

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 25, 2002

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
2002

inconsistencies bill submitted to the First Regular Session of the 121st Legislature pursuant to Title 1, section 94, any sections necessary to correct and update any cross-references in the statutes to provisions of law repealed in this Act.

See title page for effective date.

CHAPTER 665

H.P. 1468 - L.D. 1969

An Act Concerning Custody and Visitation for Sex Offenders

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

Sec. 1. 19-A MRSA §1653, sub-§3, ¶O, as amended by PL 1999, c. 702, §2, is further amended to read:

O. A parent's prior willful misuse of the protection from abuse process in chapter 101 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may only be considered if established by clear and convincing evidence, and if it is further found by clear and convincing evidence that in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the protection from abuse process; ~~and~~

Sec. 2. 19-A MRSA §1653, sub-§3, ¶P, as enacted by PL 1999, c. 702, §3, is amended to read:

P. If the child is under one year of age, whether the child is being breast-fed; ~~and~~

Sec. 3. 19-A MRSA §1653, sub-§3, ¶Q is enacted to read:

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

Sec. 4. 19-A MRSA §1653, sub-§6-A is enacted to read:

6-A. Custody and contact limited; convictions for sexual offenses. The award of primary residence and parent-child contact with a person who has been convicted of a child-related sexual offense is governed by this subsection.

A. For the purposes of this section, "child-related sexual offense" means the following sexual offenses if, at the time of the commission of the offense, the victim was under 18 years of age:

(1) Sexual exploitation of a minor, under Title 17, section 2922;

(2) Gross sexual assault, under Title 17-A, section 253;

(3) Sexual abuse of a minor, under Title 17-A, section 254;

(4) Unlawful sexual contact, under Title 17-A, section 255;

(5) Visual sexual aggression against a child, under Title 17-A, section 256;

(6) Sexual misconduct with a child under 14 years of age, under Title 17-A, section 258; or

(7) An offense in another jurisdiction, including, but not limited to, that of a state, federal, military or tribal court, that includes the essential elements of an offense listed in subparagraph (1), (2), (3), (4), (5) or (6).

B. A court may award primary residence of a minor child or parent-child contact with a minor child to a parent who has been convicted of a child-related sexual offense only if the court finds that contact between the parent and child is in the best interest of the child and that adequate provision for the safety of the child can be made.

C. In an order of parental rights and responsibilities, a court may require that parent-child contact between a minor child and a person convicted of a child-related sexual offense may occur only if there is another person or agency present to supervise the contact. If the court allows a family or household member to supervise parent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

(1) Minimize circumstances when the family of the parent who is a sex offender

or sexually violent predator would be supervising visits;

(2) Ensure that contact does not damage the relationship with the parent with whom the child has primary physical residence;

(3) Ensure the safety and well-being of the child; and

(4) Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

Sec. 5. 19-A MRSA §1803, sub-§3, ¶¶I and J, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, are amended to read:

I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods; ~~and~~

J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; ~~and~~

Sec. 6. 19-A MRSA §1803, sub-§3, ¶K is enacted to read:

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

Sec. 7. 19-A MRSA §1803, sub-§7 is enacted to read:

7. Supervision required; convictions for sexual offenses. Notwithstanding any other provision of this chapter, the court may award a grandparent who is convicted of a child-related sexual offense visitation with a minor grandchild only if the court finds that contact between the grandparent and the child is in the best interest of the child and that adequate provision for the safety of the child can be made. For purposes of this section, "child-related sexual offense" has the same meaning as in section 1653, subsection 6-A.

The court may require that visitation may occur only if there is another person or agency present to supervise visitation. If the court allows a family or household member to supervise grandparent-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

A. Minimize circumstances when the family of the grandparent who is a sex offender or sexually violent predator would be supervising visits;

B. Ensure the safety and well-being of the child; and

C. Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

See title page for effective date.

CHAPTER 666

S.P. 722 - L.D. 1924

An Act to Support a Continuum of Quality Long-term Care Services

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation must be enacted as an emergency measure to ensure ongoing, continual access to nursing facilities with fully qualified personnel; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

PART A

Sec. A-1. 22 MRSA §1708, sub-§3, as amended by PL 1995, c. 696, Pt. A, §§32 and 33, is further amended to read:

3. Compensation for nursing homes. A nursing home, as defined under section 1812-A, or any portion of a hospital or institution operated as a nursing home, when the State is liable for payment for care, must be reimbursed at a rate established by the Department of Human Services pursuant to this subsection. The department may not establish a so-called "flat rate." This subsection applies to all funds, including federal funds, paid by any agency of the State to a nursing home for patient care. The department shall establish rules concerning reimbursement that:

A. Take into account the costs of providing care and services in conformity with applicable state and federal laws, rules, regulations and quality and safety standards;