

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 136

H.P. 82

House of Representatives, January 10, 2023

**An Act to Clarify Court Jurisdiction of Actions Involving Children
Brought Under the Maine Uniform Probate Code**

Reported by Representative MOONEN of Portland for the Family Law Advisory
Commission pursuant to the Maine Revised Statutes, Title 19-A, section 354, subsection 2.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint
Rule 218.

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

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 4 MRSA §152, sub-§5-A**, as amended by PL 2017, c. 402, Pt. C, §3 and
3 affected by PL 2019, c. 417, Pt. B, §14, is further amended to read:

4 **5-A. Actions involving minors under Title 18-C.** ~~Exclusive~~ Except as provided in
5 paragraph C, exclusive, continuing jurisdiction of actions for guardianship, adoption,
6 change of name or other matters involving custody or other parental rights with respect to
7 a minor child brought under Title 18-C under the following circumstances: if proceedings
8 under the Maine Juvenile Code brought against the minor child are pending in the District
9 Court; if proceedings involving custody or other parental rights with respect to a the minor
10 child, including but not limited to adoption, divorce, parental rights and responsibilities,
11 grandparents' rights, protective custody, change of name, guardianship, paternity, or
12 termination of parental rights and protection from abuse or harassment, are pending in the
13 District Court; or if the minor child is or was the subject of an order issued by the District
14 Court terminating parental rights, appointing a guardian, including a permanency,
15 emergency or interim guardian, awarding parental rights to a 3rd party or granting an
16 adoption. This subsection does not apply if the only proceedings pending in the District
17 Court involving custody or other parental rights with respect to the minor child are
18 protection from abuse or protection from harassment proceedings unless one of the other
19 grounds for exclusive, continuing jurisdiction are met under this subsection. For purposes
20 of this subsection, a proceeding is pending if a complaint, petition or post-judgment motion
21 has been filed and the final judgment or final order on that complaint, petition or post-
22 judgment motion has not yet been issued.

23 A. The District Court presiding over any matter involving custody or other parental
24 rights with respect to a minor child shall require all parties to disclose whether they
25 have knowledge of:

26 (1) Any interim or final order then in effect concerning custody or other parental
27 rights with respect to the minor child;

28 (2) Any proceeding under the Maine Juvenile Code brought against the minor
29 child pending in the District Court or any proceeding involving custody or other
30 parental rights with respect to the minor child ~~currently filed or~~ pending before any
31 court of this State or another state, including before a probate court in this State; or

32 (3) Any other related action ~~currently filed or~~ pending before any court of this
33 State or another state, including before a probate court in this State.

34 B. ~~If~~ Except as provided in paragraph C, if the District Court presiding over any matter
35 under the Maine Juvenile Code brought against a minor child and any matter involving
36 custody or other parental rights with respect to a minor child becomes aware that a
37 proceeding for guardianship, adoption or change of name or another matter involving
38 custody or other parental rights with respect to the minor child under Title 18-C is
39 pending in a probate court in this State, the District Court shall notify the Probate Court
40 and take appropriate action to facilitate a transfer of the matter from the Probate Court;
41 If a matter is transferred to the District Court under this paragraph, the District Court
42 has continuing, exclusive jurisdiction over the matter and over any future proceedings
43 for guardianship, adoption or change of name or other matter involving custody or
44 other parental rights with respect to the minor child brought under Title 18-C, except

1 to the extent that the District Court's jurisdiction is precluded by the Uniform Child
2 Custody Jurisdiction and Enforcement Act.

3 C. Notwithstanding any provision of law to the contrary, a probate court shall retain
4 jurisdiction over an action for guardianship, adoption, change of name or other matter
5 involving custody or other parental rights with respect to a minor child brought under
6 Title 18-C that would otherwise be within the exclusive, continuing jurisdiction of the
7 District Court under this subsection and may not transfer that matter to the District
8 Court under paragraph B if:

9 (1) At the time the proceeding under the Maine Juvenile Code or the proceeding
10 involving custody or other parental rights with respect to the minor child that would
11 otherwise trigger the District Court's continuing, exclusive jurisdiction is initiated,
12 the testimonial hearing on the Title 18-C matter has concluded and the Probate
13 Court has that matter under advisement; and

14 (2) The Probate Court has not determined that the District Court is the more
15 appropriate forum for the Title 18-C proceeding;

16 **Sec. 2. 4 MRSA §251-A**, as enacted by PL 2015, c. 460, §4, is amended to read:

17 **§251-A. Other proceedings involving parental rights; transfer to District Court**

18 **1. Disclosure of orders and proceedings.** The judge of probate presiding over any
19 matter involving guardianship, adoption or change of name or another matter involving
20 custody or other parental rights with respect to a minor child shall require all parties to
21 disclose whether they have knowledge of:

22 A. Any interim or final order then in effect concerning custody or other parental rights
23 with respect to the minor child, including any order of the District Court terminating
24 parental rights; appointing a guardian, including a permanency, emergency or interim
25 guardian; awarding parental rights to a 3rd party; or granting an adoption;

26 B. Any proceeding under the Maine Juvenile Code brought against the minor child
27 pending in District Court or any proceeding involving custody or other parental rights
28 with respect to the minor child ~~currently filed~~ or pending before any court of this State
29 or another state, including the District Court; or

30 C. Any other related action ~~currently filed~~ or pending before any court of this State or
31 another state, including the District Court.

32 **2. Transfer to District Court.** If Except as provided in subsection 3, if in a matter
33 before the Probate Court concerning a minor child a judge of probate becomes aware that
34 a proceeding involving custody or other parental rights with respect to the minor child is
35 pending in the District Court or that the minor child is or was the subject of a District Court
36 order terminating parental rights, appointing a guardian, including a permanency,
37 emergency or interim guardian, awarding parental rights to a 3rd party or granting an
38 adoption, the judge shall notify the District Court and take appropriate action to facilitate a
39 transfer of the matter to the District Court. If a matter is transferred to the District Court
40 under this subsection, the District Court has continuing, exclusive jurisdiction over the
41 matter and over any future proceedings for guardianship, adoption or change of name or
42 other matter involving custody or other parental rights with respect to the minor child
43 brought under Title 18-C, except to the extent that the District Court's jurisdiction is
44 precluded by the Uniform Child Custody Jurisdiction and Enforcement Act.

