

MAINE STATE LEGISLATURE

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L.D. 1125

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 808, L.D. 1125, Bill, "An Act to Implement the Recommendations Resulting from the Study Concerning Parental Rights and Responsibilities When Domestic Abuse is Involved"

Amend the bill in section 1 in paragraph D in the last 2 lines (page 1, lines 14 and 15 in L.D.) by striking out the following: "by the Maine Commission on Domestic Abuse" and inserting in its place the following: 'under Title 19, section 770-C'

Further amend the bill by striking out all of sections 2, 3 and 4 and inserting in their place the following:

'Sec. 2. 19 MRSA §214, sub-§6, as amended by PL 1995, c. 172, §1, is further amended to read:

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

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

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

14 The court may not order and the State may not pay for the
16 defendant to attend a batterers' intervention program unless the
18 program is certified under Title 19, section 770-C.

20 Every final order issued under this section must contain:

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

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

44 C. A statement that violation of the order may result in a
46 finding of contempt and imposition of sanctions as provided
48 in subsection 6-A.

§3, is further amended to read:

6. Order. Upon petition under subsection 3, paragraph B,
the order of the court must award allocated parental rights and
responsibilities, shared parental rights and responsibilities or
sole parental rights and responsibilities, according to the best
interest of the child. When the parents have agreed to an award
of shared parental rights and responsibilities or so agree in
open court, the court shall make that award unless there is
substantial evidence that it should not be ordered. The court
shall state in its decision the reasons for not ordering a shared
parental rights and responsibilities award agreed to by the
parents.

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

The court may award parental rights and responsibilities to a 3rd person, a society or institution for the care and protection of children, or to the Department of Human Services upon a finding 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.

The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19, section 770-C.

Every final order issued under this section must contain:

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

B. A statement that each parent must have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest 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

C. A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 6-A.

Sec. 4. 19 MRSA §752, sub-§1, as enacted by PL 1983, c. 813, §5, is repealed and the following enacted in its place:

1. Legislative findings and purpose. The Legislature makes the following findings concerning relationships among family members in determining what is in the best interest of children.

A. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

B. The Legislature finds that domestic abuse is a serious crime against the individual and society, producing an unhealthy and dangerous family environment, resulting in a pattern of escalating abuse, including violence, that frequently culminates in intrafamily homicide and creating an atmosphere that is not conducive to healthy childhood development.'

Further amend the bill in section 6 in subsection 5 in the first paragraph in the 6th and 7th lines (page 3, lines 32 and 33 in L.D.) by striking out the following: "and of the parent who is a victim of domestic abuse as defined in section 762"

Further amend the bill in section 6 in subsection 5 by striking out all of paragraph K-1 (page 4, lines 20 to 24 in L.D.) and inserting in its place the following:

'K-1. The existence of a ~~history of~~ domestic abuse between the parents, in the past or currently, and how that abuse affects:

(1) The child emotionally; and

(2) The safety of the child;

Further amend the bill in section 7 in subsection 5-A in the first paragraph in the last line (page 4, line 36 in L.D.) by inserting after the following: "contact" the following: 'in cases involving domestic abuse'

Further amend the bill in section 7 in subsection 5-A in paragraph B in subparagraph (3) in the first line (page 5, line 5 in L.D.) by striking out the following: "perpetrator of" and inserting in its place the following: 'parent who has committed'

Further amend the bill in section 7 in subsection 5-A in paragraph B in subparagraph (3) in the 2nd line (page 5, line 6 in L.D.) by inserting after the following: "court a" the following: 'domestic abuse intervention'

Further amend the bill in section 7 in subsection 5-A in paragraph B in subparagraph (3) in the 3rd line (page 5, line 7 in L.D.) by striking out the following: "of intervention for perpetrators"

Further amend the bill in section 7 in subsection 5-A in paragraph B in subparagraph (4) in the first line (page 5, line 10 in L.D.) by striking out the following: "the perpetrator of domestic abuse" and inserting in its place the following: 'either parent'

Further amend the bill in section 7 in subsection 5-A in paragraph B in subparagraph (5) in the first line (page 5, line 15 in L.D.) by striking out the following: "perpetrator of" and inserting in its place the following: 'parent who has committed'

Further amend the bill in section 7 in subsection 5-A in paragraph C in the first line (page 5, line 25 in L.D.) by

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2 striking out the following: "a bond from the perpetrator of" and
inserting in its place the following: 'security from the parent
who has committed'

4 Further amend the bill in section 7 in subsection 5-A in
6 paragraph E in the last line (page 5, line 32 in L.D.) by
striking out the following: "perpetrator of" and inserting in
8 its place the following: 'parent who has committed'

10 Further amend the bill in section 7 in subsection 5-A in
paragraph F in subparagraph (1) in the first line (page 5, line
12 39 in L.D.) by striking out the following: "perpetrator's"

14 Further amend the bill in section 7 in subsection 5-A in
paragraph F in subparagraph (1) in the last line (page 5, line 40
16 in L.D.) by inserting after the following: "family" the
following: 'of the parent who has committed domestic abuse'

18 Further amend the bill in section 7 in subsection 5-A in
20 paragraph G in the first line (page 6, line 4 in L.D.) by
striking out the following: "perpetrator of" and inserting in
22 its place the following: 'parent who has committed'

24 Further amend the bill in section 7 in subsection 5-A in
paragraph G in the 2nd line (page 6, line 5 in L.D.) by striking
26 out the following: "reducing a" and inserting in its place the
following: 'reducing that'

28 Further amend the bill by striking out all of section 8 and
30 inserting in its place the following:

32 '**Sec. 8. 19 MRSA §752, sub-§6**, as amended by PL 1995, c. 172,
§5, is further amended to read:

34
36 **6. Order.** The order of the court must award allocated
parental rights and responsibilities, shared parental rights and
responsibilities or sole parental rights and responsibilities,
38 according to the best interest of the child. When the parents
have agreed to an award of shared parental rights and
40 responsibilities or so agree in open court, the court shall make
that award unless there is substantial evidence that it should
42 not be ordered. The court shall state in its decision the reasons
for not ordering a shared parental rights and responsibilities
44 award agreed to by the parents.

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

48
50 The court may award parental rights and responsibilities with
respect to the child to a 3rd person, some suitable society or

institution for the care and protection of children or the Department of Human Services upon a finding 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.

The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19, section 770-C.

Every final order issued under this section must contain:

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

B. A statement that each parent must have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest 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

C. A statement that violation of the order may result in a finding of contempt and imposition of sanctions as provided in subsection 6-A.'

Further amend the bill in section 10 in subsection 1 in the 7th line (page 7, line 40 in L.D.) by striking out the following: "shall appoint a guardian ad item" and inserting in its place the following: 'may appoint a guardian ad litem'

Further amend the bill in section 11 by striking out all of subsection 1-A and inserting in its place the following:

'1-A. Qualifications. A guardian ad litem appointed on or after September 1, 1997 must meet the qualifications established by the Supreme Judicial Court.'

Further amend the bill in section 12 in subsection 2 in the 9th line (page 9, line 9 in L.D.) by striking out the following: "health" and inserting in its place the following: 'child'

Further amend the bill in section 12 in subsection 2 in the 10th line (page 9, line 10 in L.D.) by striking out the following: "at" and inserting in its place the following: 'ad'

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Further amend the bill in section 12 in subsection 2 in the 11th line (page 9, line 11 in L.D.) by striking out the following: "in the child's home or foster home"

Further amend the bill in section 12 in subsection 2 in paragraph J in the first line (page 9, line 47 in L.D.) by inserting after the following: "necessary" the following: "including, but not limited to, the authority to file pleadings"

Further amend the bill by striking out all of section 13 and inserting in its place the following:

Sec. 13. 19 MRSA §752-A, sub-§3, as enacted by PL 1993, c. 629, §1, is amended to read:

3. Best interest of the child. The guardian ad litem must be guided by the standard of the best interest of the child as set forth in section 752, subsection 5. A guardian ad litem shall make the wishes of the child known to the court if the child has expressed the child's wishes, regardless of the recommendation of the guardian ad litem. If the child and the child's guardian ad litem are not in agreement, the court shall evaluate the necessity for appointing special counsel for the child to serve as the child's legal advocate concerning the issues and during the proceedings as the court determines to be in the best interest of the child and shall appoint a legal advocate if the court determines that such an appointment is necessary.

Further amend the bill in section 14 in subsection 7 in the 3rd line (page 10, line 42 in L.D.) by striking out the following: "involving the child" and inserting in its place the following: "in which the child is a party or a witness"

Further amend the bill in section 15 in paragraph F in the 6th and 7th lines (page 11, lines 3 and 4 in L.D.) by striking out the following: "by the Maine Commission on Domestic Abuse" and inserting in its place the following: "under Title 19, section 770-C"

Further amend the bill by striking out all of sections 16 and 17 and inserting in their place the following:

Sec. 16. 19 MRSA §770-B, sub-§3, as enacted by PL 1989, c. 862, §22, is amended to read:

3. Powers and duties. The commission shall advise and assist the executive, legislative and judicial branches of State Government on issues related to domestic abuse. The commission may make recommendations on legislative and policy actions,

including training of the various law enforcement officers, prosecutors and judicial officers responsible for enforcing and carrying out the provisions of this chapter, and may undertake research development and program initiatives consistent with this section. The entire commission shall meet at least 2 times a year. Subcommittees of the commission may meet as necessary. The commission may accept funds from the Federal Government, from any political subdivision of the State or from any individual, foundation or corporation and may expend these funds for purposes that are consistent with this section.

Sec. 17. 19 MRSA §770-C is enacted to read:

§770-C. Certification of batterers' intervention programs

1. Rules establishing standards and procedures for certification. The Department of Public Safety, referred to in this section as the "department," shall adopt rules pursuant to the Maine Administrative Procedure Act, in consultation with the Maine Commission on Domestic Abuse, that establish standards and procedures for certification of batterers' intervention programs. The department, in consultation with the commission, shall review and certify programs that meet the standards.

2. Temporary certification of batterers' intervention programs. The department may certify programs on a temporary basis until final standards are adopted. To receive temporary certification, a batterers' intervention program must submit to the department evidence of the following:

A. The program has established a relationship with an agency in the program's area that is a member of the statewide coalition for family crisis services funded by the Department of Human Services;

B. The program is a minimum of 26 weeks in length;

C. The program includes treatment modalities that are appropriate to each gender;

D. The primary purpose of the program is to provide safety to victims; and

E. The training received by facilitators and the curriculum used are based upon models developed by a nationally recognized program.

Sec. 18. 22 MRSA §4005, sub-§1, ¶A, as amended by PL 1983, c. 783, §1, is further amended to read:

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. His The guardian ad litem's reasonable costs and expenses shall ~~shall~~ must be paid by the District Court. The appointment shall ~~shall~~ must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after September 1, 1997 must meet the qualifications established by the Supreme Judicial Court.'

Further amend the bill in section 18 in paragraph B in the last paragraph by inserting at the end the following: 'The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest.'

Further amend the bill in section 22 in paragraph I in the 3rd and 4th lines (page 13, lines 36 and 37 in L.D.) by striking out the following: "by the Maine Commission on Domestic Abuse" and inserting in its place the following: 'under Title 19, section 770-C'

Further amend the bill in section 23 by inserting at the end a new paragraph to read:

'The Maine Commission on Domestic Abuse may submit legislation recommended by the ad hoc working group to establish standards for visitation centers.'

Further amend the bill by inserting after section 23 the following:

Sec. 24. Training, certification, assignment and supervision of guardians ad litem. The Legislature recognizes the need for a program that comprehensively addresses training, certification, supervision and assignment of guardians ad litem. The Legislature also recognizes that not all parties in cases in which appointment of a guardian ad litem may be appropriate have sufficient financial resources to pay for the appointment. The Legislature requests that the Supreme Judicial Court develop a program to provide training, certification, supervision and assignment of guardians ad litem. The program must be implemented by September 1, 1997. The program must also address appointment of and funding for guardians ad litem when one or more parties are indigent.

1. Components of the training program must include at least 16 hours of training. Training must cover at least the following:

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- 2 A. Dynamics of domestic abuse and its effect on children;
- 4 B. Dynamics of divorce and its effect on children;
- 6 C. Child development;
- 8 D. The effects of trauma on children;
- 10 E. Substance abuse;
- 12 F. Legal issues and processes; and
- 14 G. Interviewing techniques.

16 2. The Supreme Judicial Court is requested to determine
 18 whether professional education, licensing or certification is an
 20 appropriate requirement for guardians ad litem in addition to the
 training established under subsection 1.

22 3. The Supreme Judicial Court may seek the assistance and
 24 cooperation of any interested person or organizations, including
 the following organizations who cooperated in presenting
 legislation pursuant to Resolve 1993, chapter 61:

- 26 A. Maine Coalition for Family Crisis Services;
- 28 B. Family Law Section, Maine State Bar Association;
- 30 C. Maine Children's Alliance;
- 32 D. Maine Association of Mental Health Services;
- 34 E. Pine Tree Legal Assistance;
- 36 F. Maine Women's Lobby; and
- 38 G. Maine Commission on Domestic Abuse.

40 The Maine Coalition for Family Crisis Services shall provide
 42 staffing assistance at the request of the Supreme Judicial Court.

44 4. The Supreme Judicial Court is requested to report its
 46 findings and recommendations, including any recommended
 48 legislation, to the First Regular Session of the 118th
 Legislature and the joint standing committee of the Legislature
 having jurisdiction over judiciary matters no later than January
 15, 1997.'

COMMITTEE AMENDMENT

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

This bill will increase indigent defense expenditures by the Judicial Department. General Fund appropriations may be required by the courts to fund these additional expenditures. The number of situations where these additional expenditures would be incurred can not be determined at this time. The department will also require additional General Fund appropriations beginning in fiscal year 1997-98 to implement the training, certification, assignment and supervision of guardians ad litem as requested. These amounts also can not be determined at this time.

The Department of Public Safety will incur some minor additional costs to adopt rules dealing with the certification of batterers' intervention programs. These costs can be absorbed within the department's existing budgeted resources.

The additional costs to serve as a member of the ad hoc working group can be absorbed by the Department of Human Services utilizing existing budgeted resources.

STATEMENT OF FACT

This amendment makes modifications to the legislative recommendations from the study group concerning parental rights and responsibilities in cases of domestic abuse.

This amendment transfers the responsibility of developing standards for and then certifying batterers' intervention programs from the Maine Commission on Domestic Abuse to the Department of Public Safety. The Department of Public Safety will consult with the Maine Commission on Domestic Abuse in carrying out those activities.

This amendment clarifies the wording on legislative findings concerning family relationships, the use of mediation in divorce proceedings in general and the seriousness of domestic abuse.

This amendment revises the factors a court must consider in determining how to award parental rights and responsibilities. The safety and well-being of the child are to be given priority

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in making decisions about primary residence. The safety and well-being of a parent who is the victim of domestic abuse is part of the consideration of how the child is affected emotionally and how the child's safety is affected.

This amendment revises language to avoid referring to a perpetrator of domestic abuse when the court is establishing conditions of parent-child contact. It broadens the options to cover either parent, not just the parent who has committed domestic abuse.

This amendment revises the option of requiring a bond from a perpetrator of domestic abuse to the option of requiring the parent who has committed domestic abuse to provide some sort of security guaranteeing the return and safety of the child when the parent takes the child for visitation.

This amendment gives the court discretion to appoint a guardian ad litem in child custody cases in which domestic abuse is involved, rather than mandatory appointment as in the bill.

This amendment revises the requirement that guardians ad litem be certified, as in the bill, to allow a court to appoint a person who is not certified but who the court determines is nonetheless appropriate to serve as guardian ad litem in that proceeding.

This amendment adds to the criteria to be included in the training of guardians ad litem the subject of the dynamics of divorce and its effect on children.

This amendment adds to the list of possible powers and duties of guardians ad litem the authority to file pleadings.

This amendment authorizes the court to provide a child with the opportunity to address the court personally if the child requests to do so or if the guardian ad litem believes it to be in the child's best interest.

This amendment requires notification of the guardian ad litem when the child is a party or a witness in a civil or criminal proceeding.

This amendment retains the requirement that a guardian ad litem have face-to-face contact with the child, but deletes the requirement that the contact be in the child's home or foster home.

This amendment removes from the bill the requirement that the courts appoint guardians ad litem in all cases of special concern and fund the appointments.

2 This amendment removes from the bill the statutory language
3 requiring the establishment of a program to train, certify,
4 supervise and assign all guardians ad litem, including the
5 court-appointed special advocates. In the interest of comity,
6 this amendment requests that the Supreme Judicial Court develop a
7 program, in cooperation with interested persons and
8 organizations, including the organizations identified in Resolve
9 1993, chapter 61, to provide for the training, certification,
10 supervision and assignment of guardians ad litem. The issue of
11 providing and funding guardians ad litem for indigent parties
12 must be examined. The Supreme Judicial Court may request
13 staffing assistance from the Maine Coalition for Family Crisis
14 Services. A report to the Legislature and the Joint Standing
15 Committee on Judiciary is due January 15, 1997.