

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1468

H.P. 1049

House of Representatives, May 2, 1995

An Act Regarding Custody and Support of Children.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative DiPIETRO of South Portland.
Cosponsored by Representatives: CAMERON of Rumford, CAMPBELL of Holden,
FARNUM of South Berwick, FISHER of Brewer, HATCH of Skowhegan, KEANE of Old
Town, LEMONT of Kittery, MURPHY of Berwick, VIGUE of Winslow.

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

2
4 **Sec. 1. 19 MRSA §693**, as amended by PL 1989, c. 834, Pt. B, §10, is further amended to read:

6 **§693. Orders pending divorce**

8 In accordance with section 752 ~~755~~, subsection 4, pending a
10 divorce action, the court may order either spouse to pay to the
12 other spouse, or to the attorney for the other spouse, sufficient
14 money for the defense or prosecution thereof; make reasonable
16 provision for either spouse's separate support, on a motion for
18 which costs and counsel fees may be ordered; enter a decree for
20 the parental rights and responsibilities and support of the minor
22 children in accordance with chapter 7, subchapter I-A; and in all
24 cases enforce obedience by appropriate processes on which costs
and counsel fees are taxed as in other actions. An order for
child support under this section may include an order for the
payment of part or all of the medical expenses, hospital expenses
and other health care expenses of the children or an order to
provide a policy or contract for coverage of those expenses.
Availability of public welfare benefits to the family ~~must~~ may
not affect the decision of the court as to the responsibility of
a parent to provide child support.

26 **Sec. 2. 19 MRSA §751**, as amended by PL 1981, c. 703, Pt. A,
§3, is repealed.

28 **Sec. 3. 19 MRSA §752**, as amended by PL 1993, c. 472, §3, is
30 repealed.

32 **Sec. 4. 19 MRSA §752-A**, as enacted by PL 1993, c. 629 , §1,
is repealed.

34 **Sec. 5. 19 MRSA §§755 to 757** are enacted to read:

36 **§755. Purpose; definitions; procedure; guidelines**

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

44 **2. Definitions.** As used in this article, unless the
46 context otherwise indicates, the following terms have the
following meanings.

48 **A. "Abandonment"** means any conduct, without interference,
on the part of a parent showing an intent to forgo parental

2 duties or relinquish parental claims to a child. The intent
3 may be evidenced by:

4 (1) Failure, for a period of at least one year and
5 without interference, to communicate meaningfully with
6 the child;

7 (2) Failure, for a period of at least one year and
8 without interference, to maintain regular visitation
9 with the child; or

10 (3) Any other conduct indicating an intent to forgo
11 parental duties or relinquish parental claims.

12
13 B. "Abuse" means that a child's health or welfare is
14 subject to or in jeopardy of physical, mental or emotional
15 injury or impairment, sexual abuse or exploitation,
16 deprivation of essential needs or lack of protection from
17 these hazards by a parent responsible for the child.

18
19 C. "Allocated parental rights and responsibilities" means
20 the rights and responsibilities for the various aspects of a
21 child's welfare that are divided between the parents by a
22 court, with the parent allocated a particular responsibility
23 having the right to control that aspect of the child's
24 welfare. Responsibilities may be divided exclusively or
25 proportionately. Aspects of a child's welfare for which
26 responsibility may be divided include primary physical
27 residence, support, education, medical and dental care,
28 religious upbringing, travel boundaries and expenses and any
29 other aspect of parental rights and responsibilities.

30
31 D. "Appointment order" means a court order issued pursuant
32 to subsection 8.

33
34 E. "Child" or "minor child" means any person who is less
35 than 18 years of age.

36
37 F. "Child's attorney" means an attorney at law having the
38 qualifications required by section 756, subsection 2,
39 paragraph A who is appointed by the court to represent a
40 child pursuant to subsection 8.

41
42 G. "Child support" means money that must be paid directly
43 to a parent, another person or an agency who has
44 court-ordered parental rights and responsibilities with
45 respect to a child or to the Department of Human Services on
46 behalf of any child receiving public assistance and any
47 medical or dental insurance coverage provided to a child
48 pursuant to a court order.
49

2 H. "Evaluation" means an evaluation conducted by an
4 appointed mental health professional pursuant to section
 756, subsection 4.

6 I. "Interference" means conduct on the part of another
8 person or entity that prevents or hinders the ability of the
 parent to make contact with a child.

10 J. "Investigation" means an investigation conducted
12 pursuant to section 756, subsection 3 by a child's appointed
 attorney.

14 K. "Jeopardy" means serious abuse or abandonment, as
 evidenced by:

- 16 (1) Serious harm;
18 (2) Deprivation of adequate food, clothing, shelter,
20 supervision or care, including health care when that
22 deprivation causes a threat of serious harm; or
24 (3) Abandonment of the child that creates a threat of
 serious harm.

26 L. "Mental health professional" means a licensed
28 psychiatrist or licensed psychologist having the
30 qualifications required by section 756, subsection 2,
 paragraph B who is appointed by the court pursuant to
 subsection 8.

32 M. "Notice certification" means the notification required
34 by section 756, subsection 6.

36 N. "Report" means the report issued by a mental health
 professional pursuant to section 756, subsection 5.

- 38 O. "Serious harm" means:
40 (1) Serious injury;
42 (2) Serious mental or emotional injury or impairment
44 that now or in the future is likely to be evidenced by
 serious mental, behavioral or personality disorder; or
46 (3) Sexual abuse or exploitation.

48 P. "Serious injury" means serious physical injury or
50 impairment.

2 O. "Shared parental rights and responsibilities" means
4 equal parental rights and responsibilities regarding all
6 aspects of a child's welfare, including physical residence,
 that are granted to both parents and that require both
 parents to confer and make joint decisions regarding the
 child's welfare.

8 R. "Sole parental rights and responsibilities" means
10 exclusive parental rights and responsibilities regarding all
12 aspects of a child's welfare, with the possible exception of
 the right and responsibility of child support, that are
 granted to one parent.

14 S. "Special parental rights and responsibilities" means
16 equal parental rights and responsibilities regarding all
18 aspects of a child's welfare, excluding physical residence,
 that are granted to both parents and that require both
 parents to confer and make joint decisions regarding the
 child's welfare.

20 3. Jurisdiction. The court making an order of nullity or of
22 divorce may make an order awarding parental rights and
24 responsibilities with respect to a minor child.

4. Mediation. Except as provided in subsection 5, prior to
26 a contested hearing under this section when there are minor
28 children of the parties, the court shall refer the parties to
30 mediation, except that, for good cause shown, the court, prior to
32 referring the parties to mediation, may hear motions for
34 temporary relief, pending final judgment on any issue or
36 combination of issues for which good cause for temporary relief
38 has been shown. Upon motion supported by affidavit, the court
40 may, for extraordinary cause shown, waive the mediation
42 requirement under this subsection. Any agreement reached by the
44 parties through mediation on any issues must be reduced to
46 writing, signed by the parties and presented to the court for
48 approval as a court order. When agreement through mediation is
 not reached on any issue, the court must determine that the
 parties made a good faith effort to mediate the issue before
 proceeding with a hearing. If the court finds that either party
 failed to make a good faith effort to mediate, the court may
 order the parties to submit to mediation, may dismiss the action
 or any part of the action, may render a decision or judgment by
 default, may assess attorney's fees and costs or may impose any
 other sanction that is appropriate in the circumstances. The
 court may also impose an appropriate sanction upon a party's
 failure without good cause to appear for mediation after
 receiving notice of the scheduled time for mediation.

2 5. Waiver of mediation; questions of law. The court may
hear motions to waive mediation in cases in which there are no
4 facts at issue and all unresolved issues are questions of law.

6 6. Best interest of family. The court, in issuing an order
of parental rights and responsibilities with respect to a minor
8 child, shall issue the order according to the guidelines
established in subsection 11.

10 7. Allegation of abuse or abandonment; request for
appointment. Whenever a parent makes an allegation that the
12 parent's child has been, is subject to or is in jeopardy of abuse
or abandonment, either parent, or the court, on its own
14 initiative and by providing notice to the parties, may move for
the appointment of a child's attorney and a mental health
16 professional.

18 Upon notice by the court or the filing by a party of a motion for
the appointment of a child's attorney and a mental health
20 professional, and no later than 7 days prior to a hearing on the
appointment, each party shall submit to the court:

22 A. Three names of attorneys for the minor child;

24 B. A curriculum vitae or resume of each attorney proposed
26 pursuant to paragraph A containing information that provides
each party a means by which to assess adequately the
28 proposed child's attorney's professional experience and
qualifications;

30 C. Three names of proposed mental health professionals; and

32 D. A curriculum vitae or resume of each licensed mental
34 health professional proposed pursuant to paragraph C
36 containing information as to provide each party a means by
which to assess adequately the proposed mental health
38 professional's qualifications and professional experience.

40 8. Appointment order. After a hearing on the appointment
of a child's attorney and a mental health professional, the court
42 may issue an order appointing a child's attorney and a mental
health professional to protect the best interests of the child.
An appointment order must include:

44 A. The appointment of a child's attorney;

46 B. The appointment of a licensed mental health professional;

48 C. A provision requiring the child's attorney to conduct an
50 investigation;

2 D. A provision requiring the mental health professional to
3 conduct an evaluation;

4 E. A provision requiring the mental health professional to
5 issue a report;

6 F. A provision requiring the child's attorney to issue a
7 notice certification; and

8 G. A provision for the payment of the fees of the child's
9 attorney and the mental health professional.

10 9. Best interest of child. The following factors must be
11 included in the investigation and evaluation of an allegation of
12 abuse or abandonment:

13 A. The age of the child;

14 B. The relationship of the child with the child's parents;

15 C. The motivation of each of the parties involved and each
16 party's capacity to give the child love, affection and
17 guidance;

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

20 E. The existence of any history of child abuse by a parent;
21 and

22 F. Any other factors that have a reasonable bearing on the
23 physical and psychological well-being of the child.

24 10. Fees. An appointment order for the payment of the fees
25 of a child's attorney and a mental health professional may run
26 against either party in whole or in part, subject to the
27 following limitations:

28 A. The child's attorney may not incur fees for services and
29 expenses in excess of \$1,000 without prior stipulation of
30 the parties or approval, after notice and hearing, by the
31 court; and

32 B. The mental health professional may not incur fees for
33 services and expenses in excess of \$1,000 without prior
34 stipulation of the parties or approval, after notice and
35 hearing, by the court.

2 If the court finds that both parties are unable to pay for the
3 fees of the child's attorney and the mental health professional,
4 the court shall order the Department of Human Services to pay
5 the fees.

6 **11. Order; parental rights and responsibilities;**
7 **guidelines.** The court shall order parental rights and
8 responsibilities. The court, in its order, shall allocate parent
9 and child contact. A parent allocated responsibility for a
10 certain aspect of a child's welfare may be required to inform the
11 other parent of major changes in that aspect. The court shall
12 use the following guidelines.

14 A. When one parent resides in or is moving to a different
15 state, the court shall grant special parental rights and
16 responsibilities, including primary physical residence, to
17 the parent who lives in this State, unless:

18
19 (1) The parents agree in writing that the child may
20 live in a different state;

22 (2) The child, if old enough to express a meaningful
23 preference, expresses a preference to live with the
24 parent residing in a different state; or

26 (3) The court finds, based upon clear and convincing
27 evidence, that the child has been subject to or is in
28 jeopardy of abuse or abandonment by the parent residing
29 in this State.

30
31 B. When the parents have agreed in writing to an order of
32 parental rights and responsibilities, the court shall make
33 that order unless the court finds, based upon clear and
34 convincing evidence, that the child has been subject to or
35 is in jeopardy of abuse or abandonment by one of the
36 parents. If the court makes this finding, the court shall
37 order sole parental rights and responsibilities or allocated
38 parental rights and responsibilities to the other parent,
39 regardless of whether that parent resides in this State. If
40 the court finds, based upon clear and convincing evidence,
41 that the child has been subject to or is in jeopardy of
42 abuse or abandonment by both parents, the court shall order
43 parental rights and responsibilities to a 3rd person
44 pursuant to paragraph D. The court shall state in its
45 decision the reasons for not ordering the parental rights
46 and responsibilities agreed to by the parents.

48 C. If custody of the child is contested, after a hearing
49 the court shall order shared parental rights and
50 responsibilities unless the court finds, based upon clear

2 and convincing evidence, that the child has been subject to
3 or is in jeopardy of abuse or abandonment by one of the
4 parents. If the court makes this finding, the court shall
5 order sole parental rights and responsibilities or allocated
6 parental rights and responsibilities to the other parent,
7 regardless of whether that parent resides in this State. If
8 the court finds, based upon clear and convincing evidence,
9 that the child has been subject to or is in jeopardy of
10 abuse or abandonment by both parents, the court shall order
11 parental rights and responsibilities to a 3rd person
12 pursuant to paragraph D. The court shall state in its
13 decision the reasons for not ordering shared parental rights
14 and responsibilities.

15 D. The court may order parental rights and responsibilities
16 to a 3rd person, a suitable society or institution for the
17 care and protection of children or the Department of Human
18 Services upon a finding, based upon clear and convincing
19 evidence, that ordering parental rights and
20 responsibilities to either parent would place the child in
21 jeopardy of abuse or abandonment.

22 12. Contact by 3rd persons. The court may order reasonable
23 rights of contact with a minor child to any 3rd person.

24 13. Final order. In addition to any information required
25 by subsection 11 or 12, every final order under this section must
26 contain:

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

29 B. A statement that each parent has access to records and
30 information pertaining to the minor child, including, but
31 not limited to, medical, dental and school records,
32 regardless of whether the child resides with the parent,
33 unless the access is found, based upon clear and convincing
34 evidence, not to be in the best interest of the child or the
35 access is found, based upon clear and convincing evidence,
36 to be sought for the purpose of causing detriment to the
37 other parent. If access to the records and information is
38 not ordered, the court shall state in the order its reasons
39 for denying access.

40 14. Equal consideration of parents. The court may not apply
41 a preference for one parent over the other in determining
42 parental rights and responsibilities because of the parent's sex
43 or the child's age or sex.

2 15. Abandonment of family residence. The court may not
4 consider abandonment of the family residence as a factor in
6 determining parental rights and responsibilities with respect to
8 a minor child when the abandoning parent has been physically
 harmed or seriously threatened with physical harm by the other
 parent and that harm or threat of harm was causally related to
 the abandonment or when one parent has left the family residence
 at the request or insistence of the other parent.

10 16. Department of Human Services. When the Department of
12 Human Services has been granted parental rights and
14 responsibilities for a child under this section, Title 22,
16 chapter 1071 applies regarding subsequent reviews and governs
 further rights and responsibilities of the department, the
 parents, the child and any other party.

18 17. Support order. An order of the court for child support
20 may run against the father or the mother in whole or in part or
22 against both, irrespective of the fault of the father or mother
24 in the divorce action. For divorces ordered after January 1,
26 1990, the order for child support may run until the child
28 graduates, withdraws or is expelled from secondary school as
30 defined in Title 20-A, section 1, or attains the age of 19 years,
32 whichever first occurs after the child attains the age of 18
 years. When the order is to run against both parents, the court
 shall specify the amount each parent must pay. The court shall
 inquire of the parties concerning the existence of a child
 support order entered pursuant to chapter 7, subchapter V. If
 such an order exists, the court shall consider its terms in
 establishing a child support obligation. A determination or
 modification of child support under this section must comply with
 chapter 7, subchapter I-A.

34 An order for child support under this section may include an
36 order for the payment of part or all of the medical expenses,
38 hospital expenses and other health care expenses of the child.
40 The court order must include a provision requiring an obligated
42 parent to obtain and maintain health insurance coverage for
44 medical, hospitalization and dental expenses, if health insurance
46 is available to the obligated parent at reasonable cost. The
48 court order must also require the obligated parent to furnish
 proof of such coverage to the obligee within 15 days of receipt
 of a copy of the court order. For the purposes of this section,
 health insurance is considered reasonable in cost if it is
 employment-related or other group health insurance. If health
 insurance is not available at reasonable cost at the time of the
 hearing, the court order must establish the obligation to provide
 health insurance on the part of the obligated parent effective
 immediately upon the insurance being available at reasonable cost.

2 When the Department of Human Services provides support
4 enforcement services, the support order must include a provision
6 that requires the responsible parent to keep the department
8 informed of any changes in that parent's current address, the
10 name and address of that parent's current employer and whether
12 the responsible parent has access to health insurance coverage at
14 reasonable cost and, if so, the health insurance policy
16 information and any subsequent changes.

18 Availability of public welfare benefits to the family may not
20 affect the decision of the court as to the responsibility of a
22 parent to provide child support.

24 The court may enforce a support order as provided in chapter 14-A.

26 **18. Name change.** Upon the request of either spouse to
28 change that person's own name, the court, when entering judgment
30 for divorce or annulment:

32 A. Shall change the name of that spouse to any former name
34 requested; or

36 B. May change the name of that spouse to any other name
38 requested.

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

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 an award of shared or allocated
parental rights and responsibilities exists concerning the child,
is a substantial change in circumstances.

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

20. Uniform Child Custody Jurisdiction Act. The
jurisdiction granted by this section to make or alter an order

2 concerning parental rights and responsibilities with respect to a
3 minor child is limited by the Uniform Child Custody Jurisdiction
4 Act if another state has jurisdiction as provided in that Act.

6 **§756. Representation of minor child**

8 1. Appointment order. If a parent makes an allegation in a
9 divorce action that the child has been or is subject to abuse or
10 abandonment, the court, after a hearing, may issue an appointment
11 order pursuant to section 755, subsection 8.

12 2. Qualifications and standards of the child's
13 representatives. To be eligible for court appointment, the
14 attorney and the mental health professional for a minor child
15 must possess the following respective qualifications and
16 standards.

18 A. The child's attorney must:

20 (1) Be an attorney at law in good standing who is
21 admitted to practice law before the courts of this
22 State;

24 (2) Represent the minor child;

26 (3) Be free of any conflict of interest with any of
27 the parties or their attorneys. The attorney may not
28 be employed by a law firm that represents one of the
29 child's parents. If a conflict of interest is
30 discovered after representation has begun, the attorney
31 shall notify immediately all parties of any conflict of
32 interest and promptly move for recusal; and

34 (4) Promote the best interests of the minor child.

36 B. The mental health professional must:

38 (1) Be a licensed psychiatrist or psychologist in good
39 standing;

40 (2) Possess:

42 (a) Competency and knowledge in performing
43 psychological or psychiatric assessments of
44 children, adults and families;

46 (b) Education and at least 2 years' experience in
47 areas of child and family development and child
48 and family psychopathology;

- 2 (c) Training in the impact of divorce on children;
4 (d) Specialized knowledge in child abuse,
abandonment and neglect; and
6 (e) Current knowledge of the laws governing child
8 abuse, abandonment, divorce and custody
adjudications;
10 (3) Be free of any conflict of interest with any
12 of the parties or their attorneys. The mental
14 health professional may not be employed by either
16 of the child's parents. If a conflict of interest
18 is discovered after representation of the minor
20 child has begun, the mental health professional
22 shall notify immediately all parties of any
conflict of interest and move promptly for
recusal; and

24 (4) Promote the psychological best interests of
the minor child.

24 **3. Investigation by attorney.** The child's attorney shall
26 investigate to ascertain the facts and, at all times, act
28 according to the best interest of the child as defined in section
755, subsection 9.

30 A. The child's attorney has subpoena power and must be
32 granted access to relevant reports, records and documents,
including, but not limited to:

- 34 (1) Mental health records and materials;
36 (2) Medical records; and
38 (3) School records and other pertinent materials.

40 B. In conducting the investigation pursuant to section 755,
subsection 8, the child's attorney shall:

- 42 (1) Within 2 weeks of appointment, conduct a
44 preliminary meeting with the appointed mental health
professional;
46 (2) Submit all relevant materials to the mental health
48 professional as requested by the mental health
professional;
50 (3) Review all relevant reports, records and documents;

- 2 (4) Conduct a final interview with the licensed mental
3 health professional within 5 days of receiving the
4 mental health professional's report;
- 6 (5) Within 3 days after the final interview with the
7 mental health professional, issue a notice
8 certification, as required by subsection 6; and
- 10 (6) Be thoroughly prepared to represent the child at
11 trial.

12 **4. Evaluation by mental health professional.** A mental
13 health professional shall conduct an evaluation and, at all
14 times, act according to the best interest of the minor child
15 pursuant to section 755, subsection 9.

18 A. The mental health professional must be granted access to
19 all relevant reports, records and documents obtained by the
20 child's attorney in conducting the investigation required by
21 subsection 3.

22 B. The purpose of the evaluation by the mental health
23 professional is to:

26 (1) Assess the psychological functioning and
27 developmental needs of the child;

28 (2) Identify any impairments of the psychological
29 functioning and developmental needs of the child;

32 (3) Identify the sources of any impairments of the
33 psychological functioning and developmental needs of
34 the child;

36 (4) Assess the parents' capacity for parenting; and

38 (5) Assess the functional ability of each parent to
39 meet the child's needs, including an evaluation of the
40 interaction between each parent and the child.

42 C. When conducting the evaluation, the mental health
43 professional shall:

44 (1) Within 2 weeks of appointment, conduct a
45 preliminary meeting with the child's attorney;

48 (2) Submit a written request of all necessary and
49 relevant materials to the child's attorney;

50

- 2 (3) Review all relevant reports, records and documents;
- 4 (4) Interview all persons who have relevant knowledge
of the minor child and the minor child's parents;
- 6 (5) Conduct at least one interaction evaluation
session with each parent and the child; and
- 8 (6) Prepare a report based on the completed evaluation.

10 **5. Report of mental health professional.** The mental health
12 professional shall issue a report, based on the completed
14 evaluation, to the court and all parties within 21 days after the
16 evaluation has been completed and not later than 5 months from
the date the mental health professional was appointed, whichever
occurs first. The report must include:

- 18 A. A curriculum vitae of the mental health professional;
- 20 B. The purpose, nature and method of evaluation;
- 22 C. The methods of data gathering employed, including, but
24 not limited to, clinical interviews and observations and a
psychological assessment;
- 26 D. Any assessment test employed;
- 28 E. Any limitations in methods or data used;
- 30 F. Findings of the mental health professional. Within the
32 findings, if there are important facts or opinions that are
not corroborated by at least 2 sources, these facts or
34 opinions must be especially noted;
- 36 G. Conclusions of the mental health professional; and
- 38 H. The signature of the mental health professional. By
signing the report, the mental health professional affirms
40 that the mental health professional:
 - 42 (1) Does not have a conflict of interest with any of
the parties;
 - 44 (2) Is familiar with the child abuse, child
46 abandonment and divorce laws of this State; and
 - 48 (c) Has read the child abuse, child abandonment and
divorce laws of this State immediately after
50 appointment of the mental health professional and
immediately prior to the end of the evaluation.

2 6. Notice certification by attorney. Within 3 days after
the final interview with the mental health professional, the
4 child's attorney shall issue a notice certification to all
parties, including the mental health professional. The notice
6 certification must include the following statements:

8 A. That the mental health professional's report has been
received;

10 B. That the final interview with the mental health
12 professional has been conducted; and

14 C. That the child's attorney is prepared to represent the
child at trial.

16 7. Testimony of mental health professional. The mental
18 health professional may be subpoenaed, examined and
cross-examined by any party at the final hearing.

20 8. Immunity of mental health professional. The mental
22 health professional is immune from civil and criminal liability,
unless the mental health professional acted in bad faith or with
24 malicious purpose.

26 §757. Contested proceedings

28 1. Guardian ad litem; appointment. In contested
proceedings under sections 214, 581, 693 and 755 in which a minor
30 child is involved, the court may appoint a guardian ad litem for
the child. The appointment must be made as soon as possible
32 after the commencement of the proceeding. In determining whether
an appointment must be made, the court shall consider:

34 A. The wishes of the parties;

36 B. The age of the child;

38 C. The nature of the proceeding, including the
40 contentiousness of the hearing;

42 D. The financial resources of the parties;

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

48 F. Other factors the court determines relevant.

2 2. Duties. The court shall specify the duties of the
guardian ad litem. If, in order to perform the assigned duties,
4 the guardian ad litem needs information concerning the child or
parents, the court may order the parents to sign an authorization
6 form allowing the release of the necessary information. The
duties of the guardian ad litem may include the following:

8 A. Interviewing the child with or without another person
present;

10 B. Interviewing the parents, teachers and other people who
12 have knowledge of the child or family;

14 C. Reviewing mental health, medical and school records of
the child;

16 D. Reviewing mental health and medical records of the
18 parents;

20 E. Having qualified people perform medical and mental
evaluations on the child;

22 F. Having qualified people perform medical and mental
24 evaluations on the parents;

26 G. Procuring counseling for the child;

28 H. Retaining an attorney to represent the guardian ad litem
in the pending proceeding, with approval of the court;

30 I. Subpoenaing witnesses and documents and examining and
32 cross-examining witnesses;

34 J. Serving as a contact person between the parents and the
child;

36 K. Making a written report of investigations, findings and
38 recommendations and providing copies of the report to each
party and the court; and

40 L. Other duties that the court determines necessary.

42 3. Best interest of child. The guardian ad litem must be
44 guided by the standard of the best interest of the child as set
forth in section 755, subsection 9.

46 4. Written report. A written report of a guardian ad litem
48 may be admitted as evidence in the proceeding for which the
guardian was appointed only if the party seeking the admission of
50 the report has furnished a copy to all parties at least 14 days

2 prior to the hearing. The report may not be admitted as evidence
4 without the testimony of the guardian ad litem if a party objects
6 to the admittance of the report at least 7 days prior to the
8 hearing.

10 5. Court's agent. A person serving as a guardian ad litem
12 under this section acts as the court's agent and is entitled to
14 quasi-judicial immunity for acts performed within the scope of
16 the duties of the guardian ad litem.

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

26 A. The income of the parties;

28 B. The marital and nonmarital assets of the parties;

30 C. The division of property made as part of the final
32 divorce;

34 D. Which party requested appointment of a guardian ad
36 litem; and

38 E. Other relevant factors.

40 **Sec. 6. 19 MRSA §779, sub-§1**, as enacted by PL 1989, c. 337,
42 §12, is amended to read:

44 **1. Failure to obtain insurance.** If an obligated parent
46 fails to acquire health insurance coverage as required under
48 section 214, subsection 9; section 581, subsection 9; or section
50 752 ~~755~~, subsection 10 ~~17~~, that parent shall-be is liable for any
expenses incurred for that parent's dependent children that would
have been paid by the insurance coverage, regardless of who has
incurred the expenses. Incurred liability may be enforced as a
child support debt under chapter 7, subchapter V, or by judicial
action.

Sec. 7. 19 MRSA §821, sub-§1, as enacted by PL 1979, c. 481,
§4, is amended to read:

1. Responding to requests of other states. Upon request of
the court of another state, the courts of this State which that
are competent to hear custody matters may order a person in this
State to appear at a hearing to adduce evidence or to produce or
give evidence under other procedures available in this State or
may request social studies to be made for use in a custody
proceeding in another state as provided under section 751 ~~756~~ for

2 proceedings in this State. A certified copy of the transcript of
the record of the hearing or the evidence otherwise adduced and
4 any social studies prepared shall must be forwarded by the clerk
of the court to the requesting court.

6 **Sec. 8. 22 MRSA §4008, sub-§3, ¶B**, as enacted by PL 1993, c.
686, §8 and affected by §13, is amended to read:

8
10 B. A court on its finding that access to those records may
be necessary for the determination of any issue before the
12 court or a court requesting a home study from the department
pursuant to Title 19, section 751-~~0~~ 1125. Access to such a
14 report or record is limited to counsel of record unless
otherwise ordered by the court. Access to actual reports or
16 records is limited to in camera inspection, unless the court
determines that public disclosure of the information is
18 necessary for the resolution of an issue pending before the
court;

20 **Sec. 9. 22 MRSA §4041, sub-§1**, as repealed and replaced by PL
1983, c. 772, §5, is amended to read:

22
24 **I. Rehabilitation and reunification.** When a child has been
ordered into the custody of the department under this chapter or
26 under Title 19, section 214 or section 752 755, the
responsibility for reunification and rehabilitation of the family
shall-be is shared as follows.

28
30 A. The department shall:

32 (1) Develop a rehabilitation and reunification plan
which-shall-include that includes the following:

34 (a) The reasons for the child's removal;

36 (b) Any changes which that must occur for the
child to return home;

38 (c) Rehabilitation services which that must be
40 completed satisfactorily prior to the return home;

42 (d) Services available to assist the parents in
rehabilitating and reunifying with the child,
44 including reasonable transportation within the
area in which the child is located for visits if
46 the parents are unable to afford that
transportation;

48 (e) A schedule of visits between the child and
50 the parents when visits are not detrimental to the

2 child's best interests, including any special
conditions under which the visits shall may take
4 place;

6 (f) A reasonable time schedule for proposed
reunification which that is reasonably calculated
to meet the child's needs; and

8 (g) A delineation of the financial
10 responsibilities of the parents and the department
during the reunification process;

12 (2) Provide the parents with prompt written notice of
14 the following, unless that notice would be detrimental
to the best interests of the child:

16 (a) The child's residence and, when practicable,
18 at least 7 days' advance written notice of a
planned change of residence; and

20 (b) Any serious injuries, major medical care
22 received or hospitalization of the child;

24 (3) Make good faith efforts to cooperate with the
parents in the development and pursuit of the plan;

26 (4) Periodically review with the parents the progress
28 of the reunification plan and make any appropriate
changes in that plan;

30 (5) Petition for judicial review and return of custody
32 of the child to ~~his~~ the child's parents at the earliest
appropriate time; and

34 (6) Petition for termination of parental rights ~~at the~~
36 ~~earliest-possible-time-that~~ as soon as it is determined
that family reunification efforts will be discontinued
38 pursuant to subsection 2 and that termination is in the
best interests of the child;

40 B. Parents are responsible for rectifying and resolving
42 problems which that prevent the return of the child to the
home and shall take part in a reasonable rehabilitation and
44 reunification plan and shall:

46 (1) Maintain meaningful contact with the child
pursuant to the reunification plan. When a parent has
48 left the area where the child has been placed, this
~~shall-include~~ includes making arrangements to visit the
50 child at or near ~~his~~ the child's placement;

- 2 (2) Seek and utilize appropriate services to assist in
rehabilitating and reunifying with the child;
4
6 (3) Pay reasonable sums toward the support of the
child within the limits of their ability to pay;
8
10 (4) Maintain contact with the department, including
prompt written notification to the department of any
change of address; and
12
14 (5) Make good faith efforts to cooperate with the
department in developing and pursuing the plan; and

16 C. ~~Where~~ When the parties ~~eannot~~ can not agree as to
contents of a reasonable rehabilitation and reunification
18 plan, any party may file a motion for judicial review
pursuant to section 4038. At the review, the court shall
20 review the proposed plans of either party and shall order
reasonable reunification plans as it ~~deems~~ considers
22 necessary.

24 **Sec. 10. 22 MRSA §4052, sub-§2**, as amended by PL 1983, c. 249,
§1, is further amended to read:

26 **2. Time filed.** A termination petition may be brought no
earlier than 3 months after disposition under section 4036 or
28 under Title 19, section 213, 214 or ~~752~~ 755.

30 **Sec. 11. 22 MRSA §4055, sub-§1, ¶A**, as amended by PL 1983, c.
249, §2, is further amended to read:

32 A. One of the following conditions has been met:

- 34 (1) Custody has been removed from the parent under:
36 (a) Section 4035 or 4038;
38 (b) Title 19, section 213, 214 or ~~752~~ 755; or
40 (c) Section 3792 prior to the effective date of
42 this chapter; or
44 (2) The petition has been filed as part of an adoption
proceeding in Title 19, chapter 9; and
46
48

STATEMENT OF FACT

2

4 This bill makes comprehensive changes to child custody and
child support laws, including the following:

6 1. If a parent complains that another parent has abused or
abandoned the child, the court may order the appointment of an
8 attorney for the child to conduct an investigation into the legal
best interests of the child and to represent the child at court
10 and the appointment of a qualified licensed mental health
professional to conduct an evaluation of the child and all
12 parties concerned and issue a report to the child's appointed
attorney.

14

A fee cap of \$1,000 each is imposed on the child's attorney and
16 the licensed mental health professional. The fee cap may not be
increased unless a party files a motion for a fee increase and
18 the court approves an increase in the fees after a hearing.

20 2. Under current law, when parties agree to an award of
shared parental rights and responsibilities, the court is
22 directed to make that award unless there exists a "fair
preponderance of the evidence" that it should not be ordered.
24 This bill changes that law to require that, unless the court
finds by clear and convincing evidence a parent has abused or
26 neglected the child, the court shall award parental rights and
responsibilities as follows.

28

A. When one parent resides or is going to reside in another
30 state special parental rights and responsibilities as
defined by the bill must be awarded with primary physical
32 residence granted to the parent who resides in this State.

34 B. When the parents agree in writing to an order of
parental rights and responsibilities, the court shall make
36 that award unless there exists clear and convincing evidence
that the child has been or will be subject to abuse or
38 abandonment by one of the parents.

40 C. After a contested hearing, the court shall order shared
or special parental rights and responsibilities unless there
42 exists clear and convincing evidence that the child has been
or will be subject to abuse or abandonment by one of the
44 parents.

46 3. This bill also, for purposes of clarity, adds
definitions of terms used throughout the child custody and child
48 support laws.