

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

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

---

---

**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

**3. Assignment to new holder.** Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

**4. Assignment by holder; removal and re-  
placement of holder.** Except as otherwise provided in an environmental covenant:

A. A holder may not assign its interest without consent of the other parties; and

B. A holder may be removed and replaced by agreement of the other parties specified in subsection 1.

**5. Vacancy filled by court.** A court of competent jurisdiction may fill a vacancy in the position of holder.

**§3011. Enforcement of environmental covenant**

**1. Civil action.** A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

A. A party to the covenant unless the agency determines otherwise for good cause at the time the environmental covenant is created, but in that event the party has no liability for any violation of the covenant by others;

B. The agency or, if it is not the agency, the department;

C. Any person to whom the covenant expressly grants power to enforce;

D. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

E. A municipality or other unit of local government in which the real property subject to the covenant is located.

**2. Effect or regulatory authority.** This chapter does not limit the regulatory authority of the agency or the department under any law other than this chapter with respect to an environmental response project.

**3. Liability for environmental remediation.** A person is not responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

**§3012. Uniformity of application and construction**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**§3013. Relation to federal Electronic Signatures in Global and National Commerce Act**

This chapter modifies, limits or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. but does not modify, limit or supersede Section 101 of that Act, 15 United States Code, Section 7001(a) or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 United States Code, Section 7003(b).

**Sec. 2. Appropriations and allocations.**

The following appropriations and allocations are made.

ENVIRONMENTAL PROTECTION, DEPARTMENT OF  
**Remediation and Waste Management 0247**

Initiative: Provides for costs associated with environmental covenants.

OTHER SPECIAL REVENUE		
FUNDS	2005-06	2006-07
All Other	\$0	\$30,000
OTHER SPECIAL REVENUE		
FUNDS TOTAL	\$0	\$30,000

See title page for effective date.

**CHAPTER 371**

**S.P. 491 - L.D. 1402**

**An Act To Provide Guidelines,  
Standards and Rights for Children  
and the Guardians Who Care for  
Them**

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

**Sec. 1. 18-A MRSA §5-101, sub-§§(1-A),  
(1-B) and (1-C) are enacted to read:**

(1-A) The "best interest of the child" is determined according to this subsection.

(a) In determining the best interest of the child the court shall consider the following factors:

(1) The wishes of the party or parties as to custody;

(2) The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference;

(3) The child's primary caregiver;

(4) The bonding and attachment between each party and the child;

(5) The interaction and interrelationship of the child with a party or parties, siblings and any other person who may significantly affect the child's best interest;

(6) The child's adjustment to home, school and community;

(7) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;

(8) The permanence, as a family unit, of the existing or proposed home;

(9) The mental and physical health of all individuals involved;

(10) The child's cultural background;

(11) The capacity and disposition of the parties to give the child love, affection and guidance and to continue educating and raising the child in the child's culture and religion or creed, if any;

(12) The effect on the child of the actions of an abuser if related to domestic violence that has occurred between the parents or other parties; and

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

(b) The court may not consider any one of the factors set out in paragraph (a) to the exclusion of all others;

(1-B) "De facto guardian" means an individual with whom, within the 24 months immediately preceding the filing of a petition under section 5-204, subsection (d), a child has resided for the following applicable period and during which period there has been a demonstrated lack of consistent participation by the parent or legal custodian:

(a) If the child at the time of filing the petition is under 3 years of age, 6 months or more, which need not be consecutive; or

(b) If the child at the time of filing the petition is at least 3 years of age, 12 months or more, which need not be consecutive.

"De facto guardian" does not include an individual who has a guardian's powers delegated to the individual by a parent or guardian of a child under section 5-104, adopts a child under Article 9 or has a child

placed in the individual's care under Title 22, chapter 1071;

(1-C) "Demonstrated lack of consistent participation" means refusal or failure to comply with the duties imposed upon a parent by the parent-child relationship, including but not limited to providing the child necessary food, clothing, shelter, health care, education, a nurturing and consistent relationship and other care and control necessary for the child's physical, mental and emotional health and development.

In determining whether there has been a demonstrated lack of consistent participation in the child's life by the parent or legal custodian, the court shall consider at least the following factors:

(a) The intent of the parent, parents or legal custodian in placing the child with the person petitioning as a de facto guardian;

(b) The amount of involvement the parent, parents or legal custodian had with the child during the parent's, parents' or legal custodian's absence;

(c) The facts and circumstances of the parent's, parents' or legal custodian's absence;

(d) The parent's, parents' or legal custodian's refusal to comply with conditions for retaining custody set forth in any previous court orders; and

(e) Whether the nonconsenting parent, parents or legal custodian was previously prevented from participating in the child's life as a result of domestic violence or child abuse or neglect.

Serving as a member of the United States Armed Forces may not be considered demonstration of lack of consistent participation;

**Sec. 2. 18-A MRSA §5-204**, as amended by PL 2001, c. 554, §2 and PL 2003, c. 689, Pt. B, §§6 and 7, is further amended to read:

**§5-204. Court appointment of guardian of minor; conditions for appointment**

The court may appoint a guardian or coguardians for an unmarried minor if:

(a) All parental rights of custody have been terminated or suspended by circumstance or prior court order;

(b) Each living parent whose parental rights and responsibilities have not been terminated or the person who is the legal custodian of the unmarried minor consents to the guardianship and the court finds that

the consent creates a condition that is in the best interest of the child; ~~or~~

(c) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by clear and convincing evidence that the person or persons have failed to respond to proper notice or a living situation has been created that is at least temporarily intolerable for the child even though the living situation does not rise to the level of jeopardy required for the final termination of parental rights, and that the proposed guardian will provide a living situation that is in the best interest of the child; ~~or~~

(d) The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a preponderance of the evidence that there is a de facto guardian and a demonstrated lack of consistent participation by the nonconsenting parent or legal custodian of the unmarried minor. The court may appoint the de facto guardian as guardian if the appointment is in the best interest of the child.

A guardian appointed by will as provided in section 5-202 whose appointment has not been prevented or nullified under section 5-203 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding.

If a proceeding is brought under subsection (c) ~~or subsection (d)~~, the nonconsenting parent or legal custodian is entitled to court-appointed legal counsel if indigent. In a contested action, the court may also appoint counsel for any indigent de facto guardian, guardian or petitioner when a parent or legal custodian has counsel.

If a proceeding is brought under subsection (b) ~~or~~ subsection (c) ~~or subsection (d)~~, the court may order a parent to pay child support in accordance with Title 19-A, Part 3. When the Department of Health and Human Services provides child support enforcement services, the Commissioner of Health and Human Services may designate employees of the department who are not attorneys to represent the department in court if a hearing is held. The commissioner shall ensure that appropriate training is provided to all employees who are designated to represent the department under this paragraph.

If the court appoints a limited guardian, the court shall specify the duties and powers of the guardian, as required in section 5-105, and the parental rights and responsibilities retained by the parent of the minor.

**Sec. 3. 18-A MRSA §5-206**, as amended by PL 1993, c. 686, §2 and affected by §13, is further amended to read:

**§5-206. Court appointment of guardian of minor; qualifications; priority of minor's nominee**

The court may appoint as guardian any person, or as coguardians more than one person, whose appointment is in the best ~~interests~~ interest of the minor. The court shall set forth in the order of appointment the basis for determining that the appointment is in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor is 14 years of age or older, unless the court finds the appointment contrary to the best ~~interests~~ interest of the minor. The court may not appoint a guardian for a minor child who will be removed from this State for the purpose of adoption.

**Sec. 4. 18-A MRSA §5-211, sub-§(b)**, as enacted by PL 1979, c. 540, §1, is amended to read:

(b) If the court located where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, in this or another state, and after consultation with that court determine whether to retain jurisdiction or transfer ~~he~~ the proceedings to the other court, whichever is in the best interest of the ward. A copy of any order accepting a resignation or removing a guardian ~~shall~~ must be sent to the court in which acceptance of appointment is filed.

**Sec. 5. 18-A MRSA §5-212, sub-§(d)**, as enacted by PL 1995, c. 623, §2, is amended to read:

(d) The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward. The guardian petitioner has the burden of showing by a preponderance of the evidence that ~~continuation~~ termination of the guardianship is in the best interest of the ward. If the court does not terminate the guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances.

**Sec. 6. 18-A MRSA §5-212, sub-§(e)** is enacted to read:

(e) In a contested action, the court may appoint counsel for any indigent guardian or petitioner.

See title page for effective date.