

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1860

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H.P. 1299

House of Representatives, March 16, 1999

### An Act Allowing the Appointment of Temporary Guardians of Minors.

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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 McNEIL of Rockland.

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

4 **Sec. 1. 18-A MRSA §5-204-A is enacted to read:**

6 **§5-204-A. Appointment of temporary guardian**

8 (a) Upon appropriate petition, the court may exercise the  
10 power of a guardian or may enter an ex parte order appointing a  
12 temporary guardian for a minor when an emergency exists and no  
14 other person appears to have authority to act in the  
16 circumstances. The petition must be accompanied by an affidavit  
that sets forth the factual basis for the emergency and the  
specific powers requested by the proposed guardian. In the order  
and in the letters of temporary guardianship, the court shall  
specify the powers and duties of the temporary guardian, limiting  
the powers and duties to those necessary to address the emergency.

18 (b) If the court takes action to exercise the powers of a  
20 guardian or to appoint a temporary guardian under subsection (a),  
22 then the court, within 2 days of taking the action, excluding  
24 Saturdays, Sundays and legal holidays, shall appoint a visitor or  
a guardian ad litem to visit the minor, the legal custodian, if  
any, and the parents of the minor and make a report to the court  
within 10 days of the appointment.

26 (c) Notice of the appointment must be made to the parents  
28 of the minor and the custodian within 3 days of the appointment,  
excluding Saturdays, Sundays and legal holidays.

30 (d) If the court has exercised temporary guardianship  
32 powers or has issued an ex parte order under subsection (a) and  
34 if it comes to the court's attention, through the report of the  
36 visitor or guardian ad litem or otherwise, that the legal  
38 custodian or the parents of the minor wish to object to the ex  
parte order, the court shall hold an expedited hearing within 21  
days of the entry of the ex parte order. The objecting parent or  
legal custodian is entitled to court-appointed legal counsel if  
indigent.

40 (e) At the expedited hearing, the court may render a  
42 judgment authorizing the temporary guardianship to continue for a  
44 period not to exceed 6 months from the date of entry of the ex  
46 parte order under subsection (a). The temporary guardianship  
48 terminates on the date specified in the order or, if no date is  
specified in the order, 6 months following the date of entry of  
the ex parte order or at any prior time if the court determines  
the circumstances leading to the order for temporary guardianship  
no longer exist.

50 (f) If the court denies the request for an ex parte order  
52 pursuant to subsection (a), the court may enter, in its  
discretion, an order for an expedited hearing pursuant to  
subsection (c). If the petitioner requests the entry of an order

2 of temporary guardianship pursuant to subsection (a) without  
3 requesting an ex parte order, the court may hold an expedited  
4 hearing pursuant to subsection (d).

5 (g) If an appointed guardian is not effectively performing  
6 that guardian's duties and the court finds that the welfare of  
7 the minor requires immediate action, it may appoint, with or  
8 without notice, a temporary guardian for the minor for a  
9 specified period not to exceed 6 months.

10 (h) A temporary guardian has the care and custody of the  
11 minor and the authority of any permanent guardian previously  
12 appointed by the court is suspended as long as a temporary  
13 guardian has authority. A temporary guardian may not remove the  
14 minor from the State. A temporary guardian may be removed at any  
15 time. A temporary guardian shall make any report the court  
16 requires. In other respects, the provisions of this Code  
17 concerning guardians apply to temporary guardians.

18 (i) A petition for temporary guardianship may be brought  
19 before any judge if the judge of the county in which venue  
20 properly lies is unavailable. If a judge other than the judge of  
21 the county in which venue properly lies acts on a petition for  
22 temporary guardianship, that judge shall issue a written order  
23 and endorse upon it the date and time of the order. The judge  
24 shall then immediately transmit or cause to be transmitted that  
25 order to the register of the county in which venue properly  
26 lies. An order issued by a judge of a county other than the  
27 county in which venue properly lies is deemed to have been  
28 entered in the docket on the date and at the time endorsed upon  
29 it.

## 34 SUMMARY

35 This bill authorizes the Probate Court to appoint a  
36 temporary guardian for a minor when an emergency exists. This  
37 provision is similar to the current law concerning appointment of  
38 temporary guardians for incapacitated adults. The process  
39 includes allowing the minor, the parents or a legal custodian, if  
40 there is one, to contest the appointment in an expedited  
41 hearing. The guardianship is for a maximum of 6 months.  
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