

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1079

S.P. 448

In Senate, March 9, 2023

An Act Regarding Visitation Rights of Grandparents

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator POULIOT of Kennebec.
Cosponsored by Senator STEWART of Aroostook, Representative LYMAN of Livermore
Falls and
Representative: MORRIS of Turner.

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 2019, c. 197, §2 and
3 affected by c. 417, Pt. B, §14, is further amended to read:

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

8 **Sec. 2. 19-A MRSA §1803, sub-§1**, as amended by PL 2017, c. 328, §2, is
9 repealed.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 parent,
14 legal guardian, grandparent, counselor and guardian ad litem of the child, have
15 undergone mediation together at least once a week for 4 consecutive weeks with a
16 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 guardian
22 of the child has died, is missing, is in a persistent vegetative state or is an incapacitated
23 person and the grandparent avers that:

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

31 For purposes of this paragraph, "incapacitated person" has the same meaning as Title
32 18-C, section 1-201, subsection 24.

33 **Sec. 4. 19-A MRSA §1803, sub-§2**, as amended by PL 2017, c. 328, §3, is further
34 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 court
37 and shall serve a copy of both on at least one of the parents or legal guardians of the child.
38 The following procedures apply to petitions for rights of visitation or access under
39 subsection 1-A, paragraph B, subparagraph (1), (2) or (3).

40 A. A grandparent seeking rights of visitation or access shall file with the initial
41 pleadings an affidavit alleging under oath sufficient facts to support the grandparent's

1 standing under subsection † 1-A. The pleadings and affidavit must be served upon all
2 parents and legal guardians of the child.

3 B. A parent or legal guardian of the child who files a pleading in response to the
4 pleadings in paragraph A shall also file an affidavit in response, serving all parties to
5 the proceeding with a copy.

6 B-1. The grandparent may file a written response to the response in paragraph B within
7 21 days of the filing of the response in paragraph B. When the written response under
8 this paragraph is filed with the court, the grandparent shall deliver a copy to at least
9 one of the parents or legal guardians of the child.

10 C. The court shall determine on the basis of the pleadings and affidavits under
11 paragraphs A and B and any response under paragraph B-1 whether the grandparent
12 has presented prima facie evidence of standing under subsection † 1-A. The court may
13 in its sole discretion, if necessary and on an expedited basis, hold a hearing to determine
14 disputed facts that are necessary and material to the issue of standing.

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

22 **Sec. 5. 19-A MRSA §1803, sub-§3**, as amended by PL 2017, c. 328, §4, is further
23 amended to read:

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

33 A. The age of the child;

34 B. The relationship of the child with the child's grandparents, including the amount of
35 previous contact;

36 B-1. Whether one or more of the child's parents or legal guardians has died;

37 C. The preference of the child, if old enough to express a meaningful preference;

38 D. The duration and adequacy of the child's current living arrangements and the
39 desirability of maintaining continuity;

40 E. The stability of any proposed living arrangements for the child;

41 F. The motivation of the parties involved and their capacities to give the child love,
42 affection and guidance;

- 1 G. The child's adjustment to the child's present home, school and community;
- 2 H. The capacity of the parent and grandparent to cooperate or to learn to cooperate in
- 3 child care;
- 4 I. Methods of assisting cooperation and resolving disputes and each person's
- 5 willingness to use those methods;
- 6 ~~J. Any other factor having a reasonable bearing on the physical and psychological~~
- 7 ~~well-being of the child; and~~
- 8 K. The existence of a grandparent's conviction for a sex offense or a sexually violent
- 9 offense as those terms are defined in Title 34-A, section 11203-;
- 10 L. If a parent of the child has died, the effect on the grieving child of being denied
- 11 visitation with or access to the grandparent;
- 12 M. Any evidence that the parent or legal guardian may not be considering or acting in
- 13 the best interests of the child; and
- 14 N. Any other factor having a reasonable bearing on the physical and psychological
- 15 well-being of the child.

16 **Sec. 6. 22 MRSA §4005-H, sub-§1**, as enacted by PL 2017, c. 411, §11, is amended
17 to read:

18 **1. Grandparent visitation or access.** A grandparent who is designated as an
19 interested person or a participant under section 4005-D or who has been granted intervenor
20 status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant
21 reasonable rights of visitation or access under Title 19-A, chapter 59. ~~When a child is~~
22 ~~placed in a prospective adoptive home and the prospective adoptive parents have signed an~~
23 ~~adoptive placement agreement, a grandparent's rights of visitation or access that were~~
24 ~~granted pursuant to this chapter are suspended unless a court determines that it is in the best~~
25 ~~interest of the child to continue the grandparent's rights of visitation or access. A~~
26 ~~grandparent's rights of visitation or access terminate when the adoption is finalized~~
27 ~~pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective~~
28 ~~adoptive parents from independently facilitating or permitting contact between a child and~~
29 ~~a grandparent, especially when a court has previously ordered rights of visitation or access.~~
30 For the purposes of this subsection, "grandparent" includes a parent of a child's parent
31 whose parental rights have been terminated, ~~but only until the child is adopted.~~

32 **SUMMARY**

33 This bill amends the Grandparents and Great-grandparents Visitation Act and other
34 provisions of law concerning grandparents, including great-grandparents, by:

- 35 1. Removing the provision that terminates a grandparent's right to visitation with and
- 36 access to a grandchild when that grandchild has been adopted;
- 37 2. Amending the provisions regarding standing for a grandparent to petition the court
- 38 for visitation with and access to a grandchild by requiring mediation before the petition is
- 39 filed, if possible;

1 3. Amending the provisions regarding standing for a grandparent to petition the court
2 for visitation with and access to a grandchild when the parties are unable to accomplish
3 mediation; and

4 4. Including, in the criteria included in the best interests of the child for the court to
5 consider when ruling on a grandparent visitation petition, the effect on a grieving child who
6 has lost a parent of being denied visitation with and access to a grandparent and any
7 evidence that a parent or legal guardian of a child is not considering or acting in the best
8 interests of the child.