

# MAINE STATE LEGISLATURE

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1018

L.D. 1969

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JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "C" to H.P. 1468, L.D. 1969, Bill, "An Act to Prohibit a Convicted Sexual Offender From Acquiring Custody or Obtaining Visitation Rights Without Adult Supervision"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Custody and Visitation for Sex Offenders'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 19-A MRSA §1653, sub-§3, ¶O, as amended by PL 1999, c. 702, §2, is further amended to read:

O. A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary 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; and

COMMITTEE AMENDMENT

B. of S.

2           **Sec. 2. 19-A MRSA §1653, sub-§3, ¶P**, as enacted by PL 1999, c.  
702, §3, is amended to read:

4           P. If the child is under one year of age, whether the child  
6 is being breast-fed; and

8           **Sec. 3. 19-A MRSA §1653, sub-§3, ¶Q** is enacted to read:

10           Q. The existence of a parent's conviction for a sex offense  
12 or a sexually violent offense as those terms are defined in  
Title 34-A, section 11203.

14           **Sec. 4. 19-A MRSA §1653, sub-§6-A** is enacted to read:

16           6-A. Custody and contact limited; convictions for sexual  
18 offenses. The award of primary residence and parent-child  
contact with a person who has been convicted of a child-related  
20 sexual offense is governed by this subsection.

22           A. For the purposes of this section, "child-related sexual  
offense" means the following sexual offenses if, at the time  
24 of the commission of the offense, the victim was under 18  
years of age:

26                   (1) Sexual exploitation of a minor, under Title 17,  
section 2922;

28                   (2) Gross sexual assault, under Title 17-A, section  
30 253;

32                   (3) Sexual abuse of a minor, under Title 17-A, section  
254;

34                   (4) Unlawful sexual contact, under Title 17-A, section  
36 255;

38                   (5) Visual sexual aggression against a child, under  
Title 17-A, section 256;

40                   (6) Sexual misconduct with a child under 14 years of  
42 age, under Title 17-A, section 258; or

44                   (7) An offense in another jurisdiction, including, but  
not limited to, that of a state, federal, military or  
46 tribal court, that includes the essential elements of  
an offense listed in subparagraph (1), (2), (3), (4),  
48 (5) or (6).

H. of S.

2 B. A court may award primary residence of a minor child or  
4 parent-child contact with a minor child to a parent who has  
6 been convicted of a child-related sexual offense only if the  
court finds that contact between the parent and child is in  
the best interest of the child and that adequate provision  
for the safety of the child can be made.

8 C. In an order of parental rights and responsibilities, a  
10 court may require that parent-child contact between a minor  
12 child and a person convicted of a child-related sexual  
14 offense may occur only if there is another person or agency  
16 present to supervise the contact. If the court allows a  
family or household member to supervise parent-child  
contact, the court shall establish conditions to be followed  
during that contact. Conditions include, but are not  
limited to, those that:

18 (1) Minimize circumstances when the family of the  
20 parent who is a sex offender or sexually violent  
predator would be supervising visits;

22 (2) Ensure that contact does not damage the  
24 relationship with the parent with whom the child has  
primary physical residence;

26 (3) Ensure the safety and well-being of the child; and

28 (4) Require that supervision be provided by a person  
30 who is physically and mentally capable of supervising a  
visit and who does not have a criminal history or  
32 history of abuse or neglect.

34 **Sec. 5. 19-A MRSA §1803, sub-§3, ¶¶I and J, as enacted by PL**  
36 **1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to**  
38 **read:**

40 **I. Methods of assisting cooperation and resolving disputes**  
42 **and each person's willingness to use those methods; and**

44 **J. Any other factor having a reasonable bearing on the**  
46 **physical and psychological well-being of the child; and**

48 **Sec. 6. 19-A MRSA §1803, sub-§3, ¶K is enacted to read:**

50 K. The existence of a grandparent's conviction for a sex  
offense or a sexually violent offense as those terms are  
defined in Title 34-A, section 11203.

**Sec. 7. 19-A MRSA §1803, sub-§7 is enacted to read:**

**7. Supervision required; convictions for sexual offenses.**

2 Notwithstanding any other provision of this chapter, the court  
4 may award a grandparent who is convicted of a child-related  
6 sexual offense visitation with a minor grandchild only if the  
8 court finds that contact between the grandparent and the child is  
10 in the best interest of the child and that adequate provision for  
12 the safety of the child can be made. For purposes of this  
14 section, "child-related sexual offense" has the same meaning as  
16 in section 1653, subsection 6-A.

18 The court may require that visitation may occur only if there is  
20 another person or agency present to supervise visitation. If the  
22 court allows a family or household member to supervise  
24 grandparent-child contact, the court shall establish conditions  
26 to be followed during that contact. Conditions include, but are  
28 not limited to, those that:

30 A. Minimize circumstances when the family of the  
32 grandparent who is a sex offender or sexually violent  
34 predator would be supervising visits;

36 B. Ensure the safety and well-being of the child; and

38 C. Require that supervision be provided by a person who is  
40 physically and mentally capable of supervising a visit and  
42 who does not have a criminal history or history of abuse or  
44 neglect.'

**SUMMARY**

46 This amendment slightly modifies the title and replaces the  
48 bill. This amendment requires the court, when establishing  
50 parental rights and visitation concerning a child, to take into  
account a parent's convictions for sex offenses and sexually  
violent offenses. Those terms are defined in the Sex Offender  
Registration and Notification Act of 1999 to include: gross  
sexual assault; sexual abuse of minors; unlawful sexual contact;  
visual sexual aggression against a child; sexual misconduct with  
a child under 14 years of age; solicitation of a child by  
computer to commit a prohibited act; kidnapping; criminal  
restraint; violation of privacy; incest; aggravated promotion of  
prostitution; patronizing prostitution of a minor; and  
exploitation of a minor. The court retains discretion to weigh  
the information and how the existence of any convictions affects  
the best interests of the child. The same consideration must be  
taken when establishing grandparents' visitation.

This amendment requires that in order to award primary  
residence to a person who is convicted of a child-related sexual

2 offense, the court must find that it is in the best interests of  
the child and that adequate provision can be made to ensure the  
4 child's safety. The following sexual offenses are child-related  
sexual offenses if the victim, at the time of the commission of  
the offense, was under 18 years of age:

- 6 1. Sexual exploitation of a minor;
- 8 2. Gross sexual assault;
- 10 3. Sexual abuse of a minor;
- 12 4. Unlawful sexual contact;
- 14 5. Visual sexual aggression against a child;
- 16 6. Sexual misconduct with a child under 14 years of age; and
- 18 7. A similar offense in another jurisdiction.

20 The same finding is required when the court orders  
22 visitation and contact with a grandparent who is convicted of a  
child-related sexual offense.

24