

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2067

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H.P. 1494

House of Representatives, January 3, 1990

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative ANTHONY of South Portland.

Cosponsored by Senator HOBBS of York, Representative NORTON of Winthrop and Representative FARNSWORTH of Hallowell.

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STATE OF MAINE

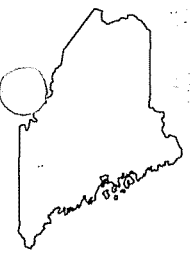
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act to Allow Grandparents to Petition the Court for Visitation  
Rights in Certain Limited Circumstances.**

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

4 19 MRSA c. 13-A is enacted to read:

6 CHAPTER 13-A

8 GRANDPARENTS AND GRANDCHILDREN

10 §755. Grandparent visitation

12 1. Definitions. As used in this chapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

14 A. "Grandparent" means the biological or adoptive parent of  
a minor child's biological or adoptive parent. The term  
does not include a biological or adoptive parent of any  
minor child's biological or adoptive parent whose parental  
rights have been terminated.

20 2. Visitation. A grandparent may seek visitation with a  
minor grandchild if:

22 A. Either of the child's parents are deceased;

24 B. The child's parents have been divorced or a decree of  
judicial separation has been decreed regarding the child's  
parents or custody and support have been decreed when the  
parents are living apart pursuant to section 214;

26 C. An action for divorce or for judicial separation or for  
custody and support when the parents are living apart is  
pending before the courts of this State, but no final decree  
has been entered; or

28 D. The parents of the minor child have never been married,  
but paternity has been legally established and the parents  
of the minor child are not cohabiting.

30 3. Evidence. In determining whether a grandparent may be  
granted visitation, the court shall require evidence concerning  
the beneficial nature of the relationship of the grandparent to  
the child. The evidence may be presented by affidavit and must  
demonstrate that a significant beneficial relationship exists,  
has existed in the past, or has the opportunity to exist in the  
future, between the grandparent and the child, and that it would  
be in the best interest of the child to allow the relationship to  
exist or to continue to exist. Reasonable rights of visitation  
may be granted when the court determines by clear and convincing  
evidence that there is, has been, or there is a reasonable  
likelihood that there can be in the future a significant  
beneficial relationship between the grandparent and the child,  
that it is in the best interest of the child that a relationship

2 exist or continue to exist, and that a relationship will not  
3 adversely interfere with the parent-child relationship. If both  
4 parents of the child express opposition to the reasonable rights  
5 of visitation by grandparents, the opposition is prima facie  
6 evidence that any visitation would adversely interfere with the  
7 parent-child relationship.

8 4. Modification. The court may modify an order granting or  
9 denying visitation on a showing that there has been a material  
10 change in circumstances which justifies modification and that the  
11 modification would be in the best interest of the child.

12 5. Procedure. The following procedures apply to  
13 grandparents seeking visitation rights.

14 A. If either of the minor child's parents are deceased or  
15 if they have never been married, a grandparent seeking  
16 visitation shall file a petition in the District Court in  
17 the district in which the minor child resides. If a divorce  
18 has been granted between the parents of a minor child or a  
19 decree of judicial separation has been entered regarding  
20 that marriage or custody and support have been determined  
21 when the parents are living apart, or an action for divorce  
22 or judicial separation regarding the marriage or an action  
23 for custody and support when the parents are living apart  
24 has been filed and is still pending, but no final decree has  
25 been entered, a grandparent seeking visitation shall file a  
26 petition for visitation in the same court in which the  
27 divorce or action for separation or for custody and support  
28 when the parents are living apart was granted or the  
29 proceedings are currently pending. The form of the petition  
30 and all other pleadings required by this section must be as  
31 prescribed by the Maine Rules of Civil Procedure.

32 B. When a petition seeking visitation is filed, a copy of  
33 the petition must be served on the parent or parents or  
34 other party having custody of the child and on any parent  
35 not having custody of the child by personal service in the  
36 same manner as is prescribed for actions for divorce.

37 C. When a petition seeking visitation is filed, and there  
38 is presently pending in that court an action for divorce or  
39 for judicial separation or for custody and support when the  
40 parents are living apart, or an action to modify a decree of  
41 divorce or judicial separation or for custody and support  
42 when the parents are living apart, on motion of any party  
43 the judge may at the judge's discretion join that action  
44 with any other action which may be pending before that court.

45 6. Mediation. Prior to a contested hearing under this  
46 section, the court shall refer the parties to mediation, except  
47 that on motion supported by affidavit, the court may, for  
48 extraordinary cause shown, waive the mediation requirement under  
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1 this subsection. Any agreement reached by the parties through  
2 mediation must be reduced to writing, signed by the parties and  
3 presented to the court for approval as a court order. When  
4 an agreement through mediation is not reached, the court must  
5 determine that the parties made a good faith effort to mediate  
6 the issue before proceeding with a hearing. If the court finds  
7 that any party failed to make a good faith effort to mediate, the  
8 court may order the parties to submit to mediation, may dismiss  
9 the action or any part of the action, may render a decision or  
10 judgment by default, may assess attorney's fees and costs, or may  
11 impose any other sanction that is appropriate in the  
12 circumstances. The court may also impose an appropriate sanction  
13 on a party's failure without good cause to appear for mediation  
14 after receiving notice of the scheduled time for mediation.

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### STATEMENT OF FACT

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21 This bill allows grandparents, in certain situations, to  
22 petition the court for visitation rights with their grandchildren  
23 if they can show that the grandchildren would benefit and that no  
24 harm would be done to the parents' relationship with the child.

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