

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

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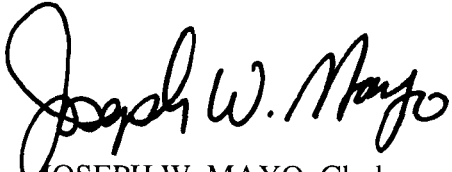
H.P. 808

House of Representatives, March 30, 1995

**An Act to Implement the Recommendations Resulting from the Study
Concerning Parental Rights and Responsibilities When Domestic Abuse
is Involved.**

Reported by Representative TREAT for the study group concerning parental rights and responsibilities in cases of domestic abuse pursuant to Resolve 1993, chapter 61.

Reference to the Joint Standing Committee on Committee on Judiciary suggested and printing ordered under Joint Rule 20.


JOSEPH W. MAYO, Clerk

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

Sec. 1. 17-A MRSA §1204, sub-§2-A, ¶D, as enacted by PL 1975, c. 740, §110-A, is amended to read:

D. To undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition ~~shall-be~~ is considered only as a violation of probation and ~~shall may~~ not, in itself, authorize involuntary treatment or hospitalization. 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 by the Maine Commission on Domestic Abuse;

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

6. Order. The order of the court ~~shall~~ 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. ~~Where~~ 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 by the Maine Commission on Domestic Abuse.

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

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

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

11 **Sec. 3. 19 MRSA §581, sub-§6,** as amended by PL 1989, c. 272,
12 §2, is further amended to read:

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

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

27
28 The court may award parental rights and responsibilities to a 3rd
29 person, a society or institution for the care and protection of
30 children, or to the Department of Human Services upon a finding
31 that awarding parental rights and responsibilities to either or
32 both parents will place the child in jeopardy as defined in Title
33 22, section 4002, subsection 6.

34
35 The court may not order and the State may not pay for the
36 defendant to attend a batterers' intervention program unless the
37 program is certified by the Maine Commission on Domestic Abuse.

38
39 Every final order issued under this section ~~shall~~ must contain:

40
41 A. A provision for child support or a statement of the
42 reasons for not ordering child support; and

43
44 B. A statement that each parent ~~shall~~ may have access to
45 records and information pertaining to a minor child,
46 including but not limited to, medical, dental and school
47 records, whether or not the child resides with the parent,
48 unless that access is found not to be in the best interest
49 of the child or that access is found to be sought for the
50

2 purpose of causing detriment to the other parent. If that
access is not ordered, the court shall state in the order
4 its reasons for denying that access.

6 **Sec. 4. 19 MRSA §752, sub-§1**, as enacted by PL 1983, c. 813,
§5, is amended to read:

8 **1. Legislative findings and purpose.** The Legislature finds
and declares as public policy that encouraging mediated
10 resolutions of disputes between parents is in the best interest
of minor children.

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

20 **Sec. 5. 19 MRSA §752, sub-§2, ¶B-1** is enacted to read:

22 B-1. "Domestic abuse" means abuse as defined in section 762.

24 **Sec. 6. 19 MRSA §752, sub-§5**, as amended by PL 1993, c. 453,
§§9 and 10, is further amended to read:

26 **5. Best interest of the child.** The court, in making an
award of parental rights and responsibilities with respect to a
28 minor child, shall apply the standard of the best interest of the
child. In making decisions regarding primary residence and
30 parent-child contact, the court shall consider as primary the
32 safety and well-being of the child and of the parent who is a
victim of domestic abuse as defined in section 762. In applying
34 this standard, the court shall consider the following factors:

36 A. The age of the child;

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

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

44 D. The duration and adequacy of the child's current living
46 arrangements and the desirability of maintaining continuity;

48 E. The stability of any proposed living arrangements for
the child;

50

2 F. The motivation of the parties involved and their
capacities to give the child love, affection and guidance;

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

6 H. The capacity of each parent to allow and encourage
8 frequent and continuing contact between the child and the
other parent, including physical access;

10 I. The capacity of each parent to cooperate or to learn to
12 cooperate in child care;

14 J. Methods for assisting parental cooperation and resolving
disputes and each parent's willingness to use those methods;

16 K. The effect on the child if one parent has sole authority
18 over the child's upbringing;

20 K-1. The existence--of--a perpetrator's history of causing
22 physical harm, bodily injury or assault, or of causing
reasonable fear of physical harm, bodily injury or assault,
24 to another person. The court shall consider the emotional
impact of domestic abuse between-the-parents on the child;

26 K-2. The existence of any history of child abuse by a
parent; and

28 L. All other factors having a reasonable bearing on the
30 physical and psychological well-being of the child.

32 Sec. 7. 19 MRSA §752, sub-§5-A is enacted to read:

34 5-A. Conditions of parent-child contact in cases involving
domestic abuse. The court shall establish conditions of
36 parent-child contact as follows.

38 A. A court may award primary residence of a minor child or
parent-child contact with a minor child to a parent who has
40 committed domestic abuse only if the court finds that
contact between the parent and child is in the best interest
42 of the child and that adequate provision for the safety of
the child and the parent who is a victim of domestic abuse
44 can be made.

46 B. In an order of parental rights and responsibilities, a
court may:

48 (1) Order an exchange of a child to occur in a
50 protected setting;

2 (2) Order contact to be supervised by another person
3 or agency;
4
5 (3) Order the perpetrator of domestic abuse to attend
6 and complete to the satisfaction of the court a program
7 of intervention for perpetrators or other designated
8 counseling as a condition of the contact;
9
10 (4) Order the perpetrator of domestic abuse to abstain
11 from possession or consumption of alcohol or controlled
12 substances, or both, during the visitation and for 24
13 hours preceding the contact;
14
15 (5) Order the perpetrator of domestic abuse to pay a
16 fee to defray the costs of supervised contact;
17
18 (6) Prohibit overnight parent-child contact; and
19
20 (7) Impose any other condition that is determined
21 necessary to provide for the safety of the child, the
22 victim of domestic abuse or any other family or
23 household member.
24
25 C. The court may require a bond from the perpetrator of
26 domestic abuse for the return and safety of the child.
27
28 D. The court may order the address of the child and the
29 victim to be kept confidential.
30
31 E. The court may not order a victim of domestic abuse to
32 attend counseling with the perpetrator of domestic abuse.
33
34 F. If a court allows a family or household member to
35 supervise parent-child contact, the court shall establish
36 conditions to be followed during that contact. Conditions
37 include but are not limited to:
38
39 (1) Minimizing circumstances when the perpetrator's
40 family would be supervising visits;
41
42 (2) Ensuring that contact does not damage the
43 relationship with the parent who has primary physical
44 residence;
45
46 (3) Ensuring the safety and well-being of the child;
47 and
48
49 (4) Requiring that supervision is provided by a person
50 who is physically and mentally capable of supervising

2 a visit and who does not have a criminal history or
3 history of abuse or neglect.

4 G. Fees incurred by the perpetrator of domestic abuse may
5 not be considered as a mitigating factor reducing a parent's
6 child support obligation.

8 **Sec. 8. 19 MRSA §752, sub-§6,** as enacted by PL 1983, c. 813,
9 §5, is amended to read:

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

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

22 The court may award parental rights and responsibilities with
23 respect to the child to a 3rd person, some suitable society or
24 institution for the care and protection of children or the
25 Department of Human Services upon a finding that awarding
26 parental rights and responsibilities to either or both parents
27 will place the child in jeopardy as defined in Title 22, section
28 4002, subsection 6.

29 The court may not order and the State may not pay for the
30 defendant to attend a batterers' intervention program unless the
31 program is certified by the Maine Commission on Domestic Abuse.

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

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

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

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

4
6 **12. Modification of orders; compulsory process.** Upon the
motion of one or both of the parents, or any agency or person who
8 has been granted parental rights and responsibilities or contact
with respect to a child under this section, the court may alter
its order concerning parental rights and responsibilities or
10 contact with respect to a minor child as circumstances require.
Child support orders may be modified retroactively, but only from
12 the date that notice of a petition for modification has been
served upon the opposing party pursuant to the Maine Rules of
14 Civil Procedure. The parties ~~shall~~ must be referred to mediation
as provided under subsection 4.

16
18 The relocation, or intended relocation, of a child resident in
this State to another state by a parent, when the other parent is
a resident in this State and there exists an award of shared or
20 allocated parental rights and responsibilities concerning the
child, is a substantial change in circumstances. The finding
22 that domestic or family violence has occurred since the last
custody determination constitutes a finding of a change of
24 circumstances.

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

30 **Sec. 10. 19 MRSA §752-A, sub-§1**, as enacted by PL 1993, c.
32 629, §1, is amended to read:

34 **1. Guardian ad litem; appointment.** In contested
proceedings under sections 214, 581, 693 and 752 in which a minor
36 child is involved, the court may appoint a guardian ad litem for
the child. The appointment ~~must~~ may be made at any time, but the
38 court must make every effort to make the appointment as soon as
possible after the commencement of the proceeding. The court
40 shall appoint a guardian ad item when the court has reason for
special concern as to the welfare of a minor child. In
42 determining whether an appointment must be made, the court shall
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;

2 D. The financial resources of the parties;

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

6 F. Other factors the court determines relevant.;

8 G. Whether the family has experienced a history of domestic
abuse; and

10 H. Any abuse of the child by one of the parties.

12 At the time of the appointment, the court shall specify the
14 guardian ad litem's length of appointment, duties and fee
16 arrangements.

18 **Sec. 11. 19 MRSA §752-A, sub-§1-A** is enacted to read:

20 1-A. Qualifications. A guardian ad litem must meet the
following qualifications.

22 A. The guardian ad litem must be an attorney, mental health
24 professional, court-appointed special advocate or other
26 professional who is certified by the court to be a guardian
ad litem.

28 B. The Supreme Judicial Court shall establish a program for
30 certification, assignment, training and supervision for
32 guardians ad litem and shall certify only those individuals
who have completed the mandatory training program. The
training program consists of a minimum of 16 hours of
training and includes, but is not limited to, training in
the following areas:

34 (1) Dynamics of domestic abuse and its effect on
36 children;

38 (2) Child development;

40 (3) The effects of trauma on children;

42 (4) Substance abuse;

44 (5) Legal issues and processes; and

46 (6) Interviewing techniques.

48 **Sec. 12. 19 MRSA §752-A, sub-§2,** as enacted by PL 1993, c.
50 629, §1, is repealed and the following enacted in its place:

2 2. Duties. The guardian ad litem has both mandatory and
3 optional duties. If, in order to perform the duties, the
4 guardian needs information concerning the child or parents, the
5 court may order the parents to sign an authorization form
6 allowing the release of the necessary information. The guardian
7 ad litem shall interview the child with or without another person
8 present. The guardian ad litem must be allowed access to the
9 child by caretakers of the child, whether the caretakers are
10 individuals, authorized agencies or health care providers. The
11 guardian at litem shall have face-to-face contact with the child
12 in the child's home or foster home within 7 days of appointment
13 by the court and at least once every 3 months thereafter. The
14 guardian ad litem shall make a written report of investigations,
15 findings and recommendations every 6 months or as ordered by the
16 court, with copies of the report to each party and the court.

17 The court shall specify the optional duties of the guardian ad
18 litem. The duties of the guardian ad litem may include the
19 following:

20 A. Interviewing the parents, teachers and other people who
21 have knowledge of the child or family;

22 B. Reviewing mental health, medical and school records of
23 the child;

24 C. Reviewing mental health and medical records of the
25 parents;

26 D. Having qualified people perform medical and mental
27 evaluations on the child;

28 E. Having qualified people perform medical and mental
29 evaluations on the parents;

30 F. Procuring counseling for the child;

31 G. Retaining an attorney to represent the guardian ad litem
32 in the pending proceeding, with approval of the court;

33 H. Subpoenaing witnesses and documents and examining and
34 cross-examining witnesses;

35 I. Serving as a contact person between the parents and the
36 child; and

37 J. Other duties that the court determines necessary.

38 **Sec. 13. 19 MRSA §752-A, sub-§§3 and 6,** as enacted by PL 1993,
39 c. 629, §1, are amended to read:
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2 **3. Best interest of the child.** The guardian ad litem must
4 be guided by the standard of the best interest of the child as
5 set forth in section 752, subsection 5. A guardian ad litem
6 shall make the wishes of the child known to the court if the
7 child has expressed the child's wishes, regardless of the
8 recommendation of the guardian ad litem. If the child and the
9 child's guardian ad litem are not in agreement, the court shall
10 evaluate the necessity for appointing special counsel for the
11 child to serve as the child's legal advocate concerning the
12 issues and during the proceedings as the court determines to be
13 in the best interest of the child and shall appoint a legal
14 advocate if the court determines that such an appointment is
15 necessary.

16 **6. Payment for services.** ~~Payment-for-the-services-of-the~~
17 ~~guardian-ad-litem-is-the-responsibility-of-the-parties--as~~
18 ~~ordered-by-the-court.~~ A guardian ad litem or counsel appointed
19 for the child pursuant to this section may be paid for by the
20 court, unless the court determines that the parties are able to
21 pay the costs. The court may order the appropriate parties to
22 pay or reimburse the costs and fees of the guardian ad litem and
23 other counsel appointed for the child. In determining the
24 responsibility for payment or reimbursement, the court shall
25 consider:

- 26 A. The income of the parties;
27
28 B. The marital and nonmarital assets of the parties;
29
30 C. The division of property made as part of the final
31 divorce;
32
33 D. Which party requested appointment of a guardian; and
34
35 E. Other relevant factors.

36
37 **Sec. 14. 19 MRSA §752-A, sub-§7** is enacted to read:

38
39 **7. Notice.** A guardian ad litem must be given notice of all
40 hearings and proceedings, civil or criminal, including, but not
41 limited to, grand juries, involving the child and shall protect
42 the best interests of the child in those hearings and
43 proceedings, unless otherwise ordered by the court.

44
45 **Sec. 15. 19 MRSA §766, sub-§1, ¶F,** as amended by PL 1989, c.
46 862, §17, is further amended to read:

- 47
48 F. Requiring the defendant to receive counseling from a
49 social worker, family service agency, mental health center,
50 psychiatrist or any other guidance service that the court

considers appropriate. 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 by the Maine Commission on Domestic Abuse;

Sec. 16. 19 MRSA §770-B, sub-§3, as enacted by PL 1989, c. 862, §22, is repealed and the following enacted in its place:

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 shall establish standards and procedures for certification of batterers' intervention programs and supervised visitation centers. As an interim measure, a batterers' intervention program shall submit to the commission evidence of the following:

A. The program has established a relationship with the Maine Coalition for Family Crisis Services member agency in the program's area;

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

C. The program includes only members of the same sex;

D. A statement that 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.

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. 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

2 section 4071, but including hearings on those orders, shall
3 appoint a guardian ad litem for the child. ~~His~~ The guardian
4 ad litem's reasonable costs and expenses shall must be paid
5 by the District Court. The appointment shall must be made as
6 soon as possible after the proceeding is initiated. The
7 Supreme Judicial Court shall establish a program for
8 certification, assignment, training and supervision of
9 guardians ad litem and certify only those individuals who
10 have completed the mandatory training program. The training
11 program consists of a minimum of 16 hours of training and
12 includes, but is not limited to, training in the following
13 areas:

14 (1) Dynamics of domestic abuse and its effect on
15 children;

16 (2) Child development;

17 (3) The effects of trauma on children;

18 (4) substance abuse;

19 (5) Legal issues and processes; and

20 (6) Interviewing techniques.

21 **Sec. 18. 22 MRSA §4005, sub-§1, ¶B,** as repealed and replaced
22 by PL 1983, c. 183, is amended to read:

23 B. The guardian ad litem shall act in pursuit of the best
24 interests of the child. ~~He shall~~ The guardian ad litem must
25 be given access to all reports and records relevant to the
26 case. ~~He shall~~ and investigate to ascertain the facts. ~~His~~
27 The investigation shall must include, where when possible
28 and appropriate, the following:

29 (1) Review of relevant mental health records and
30 materials;

31 (2) Review of relevant medical records;

32 (3) Review of relevant school records and other
33 pertinent materials;

34 (4) Interviews with the child with or without other
35 persons present; and

36 (5) Interviews with parents, foster parents, teachers,
37 caseworkers and other persons who have been involved in
38 caring for or treating the child.

2 The guardian ad litem shall have face-to-face contact with
4 the child in the child's home or foster home within 7 days
6 of appointment by the court and at least once every 3 months
8 thereafter. The guardian ad litem shall report to the court
10 and all parties in writing at 6-month intervals, or as is
12 otherwise ordered by the court, regarding the guardian ad
14 litem's activities on the behalf of the child and
16 recommendations concerning the manner in which the court
18 should proceed in the best interest of the child.

20 **Sec. 19. 22 MRSA §4005, sub-§1, ¶F,** as enacted by PL 1985, c.
22 581, §2, is amended to read:

24 F. The guardian ad litem or the child may request the court
26 to appoint legal counsel for ~~him~~ the child. The District
28 Court shall pay reasonable costs and expenses of ~~his~~ the
30 child's legal counsel.

32 **Sec. 20. 22 MRSA §4036, sub-§1, ¶G-1,** as enacted by PL 1985, c.
34 739, §9, is amended to read:

36 G-1. The department has no further responsibility under
38 section 4041 and, when the child has been placed in the
40 custody of the department, shall move forward in a timely
42 fashion to make permanent plans for the child; ~~or~~

44 **Sec. 21. 22 MRSA §4036, sub-§1, ¶H,** as enacted by PL 1979, c.
46 733, §18, is amended to read:

48 H. Other specific conditions governing custody; ~~or~~

50 **Sec. 22. 22 MRSA §4036, sub-§1, ¶I** is enacted to read:

I. 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 by the Maine Commission on
 Domestic Abuse.

Sec. 23. Ad hoc working group established. An ad hoc working
group of the Maine Commission on Domestic Abuse is established to
create standards for visitation centers by January 1, 1996. The
working group includes, but is not limited to, representatives
from:

1. The Maine Commission on Domestic Abuse;
2. The Maine Coalition for Family Crisis Services;
3. The Department of Human Services, Bureau of Child and
Family Services;

2 4. Law enforcement;

4 5. The judiciary;

6 6. Legislators;

8 7. Child advocates;

10 8. Two attorneys, one with specific experience in handling
12 domestic abuse cases and one who represents the family law
section of the bar association;

14 9. A mental health professional with experience in child
16 and family issues; and

18 10. Parents or guardians who have had previous contact and
experience with the system.

20 In establishing standards for supervised visitation centers,
22 the standards must provide for the following:

24 1. The neutral exchange of children for visitation purposes
and on-site visits, both supervised and unsupervised;

26 2. Specific procedures for screening and intake;

28 3. Guidelines regarding fees for service;

30 4. Specific staffing requirements, including, but not
32 limited to, staff and volunteer qualification and training;

34 5. Security;

36 6. Confidentiality;

38 7. Specific site requirements;

40 8. Any other program or service that ensures that
42 visitation is conducted in a manner consistent with the best
interest of the child;

44 9. What types of programs should be regulated by the
standards; and

46 10. Any other issues the working group determines
48 appropriate.

2

STATEMENT OF FACT

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8

This bill implements changes to current domestic relations laws as suggested by the study group formed to examine the issues concerning parental rights and responsibilities in cases of domestic abuse. The study group was authorized by Resolve 1993, chapter 61.