

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1356

S.P. 464

In Senate, April 6, 2017

An Act To Amend the Grandparents Visitation Act

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 ROSEN of Hancock.
Cosponsored by Senators: HILL of York, KATZ of Kennebec, KEIM of Oxford,
Representative: BRADSTREET of Vassalboro.

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

2 **Sec. 1. 19-A MRSA §1802, sub-§1**, as amended by PL 2015, c. 296, Pt. C, §19
3 and affected by Pt. D, §1, is further amended to read:

4 **1. Grandparent.** "Grandparent" is a parent of a child's parent. "Grandparent"
5 includes a parent of a child's parent whose parental rights have been terminated pursuant
6 to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter 6, ~~but only until the~~
7 ~~child's adoption.~~

8 **Sec. 2. 19-A MRSA §1803, sub-§1**, as enacted by PL 1995, c. 694, Pt. B, §2 and
9 affected by Pt. E, §2, is repealed.

10 **Sec. 3. 19-A MRSA §1803, sub-§1-A** is enacted to read:

11 **1-A. Standing to petition for visitation rights.** A grandparent of a minor child may
12 petition the court for reasonable rights of visitation if:

13 A. All parties to a proceeding regarding a petition under this section, including a
14 parent, legal guardian, grandparent, counselor and guardian ad litem of the child,
15 have undergone mediation together at least once a week for 4 consecutive weeks with
16 a mediator or other qualified person and have failed to reach a visitation agreement
17 before the petition is filed. A petition under this paragraph must include a written
18 summary of the mediation provided by the mediator. The grandparents and parents
19 undergoing mediation under this paragraph must share the expense of the mediation;
20 or

21 B. Mediation has not been undertaken under paragraph A and a parent or legal
22 guardian of the child has died, is missing, is in a persistent vegetative state or is an
23 incapacitated person and the grandparent avers that:

24 (1) The prior relationship between the grandparent and the child was loving,
25 caring and encouraging and bolstered the child's sense of belonging, history and
26 family continuity;

27 (2) The child is old enough to express and expresses the child's desire to have
28 visitation with the grandparent; or

29 (3) There is no valid and substantive reason to deny the reasonable visitation
30 rights for the grandparent.

31 For purposes of this paragraph, "incapacitated person" has the same meaning as Title
32 18-A, section 5-101, subsection 1.

33 **Sec. 4. 19-A MRSA §1803, sub-§2**, as amended by PL 2005, c. 360, §3, is
34 further amended to read:

35 **2. Procedure.** If the petition is based upon subsection 1-A, paragraph A, the
36 grandparent shall file the petition and the written summary of the mediation with the
37 court and shall serve a copy of both on at least one of the parents or legal guardians of the

1 child. The following procedures apply to petitions for rights of visitation or access under
2 subsection ~~1-A~~, paragraph B ~~or C~~, subparagraph (1), (2) or (3).

3 A. The grandparent must file with the petition for rights of visitation or access an
4 affidavit alleging a sufficient existing relationship with the child, or that sufficient
5 efforts have been made to establish a relationship with the child. When the petition
6 and accompanying affidavit are filed with the court, the grandparent shall serve a
7 copy of both on at least one of the parents or legal guardians of the child.

8 B. The parent or legal guardian of the child may file an affidavit in response to the
9 grandparent's petition and accompanying affidavit. When the affidavit in response is
10 filed with the court, the parent or legal guardian shall deliver a copy to the
11 grandparent.

12 B-1. The grandparent may file a written response to the response in paragraph B
13 within 21 days of the filing of the response in paragraph B. When the written
14 response under this paragraph is filed with the court, the grandparent shall deliver a
15 copy to at least one of the parents or legal guardians of the child.

16 C. The court shall determine on the basis of the petition ~~and~~ the affidavit and any
17 responses under paragraphs B and B-1 whether it is more likely than not that ~~there is~~
18 ~~a sufficient existing relationship or, if a sufficient relationship does not exist, that a~~
19 ~~sufficient effort to establish one has been made~~ a condition under subsection 1-A,
20 paragraph B, subparagraph (1), (2) or (3) exists.

21 D. If the court's determination under paragraph C is in the affirmative, the court may
22 appoint a guardian ad litem as provided in section 1507. The court shall hold a
23 hearing on the grandparent's petition for reasonable rights of visitation or access and
24 shall consider any objections the parents or legal guardians may have concerning the
25 award of rights of visitation or access to the grandparent. If the court has appointed a
26 guardian ad litem, the court shall also consider the report of the guardian ad litem.
27 The standard for the award of reasonable rights of visitation or access is provided in
28 subsection 3.

29 **Sec. 5. 19-A MRSA §1803, sub-§3, ¶J,** as amended by PL 2001, c. 665, §5, is
30 repealed.

31 **Sec. 6. 19-A MRSA §1803, sub-§3, ¶K,** as enacted by PL 2001, c. 665, §6, is
32 amended to read:

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

35 **Sec. 7. 19-A MRSA §1803, sub-§3, ¶¶L to N** are enacted to read:

36 L. If a parent of the child has died, the effect on the grieving child of being denied
37 visitation with or access to the grandparent;

38 M. Any evidence that the parent or legal guardian may not be considering or acting
39 in the best interests of the child; and

40 N. Any other factor having a reasonable bearing on the physical and psychological
41 well-being of the child.

