

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1143

H.P. 787

House of Representatives, March 23, 2009

### **An Act To Establish Child Custody and Domestic Violence Presumptions**

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Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MORRISON of South Portland.  
Cosponsored by Representative RUSSELL of Portland, Senator BLISS of Cumberland and  
Representatives: BOLAND of Sanford, FLAHERTY of Scarborough, HARLOW of Portland,  
KAENRATH of South Portland, MacDONALD of Boothbay, SMITH of Monmouth,  
STEVENS of Bangor, STRANG BURGESS of Cumberland.

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

2           **Sec. 1. 19-A MRSA §1653, sub-§3, ¶H,** as enacted by PL 1995, c. 694, Pt. B, §2  
3 and affected by Pt. E, §2, is amended to read:

4           H. The capacity of each parent to allow and encourage frequent and continuing  
5 contact between the child and the other parent, including physical access, except that  
6 the court may not consider this capacity if one parent shows that the other parent has  
7 engaged in domestic abuse against the parent or a child and that continuing contact  
8 with the other parent will endanger the health or safety of either the parent or the  
9 child;

10          **Sec. 2. 19-A MRSA §1653, sub-§6,** as enacted by PL 1995, c. 694, Pt. B, §2 and  
11 affected by Pt. E, §2, is amended to read:

12          **6. Conditions of parental rights and responsibilities and parent-child contact in**  
13 **cases involving domestic abuse.** The court shall award parental rights and  
14 responsibilities and establish conditions of parent-child contact in cases involving  
15 domestic abuse as follows.

16          ~~A. A court may award primary residence of a minor child or parent-child contact~~  
17 ~~with a minor child to a parent who has committed domestic abuse only if the court~~  
18 ~~finds that contact between the parent and child is in the best interest of the child and~~  
19 ~~that adequate provision for the safety of the child and the parent who is a victim of~~  
20 ~~domestic abuse can be made.~~

21          A-1. There is a rebuttable presumption that a parent who has a history of perpetrating  
22 domestic abuse may not be awarded sole or joint parental rights and responsibilities  
23 with regard to a child. The court may find a history of perpetrating domestic abuse if  
24 the court finds that one incident of domestic abuse has resulted in serious bodily  
25 injury or the court finds more than one incident of domestic abuse. The presumption  
26 may be rebutted only by a preponderance of the evidence that the perpetrating parent  
27 has successfully completed a batterers' intervention treatment program and is not  
28 abusing alcohol or illegally using drugs, and that the best interest of the child requires  
29 that parent's participation because of the other parent's absence or substance abuse or  
30 other circumstances that affect the best interest of the child. The fact that the abused  
31 parent suffers from the effects of the abuse is not grounds for denying that parent  
32 primary residence. Subsection 3, paragraph H may not be used to rebut this  
33 presumption.

34          A-2. If the court finds that both parents have a history of perpetrating domestic  
35 abuse, sole parental rights and responsibilities must be awarded to the parent who is  
36 less likely to continue to perpetrate domestic abuse as demonstrated by an absence or  
37 lesser history of such abuse. In such a case, the court shall mandate completion of a  
38 batterers' intervention treatment program by the parent with sole parental rights and  
39 responsibilities.

40          A-3. If the court finds that a parent has a history of perpetrating domestic abuse, the  
41 court shall allow only supervised parent-child contact with that parent, conditioned  
42 upon that parent's participation in a batterers' intervention treatment program.

1 Unsupervised contact may be allowed only if it is shown by a preponderance of the  
2 evidence that the abusive parent has completed a batterers' intervention treatment  
3 program, is not abusing alcohol or illegally using drugs and poses no danger to the  
4 child, and that such parent-child contact is in the child's best interest. The parent who  
5 may have parent-child contact only when supervised is responsible for the entire cost  
6 of the supervised visits.

7 B. In an order of parental rights and responsibilities, a court may:

- 8 (1) Order an exchange of a child to occur in a protected setting;  
9 (2) Order contact to be supervised by another person or agency;  
10 (3) Order the parent who has committed domestic abuse to attend and complete  
11 to the satisfaction of the court a domestic abuse intervention program or other  
12 designated counseling as a condition of the contact;  
13 (4) Order either parent to abstain from possession or consumption of alcohol or  
14 controlled substances, or both, during the visitation and for 24 hours preceding  
15 the contact;  
16 (5) Order the parent who has committed domestic abuse to pay a fee to defray  
17 the costs of supervised contact;  
18 (6) Prohibit overnight parent-child contact; and  
19 (7) Impose any other condition that is determined necessary to provide for the  
20 safety of the child, the victim of domestic abuse or any other family or household  
21 member.

22 C. The court may require security from the parent who has committed domestic  
23 abuse for the return and safety of the child.

24 D. The court may order the address of the child and the victim to be kept  
25 confidential.

26 E. The court may not order a victim of domestic abuse to attend counseling with the  
27 parent who has committed domestic abuse.

28 F. ~~If a court allows a family or household member~~ supervised visitation center is  
29 within a reasonable distance, the court shall order that contact occur at the supervised  
30 visitation center. If a supervised visitation center is not within a reasonable distance,  
31 the court may allow a trusted 3rd party, acceptable to both parents, to supervise  
32 parent-child contact, the. The court shall establish conditions to be followed during  
33 that contact. Conditions include but are not limited to:

- 34 (1) Minimizing circumstances when the family of the parent who has committed  
35 domestic abuse would be supervising visits;  
36 (2) Ensuring that contact does not damage the relationship with the parent with  
37 whom the child has primary physical residence;  
38 (3) Ensuring the safety and well-being of the child; and

1 (4) Requiring that supervision is provided by a person who is physically and  
2 mentally capable of supervising a visit and who does not have a criminal history  
3 or history of abuse or neglect.

4 G. Fees set forth in this subsection incurred by the parent who has committed  
5 domestic abuse may not be considered as a mitigating factor reducing that parent's  
6 child support obligation.

7 H. The court shall order that psychological testing may not occur in cases involving  
8 domestic abuse.

9 **Sec. 3. 19-A MRSA §1653, sub-§6-A**, as amended by PL 2007, c. 513, §2, is  
10 further amended to read:

11 **6-A. Custody and contact limited; sexual offenses.** The award of primary  
12 residence sole parental rights and responsibilities and parent-child contact with a person  
13 who has ~~been convicted of perpetrated~~ a child-related sexual offense is governed by this  
14 subsection.

15 A. For the purposes of this section, "child-related sexual offense" means the  
16 following sexual offenses if, at the time of the commission of the offense, the victim  
17 was under 18 years of age: any violation of Title 17-A, chapter 11.

18 ~~(1) Sexual exploitation of a minor, under Title 17-A, section 282;~~

19 ~~(2) Gross sexual assault, under Title 17-A, section 253;~~

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

21 ~~(4) Unlawful sexual contact, under Title 17-A, section 255-A or former section~~  
22 ~~255;~~

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

24 ~~(6) Sexual misconduct with a child under 14 years of age, under Title 17-A,~~  
25 ~~section 258;~~

26 ~~(6-A) Solicitation of a child by computer to commit a prohibited act, under Title~~  
27 ~~17-A, section 259; or~~

28 ~~(7) An offense in another jurisdiction that involves conduct that is substantially~~  
29 ~~similar to that contained in subparagraph (1), (2), (3), (4), (5), (6) or (6-A). For~~  
30 ~~purposes of this subparagraph, "another jurisdiction" means the Federal~~  
31 ~~Government, the United States military, the District of Columbia, the~~  
32 ~~Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana~~  
33 ~~Islands, the United States Virgin Islands, Guam, American Samoa and each of~~  
34 ~~the several states except Maine. "Another jurisdiction" also means the~~  
35 ~~Passamaquoddy Tribe when that tribe has acted pursuant to Title 30, section~~  
36 ~~6209-A, subsection 1, paragraph A or B and the Penobscot Nation when that tribe~~  
37 ~~has acted pursuant to Title 30, section 6209-B, subsection 1, paragraph A or B.~~

38 A-1. There is a presumption that a parent who has a history of perpetrating sexual  
39 offenses, child-related or otherwise, may not be awarded sole or joint parental rights  
40 and responsibilities with regard to a child. The court may find a history of

1 perpetrating sexual offenses if one incident has been verified by medical care  
2 providers, the Department of Health and Human Services or a law enforcement  
3 agency. The presumption may be rebutted by a preponderance of the evidence that  
4 the perpetrating parent has successfully completed a sexual abuser intervention  
5 treatment program of at least one year in length, is not abusing alcohol or illegally  
6 using drugs and that the best interest of the child requires that parent's participation.  
7 The fact that the abused parent suffers from the effects of the abuse is not grounds for  
8 denying that parent primary residence.

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

14 C. In an order of parental rights and responsibilities, a court may require that parent-  
15 child contact between a minor child and a person ~~convicted of a child-related~~ who has  
16 perpetrated a sexual offense may occur only if there is ~~another person or an agency or~~  
17 a trusted 3rd party acceptable to both parents present to supervise the contact. The  
18 parent who may have parent-child contact only when supervised is responsible for the  
19 entire cost of the supervised visits. If the court allows a family or household member  
20 to supervise parent-child contact, the court shall establish conditions to be followed  
21 during that contact. Conditions include, but are not limited to, those that:

- 22 (1) Minimize circumstances when the family of the parent who is a sex offender  
23 or sexually violent predator would be supervising visits;
- 24 (2) Ensure that contact does not damage the relationship with the parent with  
25 whom the child has primary physical residence;
- 26 (3) Ensure the safety and well-being of the child; and
- 27 (4) Require that supervision be provided by a person who is physically and  
28 mentally capable of supervising a visit and who does not have a criminal history  
29 or history of abuse or neglect.

30 **Sec. 4. 19-A MRSA §1653, sub-§6-B,** as amended by PL 2007, c. 513, §3, is  
31 further amended to read:

32 **6-B. Conviction or adjudication for certain sex offenses; presumption.** There is  
33 a rebuttable presumption that the petitioner would create a situation of jeopardy for the  
34 child if any contact were to be permitted and that any contact is not in the best interests of  
35 the child if the court finds that the person seeking primary residence or contact with the  
36 child the abusing parent:

37 A. Has been convicted of an offense listed in subsection 6-A, paragraph A in which  
38 the victim was a minor at the time of the offense and the person was at least 5 years  
39 older than the minor at the time of the offense except that, if the offense was gross  
40 sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an  
41 offense in another jurisdiction that involves conduct that is substantially similar to  
42 that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the

1 minor victim submitted as a result of compulsion, the presumption applies regardless  
2 of the ages of the person and the minor victim at the time of the offense; or

3 B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually  
4 abusing a person who was a minor at the time of the abuse.

5 ~~The person seeking primary residence or contact with the child may present evidence to~~  
6 ~~rebut the presumption.~~

7 **Sec. 5. 19-A MRSA §1653, sub-§6-C** is enacted to read:

8 **6-C. Evidence when domestic abuse present.** The court shall appoint a domestic  
9 abuse expert recognized by the Attorney General's office, who is not a guardian ad litem,  
10 for all cases involving domestic abuse. The expert shall employ the highest and best  
11 recognized domestic abuse paradigms and lethality assessments as approved by the  
12 Attorney General's office. The Department of Health and Human Services' domestic  
13 violence protocol must be followed and used by all guardians ad litem and domestic  
14 abuse experts. The expert and the expert's report must carry the same weight in all  
15 parental rights and responsibilities matters as the report of the guardian ad litem. Full  
16 disclosure of any and all medical, mental health and employment records for both parents  
17 must be provided to and considered by the domestic abuse expert.

18 The court shall allow testimony via telephone or other electronic means when national  
19 experts on parental rights and responsibilities and domestic abuse are involved.

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

21 **6-D. Relocation.** If a parent relocates with the child due to domestic abuse or threat  
22 of harm, including real fear based on past history of such threats and abuse, the absence  
23 or relocation is not a factor that weighs against the absent or relocated parent in  
24 determining parental rights and responsibilities.

25 In every proceeding in which there is at issue a dispute as to the primary residence of a  
26 child, a determination by the court that domestic abuse has occurred raises a rebuttable  
27 presumption that it is in the best interest of the child to reside with the parent who is not a  
28 perpetrator of domestic abuse in the location of that parent's choice, within or outside of  
29 the State.

## 30 SUMMARY

31 This bill creates a rebuttable presumption in the awarding of sole and joint parental  
32 rights and responsibilities in cases of domestic abuse in a family. It is presumed that a  
33 parent who has a history of perpetrating domestic abuse will not be awarded primary  
34 residence or shared residence with children. This bill is modeled on law enacted in  
35 Louisiana and many other states, as well as on the National Council of Juvenile and  
36 Family Court Judges' model code.