

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1053

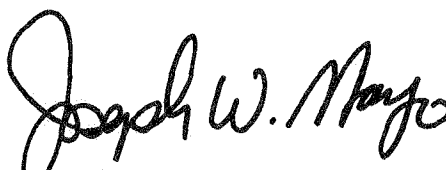
H.P. 776

House of Representatives, February 13, 1997

**An Act to Implement the Recommendations of the Family Law Advisory
Commission Concerning Parental Rights and Responsibilities.**

Reported by Representative THOMPSON for the Family Law Advisory Commission
pursuant to Public Law 1995, chapter 694, Part A.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered
under Joint Rule 218.


JOSEPH W. MAYO, Clerk

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

2
3 **Sec. 1. 19-A MRSA §1501, sub-§5**, as enacted by PL 1995, c.
4 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

6 **5. Shared parental rights and responsibilities.** "Shared
7 parental rights and responsibilities" means that most or all
8 aspects of a child's welfare remain the joint responsibility and
9 right of both parents, so that both parents retain equal parental
10 rights and responsibilities, and both parents confer and make
11 joint decisions regarding the child's welfare. Matters
12 pertaining to the child's welfare include, but are not limited
13 to, education, religious upbringing, medical, dental and mental
14 health care, travel arrangements, child care arrangements and
15 residence. Parents who share parental rights and
16 responsibilities shall keep one another informed of any major
17 changes affecting the child's welfare and shall consult in
18 advance to the extent practicable on decisions related to the
19 child's welfare.

20 **Sec. 2. 19-A MRSA §1653, sub-§2, ¶D**, as enacted by PL 1995, c.
21 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

22 **D.** The order of the court awarding parental rights and
23 responsibilities must include the following:

24 (1) Allocated parental rights and responsibilities,
25 shared parental rights and responsibilities or sole
26 parental rights and responsibilities, according to the
27 best interest of the child as provided in subsection
28 3. An award of shared parental rights and
29 responsibilities may include either an allocation of
30 the child's primary residential care to one parent and
31 rights of parent-child contact to the other parent, or
32 a sharing of the child's primary residential care by
33 both parents;

34 (2) Conditions of parent-child contact in cases
35 involving domestic abuse as provided in subsection 6;

36 (3) A provision for child support as provided in
37 subsection 8 or a statement of the reasons for not
38 ordering child support;

39 (4) A statement that each parent must have access to
40 records and information pertaining to a minor child,
41 including, but not limited to, medical, dental and
42 school records, whether or not the child resides with
43 the parent, unless that access is found not to be in
44 the best interest of the child or that access is found
45
46
47
48
49
50

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

6 (5) A statement that violation of the order may result
in a finding of contempt and imposition of sanctions as
8 provided in subsection 7; and

10 (6) A statement of the definition of shared parental
12 rights and responsibilities contained in section 1501,
subsection 5, if the order of the court awards shared
14 parental rights and responsibilities.

16 An order modifying a previous order is not required to
include provisions of the previous order that are not
18 modified.

20 **Sec. 3. 19-A MRSA §1653, sub-§3,** as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

22 **3. Best interest of child.** The court, in making an award
of parental rights and responsibilities with respect to a child,
24 shall apply the standard of the best interest of the child. In
making decisions regarding primary the child's residence and
26 parent-child contact, the court shall consider as primary the
safety and well-being of the child. In applying this standard,
28 the court shall consider the following factors:

30 A. The age of the child;

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

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

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

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

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

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

50

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

4
6 I. The capacity of each parent to cooperate or to learn to
cooperate in child care;

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

10
12 K. The effect on the child if one parent has sole authority
over the child's upbringing;

14 L. The existence of domestic abuse between the parents, in
the past or currently, and how that abuse affects:

16 (1) The child emotionally; and

18 (2) The safety of the child;

20
22 M. The existence of any history of child abuse by a parent;
and

24 N. All other factors having a reasonable bearing on the
physical and psychological well-being of the child; and

26
28 O. A parent's prior willful misuse of the protection from
abuse process in chapter 101 in order to gain tactical
30 advantage in a proceeding involving the determination of
parental rights and responsibilities of a minor child. Such
32 willful misuse may only be considered if established by
clear and convincing evidence, and if it is further found by
34 clear and convincing evidence that in the particular
circumstances of the parents and child, that willful misuse
36 tends to show that the acting parent will in the future have
a lessened ability and willingness to cooperate and work
38 with the other parent in their shared responsibilities for
the child. The court shall articulate findings of fact
40 whenever relying upon this factor as part of its
determination of a child's best interest. The voluntary
42 dismissal of a protection from abuse petition may not, taken
alone, be treated as evidence of the willful misuse of the
protection from abuse process.

44
46 **Sec. 4. 19-A MRSA §4007, sub-§1, ¶G, as enacted by PL 1995, c.
694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:**

48 G. Either awarding temporary custody of minor children or
establishing temporary visitation rights with regard to
50 minor children when the visitation is determined to be in

2 the best interest of the child, or both, as determined in
 4 accordance with the best interest of the child pursuant to
 6 section 1653, subsections 3 to 6. The court's custody and
 8 visitation award shall not be binding in any separate action
 10 involving an award of parental rights and responsibilities
 12 pursuant to chapter 55;

14 **Sec. 5. Effective date.** This Act takes effect October 1, 1997.

SUMMARY

14 The Family Law Advisory Commission was created by the
 16 Legislature in 1996 for the purpose of conducting a continuing
 18 study of Maine's family law. Pursuant to Public Law 1995,
 20 chapter 694, the Family Law Advisory Commission was directed to
 22 conduct a study of the statutes and practices of awards and
 24 allocations concerning parental rights and responsibilities. In
 26 its study, the Commission primarily focused on three factors:
 28 equal consideration and treatment of mothers and fathers as
 primary care providers; appropriate consideration and
 consequences of the relocation or intended relocation of the
 primary care provider to a place that disrupts the child's
 relationship with the other parent, as well as the child's
 relationship with friends, school, community and other family;
 and whether the importance of the roles of the mother and the
 father in the child's life is recognized in law and practice.

30 This bill is submitted by the Family Law Advisory Commission
 32 pursuant to Public Law 1995, chapter 694. It implements the
 recommended statutory changes contained in the commission's
 report to the Joint Standing Committee on Judiciary.

34 The bill proposes to do the following.

36 1. It amends the definition of shared parental rights and
 38 responsibilities to fully describe the meaning of shared parental
 40 rights and responsibilities, including a provision that
 recognizes parents should keep one another informed of major
 changes affecting a child's welfare.

42 2. It recognizes that a court order awarding shared
 44 parental rights and responsibilities may include either an
 46 allocation of the child's primary residential care to one parent
 and rights of parent-child contact to the other parent, or the
 sharing of the child's primary residential care by both parents.

48 3. It requires that each order containing an award or
 allocation of shared parental rights and responsibilities include

2 a statement of the statutory definition of shared parental rights
and responsibilities.

4 4. It amends the best interest of the child standard to
6 require courts to consider evidence of willful misuse of the
protection from abuse process when making an award of parental
8 rights and responsibilities in family law cases involving
children.

10 5. It amends the statutory provisions governing protection
12 from abuse by requiring that the best interest of the child
standard, the provision giving equal consideration to parents
14 applied in divorce and other family law cases, and the provisions
regarding conditions of parent-child contact in cases involving
16 domestic abuse be applied in protection from abuse cases where
the court makes an award of parental rights and responsibilities.

18 6. It amends the protection from abuse statute to clarify
20 that orders in protection from abuse cases that contain an award
of parental rights and responsibilities do not have res judicata
22 effect in separate proceedings involving an award of parental
rights and responsibilities regarding the same child or children.

24 7. It has an effective date of October 1, 1997 in order to
26 coincide with the effective date of the Maine Revised Statutes,
Title 19-A.