

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

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Legislative Document

No. 1670

H.P. 1157

House of Representatives, December 7, 2017

An Act To Revise the Grandparents Visitation Act

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 5, 2017. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative CARDONE of Bangor.

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

2 **Sec. 1. 19-A MRSA §1802, sub-§2** is enacted to read:

3 **2. Sufficient existing relationship.** "Sufficient existing relationship" means a
4 relationship involving extraordinary contact between a grandparent and a child, including
5 but not limited to the following circumstances:

6 A. The grandparent satisfies the standard for de facto parentage set forth in section
7 1891, subsection 3; or

8 B. The grandparent has been a primary caregiver and custodian of the child for a
9 significant period of time.

10 **Sec. 2. 19-A MRSA §1803, sub-§1**, as enacted by PL 1995, c. 694, Pt. B, §2 and
11 affected by Pt. E, §2, is amended to read:

12 **1. Standing to seek grandparent visitation rights.** A grandparent of a minor child
13 may petition the court has standing to initiate and maintain an action for reasonable rights
14 of visitation or access if:

15 ~~A. At least one of the child's parents or legal guardians has died;~~

16 B. There is a sufficient existing relationship between the grandparent and the child;
17 ~~or~~

18 ~~C. When a sufficient existing relationship between the grandparent and the child~~
19 ~~does not exist, a sufficient effort to establish one has been made.~~

20 D. The absence of contact between the grandparent and the child will substantially
21 and negatively affect the child; or

22 E. Any other compelling state interest justifies the court's interference with the
23 parent's fundamental right to deny the grandparent access to the child.

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

26 **2. Procedure.** The following procedures apply to petitions for rights of visitation or
27 access under subsection 1, ~~paragraph B or C.~~

28 A. ~~The A grandparent must seeking rights of visitation or access shall~~ file with the
29 ~~petition for rights of visitation or access initial pleadings~~ an affidavit alleging a
30 ~~sufficient existing relationship with the child, or that sufficient efforts have been~~
31 ~~made to establish a relationship with the child. When the petition and accompanying~~
32 ~~affidavit are filed with the court, the grandparent shall serve a copy of both on at least~~
33 ~~one of the parents or legal guardians of the child under oath sufficient facts to support~~
34 ~~the grandparent's standing under subsection 1. The pleadings and affidavit must be~~
35 ~~served upon all parents and legal guardians of the child.~~

36 B. ~~The A parent or legal guardian of the child may file who files a pleading in~~
37 ~~response to the pleadings in paragraph A shall also file an affidavit in response to the~~
38 ~~grandparent's petition and accompanying affidavit. When the affidavit in response is~~

1 filed with the court, the parent or legal guardian shall deliver a copy to the
2 grandparent, serving all parties to the proceeding with a copy.

3 C. The court shall determine on the basis of the petition pleadings and the affidavit
4 affidavits under paragraphs A and B whether it is more likely than not that there is a
5 sufficient existing relationship or, if a sufficient relationship does not exist, that a
6 sufficient effort to establish one has been made the grandparent has presented prima
7 facie evidence of standing under subsection 1. The court may in its sole discretion, if
8 necessary and on an expedited basis, hold a hearing to determine disputed facts that
9 are necessary and material to the issue of standing.

10 D. If the court's determination under paragraph C is in the affirmative, the court may
11 appoint a guardian ad litem as provided in section 1507. The court shall hold a
12 hearing on the grandparent's petition for reasonable rights of visitation or access and
13 shall consider any objections the parents or legal guardians may have concerning the
14 award of rights of visitation or access to the grandparent. If the court has appointed a
15 guardian ad litem, the court shall also consider the report of the guardian ad litem.
16 The standard for the award of reasonable rights of visitation or access is provided in
17 subsection 3.

18 **Sec. 4. 19-A MRSA §1803, sub-§3**, as amended by PL 2001, c. 665, §§5 and 6,
19 is further amended to read:

20 **3. Best interest of the child.** The court may grant a grandparent reasonable rights of
21 visitation or access to a minor child upon finding that the grandparent has standing under
22 subsection 1 and that granting the grandparent reasonable rights of visitation or access are
23 is in the best interest of the child and would not significantly interfere with any
24 parent-child relationship or with the parent's rightful authority over the child. In applying
25 this standard deciding whether granting the grandparent reasonable rights of visitation or
26 access is in the best interest of the child and whether it would significantly interfere with
27 the parent-child relationship or with the parent's rightful authority over the child, the court
28 shall consider the following factors:

- 29 A. The age of the child;
- 30 B. The relationship of the child with the child's grandparents, including the amount
31 of previous contact;
- 32 B-1. Whether one or more of the child's parents or legal guardians has died;
- 33 C. The preference of the child, if old enough to express a meaningful preference;
- 34 D. The duration and adequacy of the child's current living arrangements and the
35 desirability of maintaining continuity;
- 36 E. The stability of any proposed living arrangements for the child;
- 37 F. The motivation of the parties involved and their capacities to give the child love,
38 affection and guidance;
- 39 G. The child's adjustment to the child's present home, school and community;
- 40 H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in
41 child care;

- 1 I. Methods of assisting cooperation and resolving disputes and each person's
2 willingness to use those methods;
- 3 J. Any other factor having a reasonable bearing on the physical and psychological
4 well-being of the child; and
- 5 K. The existence of a grandparent's conviction for a sex offense or a sexually violent
6 offense as those terms are defined in Title 34-A, section 11203.

7 **Sec. 5. 19-A MRSA §1804, first ¶**, as enacted by PL 1995, c. 694, Pt. B, §2 and
8 affected by Pt. E, §2, is amended to read:

9 The court may refer the parties to mediation at any time after ~~the petition is filed a~~
10 court determination pursuant to section 1803, subsection 2, paragraph C that the
11 grandparent has standing and may require that the parties have made a good faith effort to
12 mediate the issue before holding a hearing. If the court finds that either party failed to
13 make a good faith effort to mediate, the court may order the parties to submit to
14 mediation, dismiss the action or any part of the action, render a decision or judgment by
15 default, assess attorney's fees and costs or impose any other sanction that is appropriate in
16 the circumstances. The court may also impose an appropriate sanction upon a party's
17 failure without good cause to appear for mediation after receiving notice of the scheduled
18 time for mediation.

19 **Sec. 6. 19-A MRSA §1806** is enacted to read:

20 **§1806. Other actions**

21 Nothing in this chapter limits a grandparent's ability to file any action not governed
22 by the provisions of this chapter with respect to a child, including but not limited to an
23 action to establish de facto parentage of a child under section 1891 and an action for
24 guardianship of a child under Title 18-A, Article 5.

25 **SUMMARY**

26 This bill amends the Grandparents Visitation Act to alleviate the constitutional
27 concerns raised by the Law Court in Dorr v. Woodard, 2016 ME 79, 140 A.3d 467.
28 Specifically, the bill:

- 29 1. Requires that a grandparent seeking access to or visitation with a child under the
30 Grandparents Visitation Act demonstrate standing to proceed at the outset of the case
31 through a procedure that more closely tracks the procedure for demonstrating standing to
32 obtain de facto parentage of a child under the Maine Parentage Act;
- 33 2. Amends the substantive test for a grandparent's standing by defining the type of
34 sufficient existing relationship that must exist between a grandparent and a child and by
35 eliminating the automatic standing granted under current law to a grandparent when one
36 of the child's parents or legal guardians has died;
- 37 3. Prohibits a court from ordering the parties to engage in mediation prior to a court

- 1 determination that a grandparent has made a prima facie showing of standing; and
- 2 4. Clarifies that a grandparent's ability to file an action for de facto parentage or for
- 3 guardianship of a child is not limited by the Grandparents Visitation Act.