

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

SECOND SPECIAL SESSION

November 18, 1983

AND AT THE

SECOND REGULAR SESSION

January 4, 1984 to April 25, 1984

AND AT THE

THIRD SPECIAL SESSION

September 4, 1984 to September 11, 1984

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH
IN ACCORDANCE WITH MAINE REVISED STATUTES
ANNOTATED, TITLE 3, SECTION 164, SUBSECTION 6.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
JANUARY 4, 1984 TO APRIL 25, 1984

FINANCE AUTHORITY OF MAINE

Natural Resource Finance and Marketing Agency	
Personal Services	(\$ 480)
Reduces funds for per diem for members of the Natural Resources Finance and Marketing Board.	
 Total	 (\$ 480)

SECRETARY OF STATE, DEPARTMENT OF

Secretary of State, Administration	
All Other	\$ 800
Capital Expenditures	<u>350</u>
Provides funds for gathering and compiling information required by this Act.	
 Total	 \$1,150
 TOTAL ALLOCATIONS	 (\$6,795)

Effective July 25, 1984.

CHAPTER 813

H.P. 1861 - L.D. 2466

AN ACT to Revise Child Custody Terminology, Enact "Best Interest of the Child" Criteria and Provide for Mandatory Mediation in Cases of Separation, Annulment or Divorce where there is a Contested Issue Involving Children.

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

Sec. 1. 19 MRSA §214, as amended by PL 1983, c. 564, §1, is repealed and the following enacted in its place:

§214. Parenting and support decreed when parents live apart

1. Legislative findings and purpose. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. "Child support" means money to be paid directly to a parent or to another person or agency awarded parental rights and responsibilities with respect to a child for the support of a child, and may include the provision of health or medical insurance coverage for a child.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. Jurisdiction. If the father and mother of a minor child are living apart, the Probate Court, Superior Court or District Court in the county or division where either resides, on complaint of either and after such notice to the other as the court may order, may make an order awarding parental rights and responsibilities with respect to the child.

The right to file a complaint shall not be denied any person for failure to meet any residency requirement

if the person is a member of the Armed Forces of the United States on active duty stationed in this State or a parent of a child of such a member. Such a member shall be deemed to be a resident either of the county in which the military installation or installations, or other place at which he has been stationed, is located or of the county in which he has sojourned.

The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, sections 801 to 825, if another state may have jurisdiction as provided in that Act.

4. Mediation. Prior to a contested hearing under this section where there are minor children of the parties, the court shall refer the parties to mediation. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may refer the parties back to mediation.

5. Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

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

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

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

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

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing; and

L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. Order. The order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons.

Every final order issued under this section shall contain:

A. A provision for child support or a statement of the reasons for not ordering child support; and

B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other

parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.

7. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.

8. Abandonment of family residence. The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.

9. Support order. The court may order either parent of a minor child to contribute reasonable and just sums as child support payable weekly, monthly or quarterly. The court may enforce obedience to the order by appropriate decrees, execution issuing for those sums when payable and for costs. The decrees shall be in force until further order of the court.

10. Appeal. An appeal shall lie from decrees awarding parental rights and responsibilities with respect to a minor child to the Supreme Judicial Court where originating in the Probate Court or the Superior Court, or to the Superior Court where originating in the District Court.

11. Modification or termination. Any order for parental rights and responsibilities with respect to a minor child may be modified or terminated as circumstances require upon the petition of one or both of the parents. The parties shall be referred to mediation as under subsection 4.

Sec. 2. 19 MRSA §581, as amended by PL 1983, c. 195, §2, is repealed and the following enacted in its place:

§581. Spouse deserted or living apart

1. Legislative findings and purpose. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which responsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. "Child support" means money to be paid directly to a parent or to another person or agency awarded parental rights and responsibilities with respect to a child for the support of a child, and may include the provision of health or medical insurance coverage for a child.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. Jurisdiction. The court shall have the following jurisdiction.

A. If a married person, without just cause, deserts his spouse or if his spouse, for just cause, is actually living apart from him, and if that desertion or living apart has continued for a period of at least 60 days immediately prior to the filing of the petition, the court may, upon the spouse's petition, or if he is mentally ill,

upon the petition of his guardian or next friend, enter a decree that the spouse is so deserted or is so living apart and may prohibit the other spouse from imposing any restraint on the petitioner's personal liberty during such time as the court shall by order direct.

B. Upon the petition of either spouse, or of the guardian or next friend of either who may be mentally ill, the court may make an order awarding parental rights and responsibilities with respect to a minor child of the parties.

4. Mediation. Prior to a contested hearing under this section where there are minor children of the parties, the court shall refer the parties to mediation. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may refer the parties back to mediation.

5. Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

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

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

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

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

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing; and

L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. Order. Upon petition under subsection 3, paragraph B, the order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall make that award unless there is substantial evidence that it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons.

Every final order issued under this section shall contain:

A. A provision for child support or a statement of the reasons for not ordering child support; and

B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought

for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.

7. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.

8. Abandonment of family residence. The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.

9. Support; prosecution money. An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the children or an order to provide a policy or contract for coverage of those expenses.

Availability of public welfare benefits to the family shall not affect the decision of the court as to the responsibility of a parent to provide child support.

The court may order either spouse to pay to the court for the other spouse sufficient money for the prosecution of a petition under this section.

10. Modification or termination. An order for parental rights and responsibilities with respect to a child may, upon petition of either spouse, be modified or terminated as circumstances require. The parties shall be referred to mediation as under subsection 4.

11. Enforcement. The court may enforce obedience to its orders by appropriate process. Nothing in this section may preclude the court from incarcerating a spouse for nonpayment of child support, alimony or attorney's fees in violation of a court order to do so.

Sec. 3. 19 MRSA §636 is enacted to read:

§636. Court authority to order mediation

The court may, in any case under this subchapter, at any time refer the parties to mediation on any issues. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may refer the parties back to mediation.

Sec. 4. 19 MRSA §665 is enacted to read:

§665. Court authority to order mediation

The court may, in any case under this subchapter, at any time refer the parties to mediation on any issues. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may refer the parties back to mediation.

Sec. 5. 19 MRSA §752, as amended by PL 1983, c. 480, Pt. A, §15 and c. 564, §2, is repealed and the following enacted in its place:

§752. Parenting of children; change of names; compulsory process; support and maintenance

1. Legislative findings and purpose. The Legislature finds and declares as public policy that encouraging mediated resolutions of disputes between parents is in the best interest of minor children.

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Allocated parental rights and responsibilities" means that responsibilities for the various aspects of a child's welfare are divided between the parents, with the parent allocated a particular responsibility having the right to control that aspect of the child's welfare. Responsibilities may be divided exclusively or proportionately. Aspects of a child's welfare for which re-

sponsibility may be divided include primary physical residence, parent-child contact, support, education, medical and dental care, religious upbringing, travel boundaries and expenses and any other aspect of parental rights and responsibilities. A parent allocated responsibility for a certain aspect of a child's welfare may be required to inform the other parent of major changes in that aspect.

B. "Child support" means money to be paid directly to a parent or to another person or agency awarded parental rights and responsibilities with respect to a child for the support of a child and may include the provision of health or medical insurance coverage for a child.

C. "Shared parental rights and responsibilities" means that most or all aspects of a child's welfare remain the joint responsibility and right of both parents, so that both parents retain equal parental rights and responsibilities and both parents must confer and make joint decisions regarding the child's welfare.

D. "Sole parental rights and responsibilities" means that one parent is granted exclusive parental rights and responsibilities with respect to all aspects of a child's welfare, with the possible exception of the right and responsibility for support.

3. Jurisdiction. The court making an order of nullity or of divorce may make an order awarding parental rights and responsibilities with respect to a minor child of the parties.

4. Mediation. Prior to a contested hearing under this chapter where there are minor children of the parties, the court shall refer the parties to mediation. Any agreement reached by the parties through mediation on any issues shall be reduced to writing, signed by the parties and presented to the court for approval as a court order. When agreement through mediation is not reached on any issue, the court must determine that the parties made a good faith effort to mediate the issue before proceeding with a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may refer the parties back to mediation.

5. Best interest of the child. The court, in making an award of parental rights and responsibilities with respect to a minor child, shall apply the

standard of the best interest of the child. In applying this standard, the court shall consider the following factors:

A. The age of the child;

B. The relationship of the child with the child's parents and any other persons who may significantly affect the child's welfare;

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

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

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

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

G. The child's adjustment to the child's present home, school and community;

H. The capacity of each parent to allow and encourage frequent and continuing contact between the child and the other parent, including physical access;

I. The capacity of each parent to cooperate or to learn to cooperate in child care;

J. Methods for assisting parental cooperation and resolving disputes and each parent's willingness to use those methods;

K. The effect on the child if one parent has sole authority over the child's upbringing; and

L. All other factors having a reasonable bearing on the physical and psychological well-being of the child.

6. Order. The order of the court shall award allocated parental rights and responsibilities, shared parental rights and responsibilities or sole parental rights and responsibilities, according to the best interest of the child. Where the parents have agreed to an award of shared parental rights and responsibilities or so agree in open court, the court shall

make that award unless there is substantial evidence that 'it should not be ordered. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

The court may award reasonable rights of contact with a minor child to any 3rd persons.

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

Every final order issued under this section shall contain:

A. A provision for child support or a statement of the reasons for not ordering child support; and

B. A statement that each parent shall have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access.

7. Equal consideration of parents. The court may not apply a preference for one parent over the other in determining parental rights and responsibilities because of the parent's sex or the child's age or sex.

8. Abandonment of family residence. The court shall not consider abandonment of the family residence as a factor in determining parental rights and responsibilities with respect to a minor child when the abandoning parent has been physically harmed or seriously threatened with physical harm by the other parent and that harm or threat of harm was causally related to the abandonment, or when one parent has left the family residence at the request or insistence of the other parent.

9. Department of Human Services. An original order made under this section granting parental rights and responsibilities with respect to a minor child to the Department of Human Services shall not extend beyond the time when the child reaches 18 years of age, except that, upon application by the department, the court, for sufficient cause, may extend the order to the time when the child reaches 21 years of age.

The expense of maintenance and education of children committed to the department under this section shall be borne in accordance with Title 22, section 4061. The department shall have all the powers that a guardian has to a ward as to the person, property, earnings and education of each child committed to it under this section during the term of commitment.

10. Support order. An order of the court for child support may run against the father or the mother in whole or in part or against both, irrespective of the fault of the father or mother in the divorce action. When the order is to run against both, the court shall specify the amount each shall pay.

An order for child support may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child or an order to provide a policy or contract for coverage of these expenses.

Availability of public welfare benefits to the family shall not affect the decision of the court as to the responsibility of a parent to provide child support.

The court may enforce a support order as provided in chapter 14-A.

11. Name change. Upon the request of the wife during the action for divorce or annulment or at any time thereafter, the court may change the name of the wife.

12. Modification of orders; compulsory process. Upon the motion of one or both of the parents; any person granted parental rights and responsibilities with respect to a child under this section; the Department of Human Services; or any blood relative of, or any person standing in loco parentis to, the minor child, the court may alter its order concerning parental rights and responsibilities with respect to a minor child as circumstances require. The parties shall be referred to mediation as under subsection 4.

In execution of the powers given it under this Title, the court may employ any compulsory process which it

deems proper, by execution attachment or other effective form, on which costs shall be taxed as in other actions.

13. Uniform Child Custody Jurisdiction Act. The jurisdiction granted by this section to make or alter an order concerning parental rights and responsibilities with respect to a minor child shall be limited by the Uniform Child Custody Jurisdiction Act, sections 801 to 825, if another state may have jurisdiction as provided in that Act.

Sec. 6. Change of circumstance. The enactment of this Act shall not be considered a change of circumstance for the purpose of a motion to amend or modify a decree issued prior to the effective date of this Act under Title 19, section 214, 581 or 752.

Effective July 25, 1984.

CHAPTER 814

H.P. 1780 - L.D. 2345

AN ACT to Provide Policy and Guidelines
for Creation and Operation of Boards
and Commissions.

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

5 MRSA c. 379 is enacted to read:

CHAPTER 379

BOARDS, COMMISSIONS, COMMITTEES,

COUNCILS AND SIMILAR ORGANIZATIONS

§12011. Duty of Secretary of State

The Secretary of State shall compile and maintain a current list of all boards in State Government, including the name of the board, the names of its members, positions in State Government held by any member, any vacancies, the date of the board's last reported meeting, its most recent reported expenditures on members' compensation and expenses and what other information he deems necessary.