

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1696, L.D. 2230)
2 (New Title)

3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 2466

8
9 H.P. 1861

House of Representatives, April 12, 1984

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

12 EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

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

19 AN ACT to Revise Child Custody
20 Terminology, Enact "Best Interest of the Child"
21 Criteria and Provide for Mandatory Mediation in
22 Cases of Separation, Annulment or Divorce where
23 there is a Contested Issue Involving Children.
24

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

27 Sec. 1. 19 MRSA §214, as amended by PL 1983, c.
28 564, §1, is repealed and the following enacted in its
29 place:

30 §214. Parenting and support decreed when parents
31 live apart

32 1. Legislative findings and purpose. The Legis-
33 lature finds and declares as public policy that en-

1 couraging mediated resolutions of disputes between
2 parents is in the best interest of minor children.

3 2. Definitions. As used in this section, unless
4 the context otherwise indicates, the following terms
5 have the following meanings.

6 A. "Allocated parental rights and responsibilities"
7 means that responsibilities for the various
8 aspects of a child's welfare are divided between
9 the parents, with the parent allocated a particu-
10 lar responsibility having the right to control
11 that aspect of the child's welfare. Responsibili-
12 ties may be divided exclusively or proportionate-
13 ly. Aspects of a child's welfare for which re-
14 sponsibility may be divided include primary phys-
15 ical residence, parent-child contact, support,
16 education, medical and dental care, religious
17 upbringing, travel boundaries and expenses and
18 any other aspect of parental rights and responsi-
19 bilities. A parent allocated responsibility for a
20 certain aspect of a child's welfare may be re-
21 quired to inform the other parent of major
22 changes in that aspect.

23 B. "Child support" means money to be paid di-
24 rectly to a parent or to another person or agency
25 awarded parental rights and responsibilities with
26 respect to a child for the support of a child,
27 and may include the provision of health or medi-
28 cal insurance coverage for a child.

29 C. "Shared parental rights and responsibilities"
30 means that most or all aspects of a child's wel-
31 fare remain the joint responsibility and right of
32 both parents, so that both parents retain equal
33 parental rights and responsibilities and both
34 parents must confer and make joint decisions re-
35 garding the child's welfare.

36 D. "Sole parental rights and responsibilities"
37 means that one parent is granted exclusive paren-
38 tal rights and responsibilities with respect to
39 all aspects of a child's welfare, with the possi-
40 ble exception of the right and responsibility for
41 support.

1 3. Jurisdiction. If the father and mother of a
2 minor child are living apart, the Probate Court, Su-
3 perior Court or District Court in the county or divi-
4 sion where either resides, on complaint of either and
5 after such notice to the other as the court may order,
6 may make an order awarding parental rights and
7 responsibilities with respect to the child.

8 The right to file a complaint shall not be denied any
9 person for failure to meet any residency requirement
10 if the person is a member of the Armed Forces of the
11 United States on active duty stationed in this State
12 or a parent of a child of such a member. Such a mem-
13 ber shall be deemed to be a resident either of the
14 county in which the military installation or instal-
15 lations, or other place at which he has been sta-
16 tioned, is located or of the county in which he has
17 sojourned.

18 The jurisdiction granted by this section shall be
19 limited by the Uniform Child Custody Jurisdiction
20 Act, sections 801 to 825, if another state may have
21 jurisdiction as provided in that Act.

22 4. Mediation. Prior to a contested hearing under
23 this section where there are minor children of the
24 parties, the court shall refer the parties to media-
25 tion. Any agreement reached by the parties through
26 mediation on any issues shall be reduced to writing,
27 signed by the parties and presented to the court for
28 approval as a court order. When agreement through me-
29 diation is not reached on any issue, the court must
30 determine that the parties made a good faith effort
31 to mediate the issue before proceeding with a hear-
32 ing. If the court finds that either party failed to
33 make a good faith effort to mediate, the court may
34 refer the parties back to mediation.

35 5. Best interest of the child. The court, in
36 making an award of parental rights and responsibili-
37 ties with respect to a minor child, shall apply the
38 standard of the best interest of the child. In apply-
39 ing this standard, the court shall consider the fol-
40 lowing factors:

41 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 physi-
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 6. Order. The order of the court shall award al-
31 located parental rights and responsibilities, shared
32 parental rights and responsibilities or sole parental
33 rights and responsibilities, according to the best
34 interest of the child. Where the parents have agreed
35 to an award of shared parental rights and responsi-
36 bilities or so agree in open court, the court shall

1 make that award unless there is substantial evidence
2 that it should not be ordered. The court shall state
3 in its decision the reasons for not ordering a shared
4 parental rights and responsibilities award agreed to
5 by the parents.

6 The court may award reasonable rights of contact with
7 a minor child to any 3rd persons.

8 Every final order issued under this section shall
9 contain:

10 A. A provision for child support or a statement
11 of the reasons for not ordering child support;
12 and

13 B. A statement that each parent shall have ac-
14 cess to records and information pertaining to a
15 minor child, including but not limited to, medi-
16 cal, dental and school records, whether or not
17 the child resides with the parent, unless that
18 access is found not to be in the best interest of
19 the child or that access is found to be sought
20 for the purpose of causing detriment to the other
21 parent. If that access is not ordered, the court
22 shall state in the order its reasons for denying
23 that access.

24 7. Equal consideration of parents. The court may
25 not apply a preference for one parent over the other
26 in determining parental rights and responsibilities
27 because of the parent's sex or the child's age or
28 sex.

29 8. Abandonment of family residence. The court
30 shall not consider abandonment of the family resi-
31 dence as a factor in determining parental rights and
32 responsibilities with respect to a minor child when
33 the abandoning parent has been physically harmed or
34 seriously threatened with physical harm by the other
35 parent and that harm or threat of harm was causally
36 related to the abandonment, or when one parent has
37 left the family residence at the request or
38 insistence of the other parent.

39 9. Support order. The court may order either
40 parent of a minor child to contribute reasonable and

1 just sums as child support payable weekly, monthly or
2 quarterly. The court may enforce obedience to the or-
3 der by appropriate decrees, execution issuing for
4 those sums when payable and for costs. The decrees
5 shall be in force until further order of the court.

6 10. Appeal. An appeal shall lie from decrees
7 awarding parental rights and responsibilities with
8 respect to a minor child to the Supreme Judicial
9 Court where originating in the Probate Court or the
10 Superior Court, or to the Superior Court where origi-
11 inating in the District Court.

12 11. Modification or termination. Any order for
13 parental rights and responsibilities with respect to
14 a minor child may be modified or terminated as cir-
15 cumstances require upon the petition of one or both
16 of the parents. The parties shall be referred to me-
17 diation as under subsection 4.

18 Sec. 2. 19 MRSA §581, as amended by PL 1983, c.
19 195, §2, is repealed and the following enacted in its
20 place:

21 §581. Spouse deserted or living apart

22 1. Legislative findings and purpose. The Legis-
23 lature finds and declares as public policy that en-
24 couraging mediated resolutions of disputes between
25 parents is in the best interest of minor children.

26 2. Definitions. As used in this section, unless
27 the context otherwise indicates, the following terms
28 have the following meanings.

29 A. "Allocated parental rights and responsibili-
30 ties" means that responsibilities for the various
31 aspects of a child's welfare are divided between
32 the parents, with the parent allocated a particu-
33 lar responsibility having the right to control
34 that aspect of the child's welfare. Responsibili-
35 ties may be divided exclusively or proportionate-
36 ly. Aspects of a child's welfare for which re-
37 sponsibility may be divided include primary phys-
38 ical residence, parent-child contact, support,
39 education, medical and dental care, religious
40 upbringing, travel boundaries and expenses and

1 any other aspect of parental rights and responsi-
2 bilities. A parent allocated responsibility for a
3 certain aspect of a child's welfare may be re-
4 quired to inform the other parent of major
5 changes in that aspect.

6 B. "Child support" means money to be paid di-
7 rectly to a parent or to another person or agency
8 awarded parental rights and responsibilities with
9 respect to a child for the support of a child,
10 and may include the provision of health or medi-
11 cal insurance coverage for a child.

12 C. "Shared parental rights and responsibilities"
13 means that most or all aspects of a child's wel-
14 fare remain the joint responsibility and right of
15 both parents, so that both parents retain equal
16 parental rights and responsibilities and both
17 parents must confer and make joint decisions re-
18 garding the child's welfare.

19 D. "Sole parental rights and responsibilities"
20 means that one parent is granted exclusive paren-
21 tal rights and responsibilities with respect to
22 all aspects of a child's welfare, with the possi-
23 ble exception of the right and responsibility for
24 support.

25 3. Jurisdiction. The court shall have the fol-
26 lowing jurisdiction.

27 A. If a married person, without just cause,
28 deserts his spouse or if his spouse, for just
29 cause, is actually living apart from him, and if
30 that desertion or living apart has continued for
31 a period of at least 60 days immediately prior to
32 the filing of the petition, the court may, upon
33 the spouse's petition, or if he is mentally ill,
34 upon the petition of his guardian or next friend,
35 enter a decree that the spouse is so deserted or
36 is so living apart and may prohibit the other
37 spouse from imposing any restraint on the
38 petitioner's personal liberty during such time as
39 the court shall by order direct.

40 B. Upon the petition of either spouse, or of the
41 guardian or next friend of either who may be men-

1 tally ill, the court may make an order awarding
2 parental rights and responsibilities with respect
3 to a minor child of the parties.

4 4. Mediation. Prior to a contested hearing under
5 this section where there are minor children of the
6 parties, the court shall refer the parties to media-
7 tion. Any agreement reached by the parties through
8 mediation on any issues shall be reduced to writing,
9 signed by the parties and presented to the court for
10 approval as a court order. When agreement through me-
11 diation is not reached on any issue, the court must
12 determine that the parties made a good faith effort
13 to mediate the issue before proceeding with a hear-
14 ing. If the court finds that either party failed to
15 make a good faith effort to mediate, the court may
16 refer the parties back to mediation.

17 5. Best interest of the child. The court, in
18 making an award of parental rights and responsibili-
19 ties with respect to a minor child, shall apply the
20 standard of the best interest of the child. In apply-
21 ing this standard, the court shall consider the fol-
22 lowing factors:

23 A. The age of the child;

24 B. The relationship of the child with the
25 child's parents and any other persons who may
26 significantly affect the child's welfare;

27 C. The preference of the child, if old enough to
28 express a meaningful preference;

29 D. The duration and adequacy of the child's cur-
30 rent living arrangements and the desirability of
31 maintaining continuity;

32 E. The stability of any proposed living arrange-
33 ments for the child;

34 F. The motivation of the parties involved and
35 their capacities to give the child love, affec-
36 tion and guidance;

37 G. The child's adjustment to the child's present
38 home, school and community;

1 H. The capacity of each parent to allow and en-
2 courage frequent and continuing contact between
3 the child and the other parent, including physi-
4 cal access;

5 I. The capacity of each parent to cooperate or
6 to learn to cooperate in child care;

7 J. Methods for assisting parental cooperation
8 and resolving disputes and each parent's willing-
9 ness to use those methods;

10 K. The effect on the child if one parent has
11 sole authority over the child's upbringing; and

12 L. All other factors having a reasonable bearing
13 on the physical and psychological well-being of
14 the child.

15 6. Order. Upon petition under subsection 3, par-
16 agraph B, the order of the court shall award allo-
17 cated parental rights and responsibilities, shared
18 parental rights and responsibilities or sole parental
19 rights and responsibilities, according to the best
20 interest of the child. Where the parents have agreed
21 to an award of shared parental rights and responsi-
22 bilities or so agree in open court, the court shall
23 make that award unless there is substantial evidence
24 that it should not be ordered. The court shall state
25 in its decision the reasons for not ordering a shared
26 parental rights and responsibilities award agreed to
27 by the parents.

28 The court may award reasonable rights of contact with
29 a minor child to any 3rd persons.

30 Every final order issued under this section shall
31 contain:

32 A. A provision for child support or a statement
33 of the reasons for not ordering child support;
34 and

35 B. A statement that each parent shall have ac-
36 cess to records and information pertaining to a
37 minor child, including but not limited to, medi-
38 cal, dental and school records, whether or not

1 the child resides with the parent, unless that
2 access is found not to be in the best interest of
3 the child or that access is found to be sought
4 for the purpose of causing detriment to the other
5 parent. If that access is not ordered, the court
6 shall state in the order its reasons for denying
7 that access.

8 7. Equal consideration of parents. The court may
9 not apply a preference for one parent over the other
10 in determining parental rights and responsibilities
11 because of the parent's sex or the child's age or
12 sex.

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

23 9. Support; prosecution money. An order for
24 child support under this section may include an order
25 for the payment of part or all of the medical ex-
26 penditures, hospital expenses and other health care ex-
27 penditures of the children or an order to provide a poli-
28 cy or contract for coverage of those expenses.

29 Availability of public welfare benefits to the family
30 shall not affect the decision of the court as to the
31 responsibility of a parent to provide child support.

32 The court may order either spouse to pay to the court
33 for the other spouse sufficient money for the prose-
34 cution of a petition under this section.

35 10. Modification or termination. An order for
36 parental rights and responsibilities with respect to
37 a child may, upon petition of either spouse, be modi-
38 fied or terminated as circumstances require. The par-
39 ties shall be referred to mediation as under subsec-
40 tion 4.

1 11. Enforcement. The court may enforce obedience
2 to its orders by appropriate process. Nothing in
3 this section may preclude the court from
4 incarcerating a spouse for nonpayment of child sup-
5 port, alimony or attorney's fees in violation of a
6 court order to do so.

7 Sec. 3. 19 MRSA §636 is enacted to read:

8 §636. Court authority to order mediation

9 The court may, in any case under this subchapter,
10 at any time refer the parties to mediation on any is-
11 ssues. Any agreement reached by the parties through
12 mediation on any issues shall be reduced to writing,
13 signed by the parties and presented to the court for
14 approval as a court order. When agreement through me-
15 diation is not reached on any issue the court must
16 determine that the parties made a good faith effort
17 to mediate the issue before proceeding with a hear-
18 ing. If the court finds that either party failed to
19 make a good faith effort to mediate, the court may
20 refer the parties back to mediation.

21 Sec. 4. 19 MRSA §665 is enacted to read:

22 §665. Court authority to order mediation

23 The court may, in any case under this subchapter,
24 at any time refer the parties to mediation on any is-
25 ssues. Any agreement reached by the parties through
26 mediation on any issues shall be reduced to writing,
27 signed by the parties and presented to the court for
28 approval as a court order. When agreement through me-
29 diation is not reached on any issue, the court must
30 determine that the parties made a good faith effort
31 to mediate the issue before proceeding with a hear-
32 ing. If the court finds that either party failed to
33 make a good faith effort to mediate, the court may
34 refer the parties back to mediation.

35 Sec. 5. 19 MRSA §752, as amended by PL 1983, c.
36 480, Pt. A, §15 and c. 564, §2, is repealed and the
37 following enacted in its place:

38 §752. Parenting of children; change of names; com-
39 pulsory process; support and maintenance

1 1. Legislative findings and purpose. The Legis-
2 lature finds and declares as public policy that en-
3 couraging mediated resolutions of disputes between
4 parents is in the best interest of minor children.

5 2. Definitions. As used in this section, unless
6 the context otherwise indicates, the following terms
7 have the following meanings.

8 A. "Allocated parental rights and responsibili-
9 ties" means that responsibilities for the various
10 aspects of a child's welfare are divided between
11 the parents, with the parent allocated a particu-
12 lar responsibility having the right to control
13 that aspect of the child's welfare. Responsibili-
14 ties may be divided exclusively or proportionate-
15 ly. Aspects of a child's welfare for which re-
16 sponsibility may be divided include primary phys-
17 ical residence, parent-child contact, support,
18 education, medical and dental care, religious
19 upbringing, travel boundaries and expenses and
20 any other aspect of parental rights and responsi-
21 bilities. A parent allocated responsibility for a
22 certain aspect of a child's welfare may be re-
23 quired to inform the other parent of major
24 changes in that aspect.

25 B. "Child support" means money to be paid di-
26 rectly to a parent or to another person or agency
27 awarded parental rights and responsibilities with
28 respect to a child for the support of a child and
29 may include the provision of health or medical
30 insurance coverage for a child.

31 C. "Shared parental rights and responsibilities"
32 means that most or all aspects of a child's wel-
33 fare remain the joint responsibility and right of
34 both parents, so that both parents retain equal
35 parental rights and responsibilities and both
36 parents must confer and make joint decisions re-
37 garding the child's welfare.

38 D. "Sole parental rights and responsibilities"
39 means that one parent is granted exclusive paren-
40 tal rights and responsibilities with respect to
41 all aspects of a child's welfare, with the possi-
42 ble exception of the right and responsibility for
43 support.

1 3. Jurisdiction. The court making an order of
2 nullity or of divorce may make an order awarding pa-
3 rental rights and responsibilities with respect to a
4 minor child of the parties.

5 4. Mediation. Prior to a contested hearing under
6 this chapter where there are minor children of the
7 parties, the court shall refer the parties to media-
8 tion. Any agreement reached by the parties through
9 mediation on any issues shall be reduced to writing,
10 signed by the parties and presented to the court for
11 approval as a court order. When agreement through me-
12 diation is not reached on any issue, the court must
13 determine that the parties made a good faith effort
14 to mediate the issue before proceeding with a hear-
15 ing. If the court finds that either party failed to
16 make a good faith effort to mediate, the court may
17 refer the parties back to mediation.

18 5. Best interest of the child. The court, in
19 making an award of parental rights and responsibili-
20 ties with respect to a minor child, shall apply the
21 standard of the best interest of the child. In apply-
22 ing this standard, the court shall consider the fol-
23 lowing factors:

24 A. The age of the child;

25 B. The relationship of the child with the
26 child's parents and any other persons who may
27 significantly affect the child's welfare;

28 C. The preference of the child, if old enough to
29 express a meaningful preference;

30 D. The duration and adequacy of the child's cur-
31 rent living arrangements and the desirability of
32 maintaining continuity;

33 E. The stability of any proposed living arrange-
34 ments for the child;

35 F. The motivation of the parties involved and
36 their capacities to give the child love, affec-
37 tion and guidance;

38 G. The child's adjustment to the child's present
39 home, school and community;

1 H. The capacity of each parent to allow and en-
2 courage frequent and continuing contact between
3 the child and the other parent, including physi-
4 cal access;

5 I. The capacity of each parent to cooperate or
6 to learn to cooperate in child care;

7 J. Methods for assisting parental cooperation
8 and resolving disputes and each parent's willing-
9 ness to use those methods;

10 K. The effect on the child if one parent has
11 sole authority over the child's upbringing; and

12 L. All other factors having a reasonable bearing
13 on the physical and psychological well-being of
14 the child.

15 6. Order. The order of the court shall award al-
16 located parental rights and responsibilities, shared
17 parental rights and responsibilities or sole parental
18 rights and responsibilities, according to the best
19 interest of the child. Where the parents have agreed
20 to an award of shared parental rights and responsi-
21 bilities or so agree in open court, the court shall
22 make that award unless there is substantial evidence
23 that it should not be ordered. The court shall state
24 in its decision the reasons for not ordering a shared
25 parental rights and responsibilities award agreed to
26 by the parents.

27 The court may award reasonable rights of contact with
28 a minor child to any 3rd persons.

29 The court may award parental rights and responsibili-
30 ties with respect to the child to a 3rd person, some
31 suitable society or institution for the care and pro-
32 tection of children or the Department of Human Ser-
33 vices upon a finding that awarding parental rights
34 and responsibilities to either or both parents will
35 place the child in jeopardy as defined in Title 22,
36 section 4002, subsection 6.

37 Every final order issued under this section shall
38 contain:

1 A. A provision for child support or a statement
2 of the reasons for not ordering child support;
3 and

4 B. A statement that each parent shall have ac-
5 cess to records and information pertaining to a
6 minor child, including but not limited to, medi-
7 cal, dental and school records, whether or not
8 the child resides with the parent, unless that
9 access is found not to be in the best interest of
10 the child or that access is found to be sought
11 for the purpose of causing detriment to the other
12 parent. If that access is not ordered, the court
13 shall state in the order its reasons for denying
14 that access.

15 7. Equal consideration of parents. The court may
16 not apply a preference for one parent over the other
17 in determining parental rights and responsibilities
18 because of the parent's sex or the child's age or
19 sex.

20 8. Abandonment of family residence. The court
21 shall not consider abandonment of the family resi-
22 dence as a factor in determining parental rights and
23 responsibilities with respect to a minor child when
24 the abandoning parent has been physically harmed or
25 seriously threatened with physical harm by the other
26 parent and that harm or threat of harm was causally
27 related to the abandonment, or when one parent has
28 left the family residence at the request or
29 insistence of the other parent.

30 9. Department of Human Services. An original or-
31 der made under this section granting parental rights
32 and responsibilities with respect to a minor child to
33 the Department of Human Services shall not extend be-
34 yond the time when the child reaches 18 years of age,
35 except that, upon application by the department, the
36 court, for sufficient cause, may extend the order to
37 the time when the child reaches 21 years of age.

38 The expense of maintenance and education of children
39 committed to the department under this section shall
40 be borne in accordance with Title 22, section 4061.
41 The department shall have all the powers that a
42 guardian has to a ward as to the person, property,

1 earnings and education of each child committed to it
2 under this section during the term of commitment.

3 10. Support order. An order of the court for
4 child support may run against the father or the moth-
5 er in whole or in part or against both, irrespective
6 of the fault of the father or mother in the divorce
7 action. When the order is to run against both, the
8 court shall specify the amount each shall pay.

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

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

17 The court may enforce a support order as provided in
18 chapter 14-A.

19 11. Name change. Upon the request of the wife
20 during the action for divorce or annulment or at any
21 time thereafter, the court may change the name of the
22 wife.

23 12. Modification of orders; compulsory process.
24 Upon the motion of one or both of the parents; any
25 person granted parental rights and responsibilities
26 with respect to a child under this section; the De-
27 partment of Human Services; or any blood relative of,
28 or any person standing in loco parentis to, the minor
29 child, the court may alter its order concerning pa-
30 rental rights and responsibilities with respect to a
31 minor child as circumstances require. The parties
32 shall be referred to mediation as under subsection 4.

33 In execution of the powers given it under this Title,
34 the court may employ any compulsory process which it
35 deems proper, by execution attachment or other effec-
36 tual form, on which costs shall be taxed as in other
37 actions.

38 13. Uniform Child Custody Jurisdiction Act. The
39 jurisdiction granted by this section to make or alter

1 an order concerning parental rights and responsibili-
2 ties with respect to a minor child shall be limited
3 by the Uniform Child Custody Jurisdiction Act, sec-
4 tions 801 to 825, if another state may have jurisdic-
5 tion as provided in that Act.

6 **Sec. 6. Change of circumstance.** The enactment of
7 this Act shall not be considered a change of circum-
8 stance for the purpose of a motion to amend or modify
9 a decree issued prior to the effective date of this
10 Act under Title 19, section 214, 581 or 752.

11 STATEMENT OF FACT

12 This new draft does not create a new office of
13 Domestic Relations to hear all divorce, annulment and
14 separation petitions, as the original draft proposed.
15 Instead, this new draft proposes that more use be
16 made of the existing Court Mediation Service.

17 The majority of this new draft reenacts the cur-
18 rent provisions of the Revised Statutes, Title 19,
19 sections 214, 581 and 752, 3 of Maine's domestic re-
20 lations statutes. These statutes are repealed and
21 reenacted in this new draft so that their provisions
22 may be placed in subsections for clarity. None of
23 these statutes is currently divided into subsections.

24 This new draft makes 3 substantive changes.

25 1. It replaces terms such as "sole custody" and
26 "joint custody," currently used in Maine domestic re-
27 lations law, with definitions of "allocated parental
28 rights and responsibilities," "shared parental rights
29 and responsibilities" and "sole parental rights and
30 responsibilities." These new terms and definitions
31 are proposed in the original bill. This new draft
32 incorporates this terminology into current Maine sep-
33 aration, divorce and annulment statutes.

34 2. It incorporates the "best interest of the
35 child" standard for determining parental rights and
36 responsibilities upon separation, divorce or annul-
37 ment into current Maine statutes. The "best inter-
38 est" standard, and factors for a court to consider in
39 its application, have been developed in Maine court

1 opinions, but do not currently appear in statute. As
2 the original bill proposes, the "best interest" stan-
3 dard and related factors should appear in statute,
4 and factors concerning parents' ability to cooperate
5 should be added to the list of considerations.

6 3. It requires separating or divorcing parties
7 to attempt to mediate their disputes when they have
8 minor children before a contested court hearing may
9 be held. This new draft provides that the court
10 shall refer parents seeking separation or divorce to
11 the existing Court Mediation Service prior to permit-
12 ting a court hearing on contested issues. This new
13 draft also gives the court the discretion to order
14 mediation in any divorce or annulment case.

15 Section 1 of the new draft repeals and replaces
16 the Revised Statutes, Title 19, section 214, the
17 statute currently providing for child custody and
18 support when parents are living apart. The new draft
19 retains all of the current provisions of Title 19,
20 section 214, and adds some new subsections.

21 Subsection 1 adds a statement of legislative
22 findings and purpose.

23 Subsection 2 adds definitions of "allocated pa-
24 rental rights and responsibilities," "shared pa-
25 rental rights and responsibilities," "sole paren-
26 tal rights and responsibilities" and "child sup-
27 port."

28 Subsection 4 adds authority for the court to or-
29 der mediation. Mediation by the existing Court
30 Mediation Service shall be ordered prior to a
31 contested hearing when the parties have minor
32 children. Mediation may be ordered by the court
33 in any other instance.

34 Subsection 5 places the "best interest" stan-
35 dard for decisions involving children in cases where
36 parents are living apart into statute. The "best
37 interest" standard, developed in case law, is
38 currently applied by courts. Subsection 5 also
39 lists all the factors, developed in Maine case
40 law, which a court must apply in determining best
41 interest. A few other factors, derived from oth-

1 er states, are included. (See paragraphs H
2 through K under subsection 5.)

3 Subsection 6 replaces the current language of
4 custody and joint custody with references to pa-
5 rental rights and responsibilities. Subsection 6
6 retains the current form of section 214, however,
7 concerning a court order which does not accept a
8 shared parenting agreement reached by the par-
9 ents, and concerning the ability of 3rd persons
10 to seek rights of contact with a child. Subsec-
11 tion 6 also provides that every court order must
12 address child support and access by both parents
13 to a child's medical and educational records.

14 Subsection 7 places into statute the prohibition,
15 already stated in several Maine court opinions,
16 against preference for one parent over the other
17 in determining child care responsibilities simply
18 because of a parent's sex.

19 Subsection 11 provides that any order of parental
20 rights and responsibilities may be modified or
21 terminated as circumstances require. This is the
22 current standard for modification or termination
23 of child custody and support orders. Again, be-
24 fore a contested hearing may be held when minor
25 children are involved, the parents shall try me-
26 diation.

27 Section 2 of the new draft repeals and replaces
28 Title 19, section 581, the statute currently permit-
29 ting married parties to petition for a judicial sepa-
30 ration. The new draft retains all of the current
31 provisions of Title 19, section 581, and adds provi-
32 sions and makes changes similar to those made in sec-
33 tion 1.

34 Sections 3 and 4 of the new draft give the court
35 authority to order, in its discretion, mediation of
36 any issue involved in an annulment or divorce pro-
37 ceeding.

38 Section 5 of the new draft repeals and replaces
39 Title 19, section 752, the statute currently provid-
40 ing for child custody and support when parents seek
41 divorce or annulment. Again, the new draft retains

1 all of the current provisions of Title 19, section
2 752.

3 Section 5 adds provisions and makes changes simi-
4 lar to those made in section 1.

5 Section 6 of the new draft provides that parties
6 already separated or divorced cannot seek to modify
7 their court order simply because this legislation is
8 enacted.

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