

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 642

S.P. 235

In Senate, March 3, 2015

### **An Act To Amend the Laws Regarding the Best Interest of the Child Standard**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator DUTREMBLE of York.  
Cosponsored by Representative NADEAU of Winslow and  
Senators: MILLETT of Cumberland, PATRICK of Oxford, SAVIELLO of Franklin,  
Representatives: CHENETTE of Saco, MAKER of Calais, TURNER of Burlington.

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

2 **Sec. 1. 19-A MRSA §1653, sub-§3**, as amended by PL 2009, c. 593, §§2 to 5, is  
3 further amended to read:

4 **3. Best interest of child.** The court, in making an award of parental rights and  
5 responsibilities with respect to a child, shall apply the standard of the best interest of the  
6 child. In making decisions regarding the child's residence and parent-child contact, the  
7 court shall consider as primary the safety and well-being of the child. Another priority in  
8 the court's decision must be consideration of the value of having both parents involved in  
9 the child's life. In applying this standard, the court shall consider the following factors:

- 10 A. The age of the child;
- 11 B. The relationship of the child with the child's parents and any other persons who  
12 may significantly affect the child's welfare;
- 13 C. The preference of the child, if old enough to express a meaningful preference;
- 14 D. The duration and adequacy of the child's current living arrangements and the  
15 desirability of maintaining continuity;
- 16 E. The stability of any proposed living arrangements for the child;
- 17 F. The motivation of the parties involved and their capacities to give the child love,  
18 affection and guidance;
- 19 G. The child's adjustment to the child's present home, school and community;
- 20 H. The capacity of each parent to allow and encourage frequent and continuing  
21 contact between the child and the other parent, including physical access;
- 22 I. The capacity of each parent to cooperate or to learn to cooperate in child care;
- 23 J. Methods for assisting parental cooperation and resolving disputes and each  
24 parent's willingness to use those methods;
- 25 K. The effect on the child if one parent has sole authority over the child's upbringing;
- 26 L. The existence of domestic abuse between the parents, in the past or currently, and  
27 how that abuse affects:
  - 28 (1) The child emotionally;
  - 29 (2) The safety of the child; and
  - 30 (3) The other factors listed in this subsection, which must be considered in light  
31 of the presence of past or current domestic abuse;
- 32 M. The existence of any history of child abuse by a parent;
- 33 N. All other factors having a reasonable bearing on the physical and psychological  
34 well-being of the child;
- 35 O. A parent's prior willful misuse of the protection from abuse process in chapter  
36 101 in order to gain tactical advantage in a proceeding involving the determination of  
37 parental rights and responsibilities of a minor child. Such willful misuse may only be

- 1 considered if established by clear and convincing evidence, and if it is further found  
2 by clear and convincing evidence that in the particular circumstances of the parents  
3 and child, that willful misuse tends to show that the acting parent will in the future  
4 have a lessened ability and willingness to cooperate and work with the other parent in  
5 their shared responsibilities for the child. The court shall articulate findings of fact  
6 whenever relying upon this factor as part of its determination of a child's best interest.  
7 The voluntary dismissal of a protection from abuse petition may not, taken alone, be  
8 treated as evidence of the willful misuse of the protection from abuse process;
- 9 P. If the child is under one year of age, whether the child is being breast-fed;
- 10 Q. The existence of a parent's conviction for a sex offense or a sexually violent  
11 offense as those terms are defined in Title 34-A, section 11203;
- 12 R. If there is a person residing with a parent, whether that person:
- 13 (1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a  
14 comparable crime in another jurisdiction;
- 15 (2) Has been adjudicated of a juvenile offense that, if the person had been an  
16 adult at the time of the offense, would have been a violation of Title 17-A,  
17 chapter 11 or 12; or
- 18 (3) Has been adjudicated in a proceeding, in which the person was a party, under  
19 Title 22, chapter 1071 as having committed a sexual offense; and
- 20 S. Whether allocation of some or all parental rights and responsibilities would best  
21 support the child's safety and well-being.

22 **SUMMARY**

23 This bill amends the best interest of the child standard used by courts in making  
24 decisions regarding parental rights and responsibilities with respect to a child by requiring  
25 the court to consider the value of having both parents involved in the child's life.