

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1592

H.P. 1133

House of Representatives, March 2, 1999

An Act to Encourage Joint Custody Practices.

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 POWERS of Rockport.
Cosponsored by Representatives: PLOWMAN of Hampden, JACOBS of Turner,
LaVERDIERE of Wilton, MADORE of Augusta, SCHNEIDER of Durham, Senator:
LONGLEY of Waldo.

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

2 **Sec. 1. 19-A MRSA §1653, sub-§1, ¶C** is enacted to read:

4 C. The Legislature finds and declares that it is the public
6 policy of this State to assure minor children of frequent
8 and continuing contact with both parents after the parents
10 have separated or dissolved their marriage and that it is in
12 the public interest to encourage parents to share the rights
14 and responsibilities of child rearing in order to effect
16 this policy.

18 **Sec. 2. 19-A MRSA §1653, sub-§2**, as amended by PL 1997, c.
20 415, §3 and affected by §5, is repealed.

22 **Sec. 3. 19-A MRSA §1653, sub-§2-A** is enacted to read:

24 2-A. Parental rights and responsibilities; order. This
26 subsection governs parental rights and responsibilities and court
28 orders for parental rights and responsibilities.

30 A. The court shall follow the following order of
32 preference, in accordance with the best interest of the
34 child, in ordering parental rights and responsibilities:

36 (1) To both parents jointly:

38 (a) When the parents have agreed to an award of
40 shared parental rights and responsibilities or so
42 agree in open court, the court shall make that
44 award unless there is substantial evidence that it
46 should not be ordered. The court shall state in
48 its decision the reasons for not ordering a shared
50 parental rights and responsibilities award agreed
 to by the parents; or

(b) If the parents have not already agreed to an
 award, the court may require the parents to submit
 a plan for implementation of the award of parental
 rights and responsibilities upon finding that both
 parents are suitable parents;

(2) To either parent; or

(3) To a 3rd person, to a suitable society or
 institution for the care and protection of children or
 to the department, 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.

2 B. In awarding primary residential care, there is a
4 presumption affecting the burden of proof that joint
6 residential care is in the best interest of a minor child.
 The court shall follow the following order of preference in
 ordering a child's primary residential care:

8 (1) To both parents jointly:

10 (a) Upon finding that both parents are suitable
12 parents, the court may require the parents to
14 submit a plan for implementation of the
 residential care order; or

16 (b) The parents acting individually or in concert
18 may submit a residential care implementation plan
 to the court prior to the issuance of a
 residential care order;

20 (2) To either parent:

22 (a) If the parents agree to an award of primary
24 residential care to one parent, the court shall
 make that award;

26 (b) In designating the parent responsible for
28 providing the child's primary residential care,
30 the court shall consider, among other factors,
32 which parent is more likely to allow the child
34 frequent and continuing contact with the other
 parent, including physical access. The court may
 not apply a preference for one parent over the
 other in determining the child's primary
 residential care based on the parent's gender; or

36 (c) If a parent requests to be designated as the
38 parent responsible for providing the child's
40 primary residential care, that parent has the
 burden of proof that joint residential care is not
 in the child's best interest; or

42 (3) To a 3rd person, to a suitable society or
44 institution for the care and protection of children or
46 to the department, upon a finding that awarding the
48 child's primary residential care to either or both
 parents will place the child in jeopardy as defined in
 Title 22, section 4002, subsection 6.

50 C. The court may award reasonable rights of contact with a
 minor child to a 3rd person.

2 D. The order of the court awarding parental rights and
3 responsibilities must include the following:

4
5
6 (1) Allocated parental rights and responsibilities,
7 shared parental rights and responsibilities or sole
8 parental rights and responsibilities, according to the
9 best interest of the child as provided in subsection
10 3. Pursuant to paragraph B, an award of shared
11 parental rights and responsibilities may include either
12 an allocation of the child's primary residential care
13 to one parent and rights of parent-child contact to the
14 other parent or a sharing of the child's primary
15 residential care by both parents;

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

18
19 (3) A provision for child support as provided in
20 subsection 8 or a statement of the reasons for not
21 ordering child support;

22
23 (4) A statement that each parent must have access to
24 records and information pertaining to a minor child,
25 including, but not limited to, medical, dental and
26 school records and other information on school
27 activities, whether or not the child resides with the
28 parent, unless that access is found not to be in the
29 best interest of the child or that access is found to
30 be sought for the purpose of causing detriment to the
31 other parent. If that access is not ordered, the court
32 shall state in the order its reasons for denying that
33 access;

34
35 (5) A statement that violation of the order may result
36 in a finding of contempt and imposition of sanctions as
37 provided in subsection 7;

38
39 (6) A statement of the definition of shared parental
40 rights and responsibilities contained in section 1501,
41 subsection 5, if the order of the court awards shared
42 parental rights and responsibilities;

43
44 (7) If the court declines to enter an order awarding
45 joint primary residential care pursuant to this
46 section, a statement of reasons for denial of an award
47 of joint residential care; and

48
49 (8) When public assistance is determined to be
50 necessary and appropriate, a stipulation as to which

2 parent may be designated as the public assistance
3 recipient if primary residential care is awarded
4 jointly.

5 An order modifying a previous order is not required to
6 include provisions of the previous order that are not
7 modified.

8
9
10 E. The order of the court may not include a requirement
11 that the State pay for the defendant to attend a batterers'
12 intervention program unless the program is certified under
13 section 4014.

14 **Sec. 4. 19-A MRSA §1653, sub-§7,** as enacted by PL 1995, c.
15 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

16
17 **7. Violation of order concerning parental rights and**
18 **responsibilities and contact.** Either parent may petition the
19 court for a hearing on the issue of noncompliance with the order
20 issued under subsection 2 2-A. If the court finds that a parent
21 has violated a part of the order, the court may find that parent
22 in contempt and may:

23
24 A. Require additional or more specific terms and conditions
25 consistent with the order;

26
27 B. Order that additional visitation be provided for a
28 parent to take the place of visitation that was wrongfully
29 denied; or

30
31 C. Order a parent found in contempt to pay a forfeiture of
32 at least \$100.

33
34 **SUMMARY**

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36
37 This bill establishes the policy that parents should be
38 awarded shared parental rights and responsibilities unless the
39 court finds that the joint responsibility would not be in the
40 child's best interest. The court must provide that the parents
41 equally share the responsibility for providing their child's
42 residential care, unless the court makes a finding that the equal
43 sharing is not in the child's best interest. The parents may
44 agree to a sharing of parental rights and responsibilities,
45 including the provision of residential care, which the court must
46 accept or provide written reasons why the agreement is not in the
child's best interest.