

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 632

H.P. 466

House of Representatives, February 23, 1995

An Act to Reform the Child Custody Laws.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Speaker GWADOSKY of Fairfield.
Cosponsored by Representatives: HATCH of Skowhegan, ROTONDI of Madison,
STEDMAN of Hartland, Senator: PENDEXTER of Cumberland.

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

2 **Sec. 1. 19 MRSA §214, sub-§6**, as amended by PL 1989, c. 272,
4 §1, is further amended to read:

6 **6. Order.** The order of the court shall ~~shall~~ must award allocated
8 parental rights and responsibilities, shared parental rights and
10 responsibilities or sole parental rights and responsibilities,
12 according to the best interest of the child. Where the parents
14 have agreed to an award of shared parental rights and
16 responsibilities or so agree in open court, the court shall make
18 that award unless there is substantial evidence that it should
20 not be ordered. The court shall state in its decision the reasons
22 for not ordering a shared parental rights and responsibilities
24 award agreed to by the parents.

18 When the court issues an order awarding allocated parental rights
20 and responsibilities or shared parental rights and
22 responsibilities, the court shall include in the order a
24 requirement that within 30 days after the court order the parents
26 file a written plan indicating in detail how the allocated or
28 shared parental rights and responsibilities will work.

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

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

34 Every final order issued under this section shall ~~shall~~ must contain:

36 A. A provision for child support or a statement of the
38 reasons for not ordering child support; ~~and~~

40 B. A statement that each parent shall ~~have~~ has access to
42 records and information pertaining to a minor child,
44 including but not limited to, medical, dental and school
46 records, whether or not the child resides with the parent,
48 unless that access is found not to be in the best interest
50 of the child or that access is found to be sought for the
 purpose of causing detriment to the other parent. If that
 access is not ordered, the court shall state in the order
 its reasons for denying that access; ~~and~~

50 C. An explanation of the reasons for the award of parental
 rights and responsibilities.

2 **Sec. 2. 19 MRSA §214, sub-§11**, as amended by PL 1989, c. 337,
3 §2, is further amended to read:

4
5 **11. Modification or termination.** Any order for parental
6 rights and responsibilities with respect to a minor child may be
7 modified or terminated as circumstances require upon the petition
8 of one or both of the parents. Child support orders may be
9 modified retroactively, but only from the date that notice of a
10 petition for modification has been served upon the opposing party
11 pursuant to the Maine Rules of Civil Procedure. The parties
12 shall must be referred to mediation as under subsection 4.

13 ~~The--relocation,--or--intended--relocation,--of~~ Before a parent
14 relocates a child resident in this State to another state by a
15 parent or to a place more than 250 miles from where the other
16 person resides, when the other parent is a resident in this State
17 and there exists an award of shared or allocated parental rights
18 and responsibilities concerning the child, is--a--substantial
19 change-in-circumstances the parent proposing the relocation must
20 give written notice to the court and the other parent. If the
21 other parent requests a hearing, the court shall hold an
22 expedited hearing to determine if the award of parental rights
23 and responsibilities should be modified because of the proposed
24 relocation. The parent proposing the relocation may not relocate
25 the child before the hearing unless allowed to do so by the court.

26
27 **Sec. 3. 19 MRSA §214, sub-§12** is enacted to read:

28
29 **12. Record.** The presiding judge shall prepare an official
30 record of all proceedings concerning parental rights and
31 responsibilities, including testimony and exhibits, in each
32 case. A transcript of the testimony need not be prepared unless
33 required for rehearing or appeal. The record may be taken by
34 stenographic notes or by mechanical recordings.

35
36 **Sec. 4. 19 MRSA §581, sub-§6**, as amended by PL 1989, c. 272,
37 §2, is further amended to read:

38
39 **6. Order.** Upon petition under subsection 3, paragraph B,
40 the order of the court shall must award allocated parental rights
41 and responsibilities, shared parental rights and responsibilities
42 or sole parental rights and responsibilities, according to the
43 best interest of the child. Where the parents have agreed to an
44 award of shared parental rights and responsibilities or so agree
45 in open court, the court shall make that award unless there is
46 substantial evidence that it should not be ordered. The court
47 shall state in its decision the reasons for not ordering a shared
48 parental rights and responsibilities award agreed to by the
49 parents.
50

2 When the court issues an order awarding allocated parental rights
4 and responsibilities or shared parental rights and
6 responsibilities, the court shall include in the order a
requirement that within 30 days after the court order the parents
file a written plan indicating in detail how the allocated or
shared parental rights and responsibilities will work.

8
10 The court may award reasonable rights of contact with a minor
child to any 3rd persons.

12 The court may award parental rights and responsibilities to a 3rd
14 person, a society or institution for the care and protection of
children, or to the Department of Human Services upon a finding
16 that awarding parental rights and responsibilities to either or
both parents will place the child in jeopardy as defined in Title
22, section 4002, subsection 6.

18 Every final order issued under this section shall ~~shall~~ must contain:

20
22 A. A provision for child support or a statement of the
reasons for not ordering child support; and

24 B. A statement that each parent shall ~~shall~~ has access to
26 records and information pertaining to a minor child,
including but not limited to, medical, dental and school
28 records, whether or not the child resides with the parent,
unless that access is found not to be in the best interest
30 of the child or that access is found to be sought for the
purpose of causing detriment to the other parent. If that
32 access is not ordered, the court shall state in the order
its reasons for denying that access; and

34 C. An explanation of the reasons for the award of parental
36 rights and responsibilities.

38 **Sec. 5. 19 MRSA §581, sub-§10**, as amended by PL 1987, c. 179,
§2, is further amended to read:

40 **10. Modification or termination.** An order for parental
42 rights and responsibilities with respect to a child may, upon
petition of either spouse, be modified or terminated as
44 circumstances require. The parties shall must be referred to
mediation as under subsection 4.

46 ~~The--relocation,--or--intended--relocation,--of~~ Before a parent
48 relocates a child resident in this State to another state by-a
parent or to a place more than 250 miles from where the other
50 parent resides, when the other parent is a resident in this State
and there exists an award of shared or allocated parental rights

2 and responsibilities concerning the child, ~~is--a--substantial~~
3 ~~change-in-circumstances~~ the parent proposing the relocation must
4 give written notice to the court and the other parent. If the
5 other parent requests a hearing, the court shall hold an
6 expedited hearing to determine if the award of parental rights
7 and responsibilities should be modified because of the proposed
8 relocation. The parent proposing the relocation may not relocate
9 the child before the hearing unless allowed to do so by the court.

10 **Sec. 6. 19 MRSA §581, sub-§12** is enacted to read:

12 **12. Record.** The presiding judge shall prepare an official
13 record of all proceedings concerning parental rights and
14 responsibilities, including testimony and exhibits, in each
15 case. A transcript of the testimony need not be prepared unless
16 required for rehearing or appeal. The record may be taken by
17 stenographic notes or by mechanical recordings.

18
19 **Sec. 7. 19 MRSA §751, first ¶,** as amended by PL 1981, c. 132,
20 §§1 to 4, is further amended to read:

22 Whenever in any divorce action the custody of a minor child
23 is involved, the court may request the Department of Human
24 Services to investigate conditions and circumstances of the child
25 and ~~his~~ the child's parents. The department shall complete its
26 investigation within 60 days after the court's request. The
27 court may grant an extension for good cause shown. Upon
28 completion of investigation, the department shall submit a
29 written report to the court and to counsel of record at least 3
30 days before date of hearing. The report shall ~~may~~ not be further
31 copied or distributed by anyone. A person who violates a
32 provision of this section commits a civil violation for which a
33 forfeiture of not more than \$500 may be adjudged. Upon request
34 of any interested party, the court shall require the person
35 making the report to testify at time of hearing. Whoever
36 participates in making a report under this section or
37 participates in a judicial proceeding resulting therefrom shall
38 be ~~is~~ immune from civil or criminal liability, unless such that
39 person acted in bad faith or with malicious purpose.

40
41 **Sec. 8. 19 MRSA §752, sub-§6,** as enacted by PL 1983, c. 813,
42 §5, is amended to read:

44 **6. Order.** The order of the court shall ~~shall~~ must award
45 allocated parental rights and responsibilities, shared parental
46 rights and responsibilities or sole parental rights and
47 responsibilities, according to the best interest of the child.
48 Where the parents have agreed to an award of shared parental
49 rights and responsibilities or so agree in open court, the court
50 shall make that award unless there is substantial evidence that

2 it should not be ordered. The court shall state in its decision
3 the reasons for not ordering a shared parental rights and
4 responsibilities award agreed to by the parents.

5 When the court issues an order awarding allocated parental rights
6 and responsibilities or shared parental rights and
7 responsibilities, the court shall include in the order a
8 requirement that within 30 days after the court order the parents
9 file a written plan indicating in detail how the allocated or
10 shared parental rights and responsibilities will work.

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

13 The court may award parental rights and responsibilities with
14 respect to the child to a 3rd person, some suitable society or
15 institution for the care and protection of children or the
16 Department of Human Services upon a finding that awarding
17 parental rights and responsibilities to either or both parents
18 will place the child in jeopardy as defined in Title 22, section
19 4002, subsection 6.

20 Every final order issued under this section shall must contain:

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

23 B. A statement that each parent shall ~~have~~ has access to
24 records and information pertaining to a minor child,
25 including but not limited to, medical, dental and school
26 records, whether or not the child resides with the parent,
27 unless that access is found not to be in the best interest
28 of the child or that access is found to be sought for the
29 purpose of causing detriment to the other parent. If that
30 access is not ordered, the court shall state in the order
31 its reasons for denying that access; and

32 C. An explanation of the reasons for the award of parental
33 rights and responsibilities.

34 **Sec. 9. 19 MRSA §752, sub-§12**, as amended by PL 1989, c. 337,
35 §9, is further amended to read:

36 **12. Modification of orders; compulsory process.** Upon the
37 motion of one or both of the parents, or any agency or person who
38 has been granted parental rights and responsibilities or contact
39 with respect to a child under this section, the court may alter
40 its order concerning parental rights and responsibilities or
41 contact with respect to a minor child as circumstances require.
42 Child support orders may be modified retroactively, but only from

2 the date that notice of a petition for modification has been
served upon the opposing party pursuant to the Maine Rules of
4 Civil Procedure. The parties shall must be referred to mediation
as under subsection 4.

6 ~~The--relocation,--or--intended--relocation,--of~~ Before a parent
7 relocates a child resident in this State to another state by a
8 parent or to a place more than 250 miles from where the other
9 parent resides, when the other parent is a resident in this State
10 and there exists an award of shared or allocated parental rights
11 and responsibilities concerning the child, is--a--substantial
12 change-in-circumstances the parent proposing the relocation must
13 give written notice to the court and the other parent. If the
14 other parent requests a hearing, the court shall hold an
15 expedited hearing to determine if the award of parental rights
16 and responsibilities should be modified because of the proposed
17 relocation. The parent proposing the relocation may not relocate
18 the child before the hearing unless allowed to do so by the court.

20 In execution of the powers given it under this Title, the court
may employ any compulsory process which that it deems determines
22 proper, by execution attachment or other effectual form, on which
23 costs shall must be taxed as in other actions.

24 **Sec. 10. 19 MRSA §752, sub-§14** is enacted to read:

26 **14. Record.** The presiding judge shall prepare an official
27 record of all proceedings concerning parental rights and
28 responsibilities, including testimony and exhibits, in each
29 case. A transcript of the testimony need not be prepared unless
30 required for rehearing or appeal. The record may be taken by
31 stenographic notes or by mechanical recordings.

34 **Sec. 11. 19 MRSA §752-A, sub-§§1, 4 and 6,** as enacted by PL
1993, c. 629, §1, are amended to read:

36 **1. Guardian ad litem; appointment.** In contested
37 proceedings under sections 214, 581, 693 and 752 in which a minor
38 child is involved, the court may shall appoint a guardian ad
39 litem for the child. The appointment must be made as soon as
40 possible after the commencement of the proceeding. ~~In~~
41 ~~determining-whether-an-appointment-must-be-made,-the-court-shall~~
42 ~~consider;~~

44 ~~A.--The-wishes-of-the-parties;~~

46 ~~B.--The-age-of-the-child;~~

48 ~~C.----The---nature---of---the---proceeding,---including---the~~
50 ~~contentiousness-of-the-hearing;~~

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~~D.--The-financial-resources-of-the-parties;~~

~~E.--The extent a guardian ad litem may assist in providing information concerning the best interest of the child; and~~

~~F.--Other factors the court determines relevant.~~

4. Written report. The guardian ad litem shall submit a written report to the court within 60 days of being appointed. The court may grant an extension for good cause shown. -A- The written report of a guardian ad litem may be admitted as evidence in the proceeding for which the guardian was appointed only if the party seeking the admission of the report has furnished a copy to all parties at least 14 days prior to the hearing. The report may not be admitted as evidence without the testimony of the guardian ad litem if a party objects to the admittance of the report at least 7 days prior to the hearing.

6. Payment for services. Payment for the services of the guardian ad litem is the responsibility of the parties, as ordered by the court. In determining the responsibility for payment, the court shall consider:

- A. The income of the parties;
- B. The marital and nonmarital assets of the parties;
- C. The division of property made as part of the final divorce; and
- ~~D.--Which party requested appointment of a guardian; and~~
- E. Other relevant factors.

If the court has made a finding of inability to pay on the part of one or both of the parents, the court shall pay the costs the parents are unable to pay.

STATEMENT OF FACT

This bill makes several reforms concerning procedures and orders when the custody of a child is involved.

This bill requires the court to require the parents to prepare a detailed plan indicating how the award of allocated or shared parental rights and responsibilities will be carried out. It also requires the court to include in the final order a statement explaining why the court awarded parental rights and

2 responsibilities as it did. These changes are made in all three
of the sections under which the court awards parental rights and
responsibilities.

4
6 In addition, the bill requires a parent who wants to
relocate the child outside the state or to a place more than 250
8 miles from where the other parent resides in this state to give
written notice to the court and the other parent before making
10 the move. If the other parent requests a hearing, the court
shall hold an expedited hearing to determine if the proposed
12 relocation should result in a change in the award of allocated or
shared parental rights and responsibilities. The parent may not
14 relocate the child before the hearing unless the court
specifically grants permission to do so.

16 This bill requires the Department of Human Services to
complete any investigations requested by the court within 60 days
18 after receiving the request. The court may extend that time
period for good cause shown.

20 This bill requires the appointment of a guardian ad litem in
22 all contested custody cases. The guardian ad litem will also
have 60 days in which to make the report to the court. The court
24 will determine the sharing of the costs of the guardian ad litem
between the parents. If one or both are unable to pay, the court
26 will pay the unpaid portion.

28 This bill also requires the presiding judge to prepare a
record of all proceedings in child custody and support matters.
30 The record may be made through the use of a stenographer or
mechanical recordings.