, may in some cases be best
8 for the children involved. Section 1 of the bill ac-
9 complishes the goals set forth above.

10 Title 19, section 901 in the bill states the leg-
11 islative findings and purposes.

12 Title 19, section 902 provides definitions. In
13 place of the current statutory terms of custody, vis-
14 itation and joint custody this bill describes shared
15 parental rights and responsibilities, allocated pa-
16 rental rights and responsibilities and sole
17 parenting.

18 Title 19, section 903 provides for the establish-
19 ment of an Office of Domestic Relations and the ap-
20 pointment of a director and 7 conciliators. The con-
21 ciliators will act as mediators, dispute-resolvers,
22 and, where necessary, decision makers when divorce,
23 annulment or separation is sought. The director will
24 administer the office, and must report to the Legis-
25 lature in January 1985 on any further statutory
26 changes needed to implement this legislation.

27 Title 19, section 904 specifies the powers and
28 duties of conciliators. The conciliators must seek
29 an equitable agreement between the parties, and,
30 where children are involved, must seek an agreement
31 in the best interest of the children. This includes
32 seeking financial support for a child, frequent and
33 continuing contact between parents and their child,
34 communication between parents and stability and con-
35 tinuity for the child. In seeking the best interest
36 of a child, a conciliator is to consider several
37 listed factors. Conciliators are not to consider a
38 mother or father better able to care for a child sim-
39 ply because the person is the mother or father. Ev-
40 ery order by the conciliator must discuss child sup-
41 port, parental access to information and records per-
42 taining to the child, and payment of fees.

1 Title 19, section 905 provides for the bringing
2 of petitions for marital dissolution, annulment or
3 separation. These petitions are filed in the Dis-
4 trict Court. The Office of Domestic Relations is no-
5 tified of the filings and assigns petitions to con-
6 ciliators. Third persons may seek through the office
7 to be granted rights of contact with a child affected
8 by a petition. Petitions are generally accompanied
9 by a \$75 fee.

10 Title 19, section 906 describes the conduct of the
11 conference on a petition. The conference is a pri-
12 vate meeting or series of private meetings between
13 the conciliator and the parties. Attorneys may be
14 present. The conference is aimed at achieving an
15 agreement on post-marital support, property disposi-
16 tion, child support, residence of minor children,
17 parent-child contact and decision making regarding
18 minor children. A parenting agreement, providing for
19 the most possible sharing of rights and responsibili-
20 ties, and, where necessary, allocating rights and re-
21 sponsibilities, according to the best interest of the
22 children, is to be sought. The conciliator or a par-
23 ty may request family investigations or counseling.

24 Title 19, section 907 provides for an order aris-
25 ing from the conference with a conciliator. Any
26 agreement reached by the parties that, where children
27 are involved, is in the best interest of the children
28 becomes an order. Any issues upon which the parties
29 cannot agree must be decided by the conciliator. A
30 parenting order should provide for the most possible
31 sharing of rights and responsibilities. Where rights
32 and responsibilities must be allocated, the concilia-
33 tor shall do the allocation according to the best in-
34 terest of the child. The conciliator may, in a prop-
35 er case, order sole parenting.

36 Parties may seek modification, termination or en-
37 forcement of orders through a conference with the
38 conciliator. Modification of divorce, annulment or
39 separation decrees previously granted by a court
40 will, after July 1, 1985, be sought through the con-
41 ciliator's office, provided there has been no action
42 on the decree for 3 years by the person seeking the
43 modification or termination.

1 Nothing in this bill precludes a party from using
2 other means of child support enforcement available in
3 statute. If the conciliator finds any violation of
4 the order, the other party may seek court enforcement
5 of the order.

6 Title 19, section 908 permits appeals from a con-
7 ciliator's order, arrived at without agreement of the
8 parties, to Superior Court. The order will be re-
9 viewed for error of law or abuse of discretion.

10 Title 19, section 909 permits the Supreme Judi-
11 cial Court to adopt rules.

12 Finally, section 2 establishes an effective date
13 for this legislation. The provisions establishing
14 the office, and permitting appointments and adminis-
15 trative functions to proceed, will be effective 90
16 days after the Legislature adjourns. The change to
17 this new method of hearing and deciding actions for
18 marital dissolution, annulment or separation will not
19 occur until July 1985.

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