

# MAINE STATE LEGISLATURE

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# 128th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2017

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Legislative Document

No. 472

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H.P. 335

House of Representatives, February 9, 2017

### An Act Regarding Parental Rights

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Reference to the Committee on Judiciary suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative ESPLING of New Gloucester.  
Cosponsored by Representative: SAMPSON of Alfred.

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

2 **Sec. 1. 19-A MRSA §1651**, as amended by PL 2015, c. 296, Pt. C, §17 and  
3 affected by Pt. D, §1, is further amended to read:

4 **§1651. Parents joint natural guardians of children**

5 The parents are the joint natural guardians of their minor children and ~~are jointly~~  
6 ~~entitled to the care, custody, control, services and earnings of their children~~ each parent  
7 has a fundamental right to make decisions concerning the upbringing, education and care  
8 of their minor children. Neither parent has any rights paramount to the rights of the other  
9 with reference to any matter affecting their children.

10 **Sec. 2. 19-A MRSA §1653, sub-§2**, as amended by PL 2015, c. 494, Pt. A, §11,  
11 is further amended to read:

12 **2. Parental rights and responsibilities; order.** This subsection governs parental  
13 rights and responsibilities and court orders for parental rights and responsibilities. Unless  
14 it finds that a compelling state interest justifies limiting the rights of a parent, the court  
15 shall order shared parental rights and responsibilities. An order limiting the rights of a  
16 parent must be narrowly tailored to achieve the compelling state interest and must impose  
17 the least restrictive limitation necessary to achieve that interest.

18 A. When the parents have agreed to an award of shared parental rights and  
19 responsibilities or so agree in open court, the court shall make that award unless there  
20 is substantial evidence that it should not be ordered. The court shall state in its  
21 decision the reasons for not ordering a shared parental rights and responsibilities  
22 award agreed to by the parents.

23 B. The court may award reasonable rights of contact with a minor child to a 3rd  
24 person.

25 C. The court may award parental rights and responsibilities with respect to the child  
26 to a 3rd person, a suitable society or institution for the care and protection of children  
27 or the department, upon a finding that awarding parental rights and responsibilities to  
28 either or both parents will place the child in jeopardy as defined in Title 22, section  
29 4002, subsection 6.

30 D. The order of the court awarding parental rights and responsibilities must include  
31 the following:

32 (1) Allocated parental rights and responsibilities, shared parental rights and  
33 responsibilities or sole parental rights and responsibilities, according to the best  
34 interest of the child as provided in subsection 3. An award of shared parental  
35 rights and responsibilities may include either an allocation of the child's primary  
36 residential care to one parent and rights of parent-child contact to the other  
37 parent, or a sharing of the child's primary residential care by both parents. If  
38 either or both parents request an award of shared primary residential care and the  
39 court does not award shared primary residential care of the child, the court shall  
40 state in its decision the reasons why shared primary residential care is not in the  
41 best interest of the child;

- 1 (2) Conditions of parent-child contact in cases involving domestic abuse as  
2 provided in subsection 6;
- 3 (3) A provision for child support as provided in subsection 8 or a statement of  
4 the reasons for not ordering child support;
- 5 (4) A statement that each parent must have access to records and information  
6 pertaining to a minor child, including, but not limited to, medical, dental and  
7 school records and other information on school activities, whether or not the  
8 child resides with the parent, unless that access is found not to be in the best  
9 interest of the child or that access is found to be sought for the purpose of causing  
10 detriment to the other parent. If that access is not ordered, the court shall state in  
11 the order its reasons for denying that access;
- 12 (5) A statement that violation of the order may result in a finding of contempt  
13 and imposition of sanctions as provided in subsection 7; and
- 14 (6) A statement of the definition of shared parental rights and responsibilities  
15 contained in section 1501, subsection 5, if the order of the court awards shared  
16 parental rights and responsibilities.
- 17 An order modifying a previous order is not required to include provisions of the  
18 previous order that are not modified.
- 19 E. The order of the court may not include a requirement that the State pay for the  
20 defendant to attend a batterers' intervention program unless the program is certified  
21 under section 4014.

22 **SUMMARY**

23 This bill amends the law to stipulate that parents have a fundamental right to make  
24 decisions concerning the upbringing, education and care of their minor children and  
25 prevents courts from limiting these fundamental parental rights unless the limitation is  
26 supported by a compelling state interest and narrowly tailored to serve that interest  
27 through the least restrictive means possible.