



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1405

H.P. 1048

House of Representatives, March 5, 2001

An Act to Encourage Joint Child Rearing Between Divorced Parents.

Reference to the Committee on Judiciary suggested and ordered printed.

Mullicent M. Mac Jarland

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:
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
б		policy of this State to assure minor children of frequent
		and continuing contact with both parents after the parents
8		have separated or dissolved their marriage and that it is in
		the public interest to encourage parents to share the rights
10		and responsibilities of child rearing in order to effect
	÷	this policy.
12		
		Sec. 2. 19-A MRSA §1653, sub-§2, as amended by PL 1997, c.
14	415,	$\S3$ and affected by $\S5$, is repealed.
16		Sec. 3. 19-A MRSA §1653, sub-§2-A is enacted to read:
18		2-A. Parental rights and responsibilities; order. This
10	auha	
20		ection governs parental rights and responsibilities and court
20	orge	rs for parental rights and responsibilities.
22		A. The court shall follow the following order of
24		preference, in accordance with the best interest of the child, in ordering parental rights and responsibilities:
24		child, in ordering paranear rights and responsibilities:
26		(1) To both parents jointly:
28		(a) When the parents have agreed to an award of
		shared parental rights and responsibilities or so
30		agree in open court, the court shall make that
		award unless there is clear and convincing
32		evidence that it should not be ordered. The court
52		shall state in its decision the reasons for not
34		ordering a shared parental rights and
71		responsibilities award agreed to by the parents; or
36		responsibilities award agreed to by the parents; or
30		(b) If the parents have not already agreed to an
38		award, the court may require the parents to submit
30		a plan for implementation of the award of parental
40		rights and responsibilities upon finding that both
40		
42		parents are suitable parents;
42		
		(2) To either parent; or
44		
		(3) To a 3rd person, to a suitable society or
46		institution for the care and protection of children or
		to the department, upon a finding that awarding
48		parental rights and responsibilities to either or both
		parents will place the child in jeopardy as defined in
50		Title 22, section 4002, subsection 6.

2	B. In awarding primary residential care, there is a
	presumption affecting the burden of proof that joint
4	residential care is in the best interest of a minor child.
	The court shall follow the following order of preference in
6	ordering a child's primary residential care:
,	
8	(1) To both parents jointly:
10	(a) Upon finding that both parents are suitable
	parents, the court may require the parents to
12	submit a plan for implementation of the
	residential care order; or
14	
	(b) The parents acting individually or in concert
16	may submit a residential care implementation plan
-•	to the court prior to the issuance of a
18	residential care order;
10	
20	(2) To either parent:
20	
22	(a) If the parents agree to an award of primary
	residential care to one parent, the court shall
24	make that award;
24	<u>make (mat awaru)</u>
26	(b) In designating the parent responsible for
20	providing the child's primary residential care,
28	the court shall consider, among other factors,
20	
30	which parent is more likely to allow the child
30	frequent and continuing contact with the other
2.2	parent, including physical access. The court may
32	not apply a preference for one parent over the
2.4	other in determining the child's primary
34	residential care based on the parent's gender; or
36	(c) If a parent requests to be designated as the
	parent responsible for providing the child's
38	primary residential care, that parent has the
	burden of proof that joint residential care is not
40	in the child's best interest; or
42	(3) To a 3rd person, to a suitable society or
	institution for the care and protection of children or
44	to the department, upon a finding that awarding the
	child's primary residential care to either or both
46	parents will place the child in jeopardy as defined in
	Title 22, section 4002, subsection 6.
48	
	C. The court may award reasonable rights of contact with a
50	minor child to a 3rd person.

4 (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 3. Pursuant to paragraph B. an award of shared 10 parental rights and responsibilities may include either an allocation of the child's primary residential care to one parent or a sharing of the child's primary 14 residential care by both parents as provided in 15 (2) Conditions of parent-child contact in cases 16 (2) Conditions of parent-child support as provided in 18 involving domestic abuse as provided in subsection 6; 20 (3) A provision for child support as provided in 21 ordering child support; 22 ordering child support; 23 (4) A statement that each parent must have access to 24 (4) A statement that caces is found not to be in the 25 parent. If that access is found not to be 26 including, but not limited to, medical, dental and 27 other parent. If that access is not ordered, the court 28 activities, whether or not the child resides	2	D. The order of the court awarding parental rights and
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rights and responsibilities contained in section 1501,42subsection 5, if the order of the court awards shared parental rights and responsibilities; and44(7) If the court declines to enter an order awarding joint primary residential care pursuant to this section, a statement of reasons for denial of an award	30	provided in subsection /;
rights and responsibilities contained in section 1501,42subsection 5, if the order of the court awards shared parental rights and responsibilities; and44(7) If the court declines to enter an order awarding joint primary residential care pursuant to this section, a statement of reasons for denial of an award	40	(6) A statement of the definition of shared parental
 42 subsection 5, if the order of the court awards shared parental rights and responsibilities; and 44 (7) If the court declines to enter an order awarding joint primary residential care pursuant to this section, a statement of reasons for denial of an award 		
44 44 46 46 46 46 46 46 46 46	42	
 44 (7) If the court declines to enter an order awarding 46 joint primary residential care pursuant to this section, a statement of reasons for denial of an award 		
46 joint primary residential care pursuant to this section, a statement of reasons for denial of an award	44	
46 joint primary residential care pursuant to this section, a statement of reasons for denial of an award		(7) If the court declines to enter an order awarding
section, a statement of reasons for denial of an award	46	
	48	of joint residential care.

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

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

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

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7. Violation of order concerning parental rights and
 14 responsibilities and contact. Either parent may petition the 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 has violated a part of the order, the court may find that parent
 18 in contempt and may:

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

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

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

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SUMMARY

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