

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## SECOND REGULAR SESSION-1996

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Legislative Document

No. 1765

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H.P. 1285

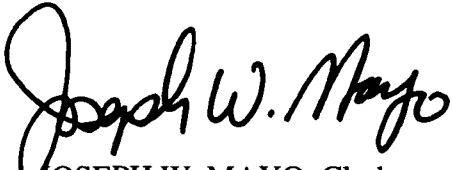
House of Representatives, February 8, 1996

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**An Act to Amend the Standards for Appointing the Guardian of a Minor.**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26.  
Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative MITCHELL of Portland.

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

4 **Sec. 1. 18-A MRSA §5-204**, as enacted by PL 1979, c. 540, §1,  
is repealed and the following enacted in its place:

6 **§5-204. Court appointment of guardian of minor;**  
8 **conditions for appointment**

10 The court may appoint a guardian or coguardians for an  
unmarried minor if:

12 (a) All parental rights of custody have been terminated or  
suspended by circumstance or prior court order;

14 (b) Both natural parents whose rights have not been  
terminated or, if both parents are deceased, the person who is  
the legal custodian of the unmarried minor, consent to the  
guardianship and the court finds that the consent creates a  
condition that is in the best interest of the child; or

20 (c) The person or persons whose consent is required under  
subsection (b) do not consent, but the court finds by clear and  
convincing evidence that the person or persons have failed to  
respond to proper notice or a living situation has been created  
that is at least temporarily intolerable for the child even  
though the living situation does not rise to the level of  
jeopardy required for the final termination of parental rights,  
and that the proposed guardian will provide a living situation  
that is in the best interest of the child.

30 A guardian appointed by will as provided in section 5-202  
whose appointment has not been prevented or nullified under  
section 5-203 has priority over any guardian who may be appointed  
by the court but the court may proceed with an appointment upon a  
finding that the testamentary guardian has failed to accept the  
testamentary appointment within 30 days after notice of the  
guardianship proceeding.

38 If a proceeding is brought under subsection (c), the  
nonconsenting parent or legal custodian is entitled to  
court-appointed legal counsel if indigent.

42 **Sec. 2. 18-A MRSA §5-212, sub-§(d)** is enacted to read:

44 (d) The court may not terminate the guardianship in the  
absence of the guardian's consent unless the court finds by a  
preponderance of the evidence that the termination is in the best  
interest of the ward.

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## STATEMENT OF FACT

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6       This bill provides for the appointment of a guardian even  
6 though all parental rights of custody have not been terminated.  
8 The bill also clarifies that once a guardian has been appointed,  
8 termination of the guardianship can not occur until a review of  
the best interests of the child has occurred.