

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1405

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H.P. 1048

House of Representatives, March 5, 2001

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**An Act to Encourage Joint Child Rearing Between Divorced Parents.**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative DORR of Camden.

Cosponsored by Representatives: CUMMINGS of Portland, JACOBS of Turner, McKEE of Wayne, TESSIER of Fairfield.

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

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

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

Sec. 2. 19-A MRSA §1653, sub-§2, as amended by PL 1997, c. 415, §3 and affected by §5, is repealed.

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

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

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

(1) To both parents jointly:

(a) When the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is clear and convincing evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared 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  
to the department, upon a finding that awarding the  
46 child's primary residential care to either or both  
48 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:

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

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

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

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

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

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

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

2 An order modifying a previous order is not required to  
3 include provisions of the previous order that are not  
4 modified.

5 E. The order of the court may not include a requirement  
6 that the State pay for the defendant to attend a batterers'  
7 intervention program unless the program is certified under  
8 section 4014.

10 **Sec. 4. 19-A MRSA §1653, sub-§7,** as enacted by PL 1995, c.  
11 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

12  
13 **7. Violation of order concerning parental rights and**  
14 **responsibilities and contact.** Either parent may petition the  
15 court for a hearing on the issue of noncompliance with the order  
16 issued under subsection 2 2-A. If the court finds that a parent  
17 has violated a part of the order, the court may find that parent  
18 in contempt and may:

19  
20 A. Require additional or more specific terms and conditions  
21 consistent with the order;

22  
23 B. Order that additional visitation be provided for a  
24 parent to take the place of visitation that was wrongfully  
25 denied; or

26  
27 C. Order a parent found in contempt to pay a forfeiture of  
28 at least \$100.

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32 **SUMMARY**

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