

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 429

H.P. 309

House of Representatives, February 7, 2017

**An Act Concerning Guardians Ad Litem and Determinations
Regarding the Best Interest of a Child in Custodial Relative
Caregiver Cases**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PICCHIOTTI of Fairfield.
Cosponsored by Representatives: CHACE of Durham, GUERIN of Glenburn, LOCKMAN of
Amherst, SIROCKI of Scarborough, STROM of Pittsfield, THERIAULT of China.

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

2 **Sec. 1. 18-A MRSA §5-101, sub-§(1-A), ¶(b)**, as enacted by PL 2005, c. 371,
3 §1, is amended to read:

4 (b). The court may not consider any one of the factors set out in paragraph (a) to the
5 exclusion of all others or weigh custody with a parent over custody with another
6 family member who would best support the child's safety and well-being;

7 **Sec. 2. 18-A MRSA §5-101, sub-§(1-E)** is enacted to read:

8 **(1-E).** "Family member" means a spouse, brother, sister, son-in-law, daughter-in-
9 law, parent by blood, parent by adoption, mother-in-law, father-in-law, child by blood,
10 child by adoption, stepchild, stepparent, grandchild or grandparent;

11 **Sec. 3. 19-A MRSA §101, sub-§4-A** is enacted to read:

12 **4-A. Family member.** "Family member" means a spouse, brother, sister, son-in-
13 law, daughter-in-law, parent by blood, parent by adoption, mother-in-law, father-in-law,
14 child by blood, child by adoption, stepchild, stepparent, grandchild or grandparent.

15 **Sec. 4. 19-A MRSA §1507, sub-§5**, as repealed and replaced by PL 2001, c. 253,
16 §3, is amended to read:

17 **5. Written report.** A guardian ad litem shall make a final written report to the
18 parties and the court reasonably in advance of the hearing. The report must be on a
19 standard form used in all jurisdictions that includes a box to be checked by the guardian
20 ad litem for each duty listed in subsection 3, paragraph A, subparagraph (1) and
21 subsection 3, paragraph B, subparagraphs (1) to (10). The guardian ad litem shall detail
22 in the report whether each duty was performed and describe the results of that
23 performance or, if the duty was not performed, the reason why the duty was not
24 performed. The report is admissible as evidence and subject to cross-examination and
25 rebuttal, whether or not objected to by a party.

26 **Sec. 5. 19-A MRSA §1653, sub-§3, ¶R**, as amended by PL 2009, c. 593, §4, is
27 further amended to read:

28 R. If there is a person residing with a parent, whether that person:

29 (1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a
30 comparable crime in another jurisdiction;

31 (2) Has been adjudicated of a juvenile offense that, if the person had been an
32 adult at the time of the offense, would have been a violation of Title 17-A,
33 chapter 11 or 12; or

34 (3) Has been adjudicated in a proceeding, in which the person was a party, under
35 Title 22, chapter 1071 as having committed a sexual offense; ~~and~~

36 **Sec. 6. 19-A MRSA §1653, sub-§3, ¶S**, as enacted by PL 2009, c. 593, §5, is
37 amended to read:

1 S. Whether allocation of some or all parental rights and responsibilities would best
2 support the child's safety and well-being; and

3 **Sec. 7. 19-A MRSA §1653, sub-§3, ¶T** is enacted to read:

4 T. Whether custody by a family member other than a parent would best support the
5 child's safety and well-being.

6 **Sec. 8. 19-A MRSA §1653, sub-§15** is enacted to read:

7 **15. Rights of family members.** A family member of a child may petition the court
8 to assume parental rights and responsibilities or have standing in a proceeding under this
9 section if the family member asserts conditions described by subsection 2, paragraph C or
10 that the family member's participation in the proceeding is in the best interest of the child.

11 **SUMMARY**

12 This bill clarifies that, in proceedings in which the best interest of a child is
13 considered, giving custody to a family member rather than a parent must be given
14 consideration. Family members may petition for standing in a proceeding involving
15 parental rights and responsibilities with respect to a child under certain circumstances.
16 This bill also requires guardians ad litem in contested cases involving the best interest of
17 a child to issue their written report on a standard form with check boxes for each
18 mandatory and optional duty of the guardian ad litem and to describe the results with
19 respect to the duties performed and to provide an explanation with respect to each duty
20 that was not performed.