

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1990

Legislative Document

No. 58

H.P. 42

House of Representatives, December 18, 1990

Reference to the Committee on Human Resources suggested and ordered printed.

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

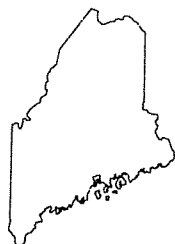
EDWIN H. PERT, Clerk

Presented by Representative DiPIETRO of South Portland.
Cosponsored by Senator GILL of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

**An Act to Amend the Laws Governing Parental Rights and
Responsibilities in Domestic Relations Matters.**



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

2
4 **Sec. 1. 19 MRSA §752, sub-§2, ¶¶A-1 and A-2** are enacted to read:

6 A-1. "Abandonment" means any conduct on the part of the
8 parent showing an intent to forego parental duties or
10 relinquish parental claims. The intent may be evidenced by:

12 (1) Failure, for a period of at least one year, to
14 communicate meaningfully with the child;

16 (2) Failure, for a period of at least one year, to
18 maintain regular visitation with the child; or

20 (3) Any other conduct indicating an intent to forego
22 parental duties or relinquish parental claims.

24 A-2. "Abuse" means a threat to a child's health or welfare
26 by physical, mental or emotional injury or impairment,
28 sexual abuse or exploitation, deprivation of essential needs
30 or lack of protection from these, by a parent responsible
32 for the child.

34 **Sec. 2. 19 MRSA §752, sub-§2, ¶C**, as enacted by PL 1983, c.
36 813, §5, is amended to read:

38 C. "Shared parental rights and responsibilities" means that
40 ~~most~~-~~or~~ all aspects of a child's welfare remain the joint
42 responsibility and right of both parents, so that both
44 parents retain equal parental rights and responsibilities
46 and both parents must confer and make joint decisions
48 regarding the child's welfare.

50 **Sec. 3. 19 MRSA §752, sub-§6**, as enacted by PL 1983, c. 813,
§5, is repealed.

Sec. 4. 19 MRSA §752, sub-§§6-A and 6-B are enacted to read:

6-A. Award of parental rights and responsibilities;
 guidelines. The court shall award parental rights and
 responsibilities according to the best interest of the child.

A. In making the award, the court shall apply the following
 guidelines, unless such application would result in an award
 that is not in accordance with the best interest of the
 child.

(1) When the parents have agreed in writing to an
 award of parental rights and responsibilities, the
 court shall make that award unless the court finds that
 there is substantial evidence that the child has been

2 subject to or is in jeopardy of abuse, neglect or
3 abandonment by one of the parents. If the court finds
4 that there is substantial evidence that the child has
5 been subject to or is in jeopardy of abuse, neglect or
6 abandonment by one of the parents, the court shall
7 award sole parental rights and responsibilities to the
8 other parent, allocated parental rights and
9 responsibilities, or parental rights and
10 responsibilities to a 3rd person pursuant to paragraph
11 C, according to the best interest of the child. The
12 court shall state in its decision the reasons for not
13 ordering the parental rights and responsibilities
14 agreed to by the parents.

15 (2) After a contested hearing, the court shall award
16 shared parental rights and responsibilities unless the
17 court finds that there is substantial evidence that the
18 child has been subject to or is in jeopardy of abuse,
19 neglect or abandonment by one of the parents. If the
20 court finds that there is substantial evidence that the
21 child has been subject to or is in jeopardy of abuse,
22 neglect or abandonment by one of the parents, the court
23 shall award sole parental rights and responsibilities
24 to the other parent, allocated parental rights and
25 responsibilities, or parental rights and
26 responsibilities to a 3rd person pursuant to paragraph
27 C, according to the best interest of the child. The
28 court shall state in its decision the reasons for not
29 ordering shared parental rights and responsibilities.

30 B. The court may award reasonable rights of contact with a
31 minor child to any 3rd persons.

32 C. The court may award parental rights and responsibilities
33 with respect to the child to a 3rd person, a suitable
34 society or institution for the care and protection of
35 children, or the Department of Human Services upon a finding
36 that awarding parental rights and responsibilities to either
37 or both parents would place the child in jeopardy as defined
38 by Title 22, section 4002, subsection 6.

39 6-B. Final order. In addition to any information required
40 by subsection 6-A, every final order issued under this section
41 must contain:

42 A. A provision for child support or a statement of the
43 reasons for not ordering child support; and

44 B. A statement that each parent has access to records and
45 information pertaining to a minor child, including, but not
46 limited to, medical, dental and school records, whether or
47 not the child resides with the parent, unless the court
48 orders otherwise.

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

8
9
10 **STATEMENT OF FACT**

11 Under current law, when parties in a divorce proceeding
12 agree to an award of shared parental rights and responsibilities,
13 the court is directed to make that award unless there exists
14 substantial evidence that it should not be ordered. This bill
15 changes that law to require that, unless it is not in the best
16 interest of the child, the court shall award parental rights and
17 responsibilities as follows.

18
19 1. When parents agree, in writing, to any award of parental
20 rights and responsibilities, the court will make that award
21 unless there exists substantial evidence that the child has been
22 or will be subject to abuse, neglect or abandonment by one of the
23 parents.

24
25 2. After a contested hearing, the court will order shared
26 parental rights and responsibilities, unless there exists
27 substantial evidence that the child has been or will be subject
28 to abuse, neglect or abandonment by one of the parents.