



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 1030

H.P. 765

House of Representatives, March 10, 2021

**An Act To Expand Courts' Authority To Protect Children When a
Parent Has Been Awarded Sole Parental Rights and Responsibilities**

Reported by Representative HARNETT of Gardiner 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 "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

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

2 **Sec. 1. 18-C MRSA §5-204, sub-§2, ¶C**, as enacted by PL 2017, c. 402, Pt. A, §2
3 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

4 C. By clear and convincing evidence that the parents are unwilling or unable to
5 exercise their parental rights, including but not limited to the following situations:

6 (1) The parent is currently unwilling or unable to meet the minor's needs and that
7 will have a substantial adverse effect on the minor's well-being if the minor lives
8 with the parent; ~~or~~

9 (2) The parent has failed, without good cause, to maintain a parental relationship
10 with the minor, including but not limited to failing to maintain regular contact with
11 the minor for a length of time that evidences an intent to abandon the minor; or

12 (3) A prior court order concerning the minor granted another parent, who is now
13 deceased, exclusive parental rights and responsibilities with respect to all aspects
14 of the minor's welfare without reserving for the parent who is now the respondent
15 in the guardianship proceeding any rights to make decisions, to have access to
16 records or to have contact with the minor and:

17 (a) Such order was in effect at the time of the death of the parent awarded
18 exclusive parental rights and responsibilities; and

19 (b) There is neither a substantial change in circumstances between the time of
20 the entry of the order and the parent's death nor other facts that would render a
21 finding based on the order to be inequitable or unjust.

22 **Sec. 2. 19-A MRSA §1658**, as repealed and replaced by PL 2015, c. 427, §1, is
23 amended to read:

24 **§1658. Termination of parental rights and responsibilities ~~in cases involving sexual~~**
25 **~~assault~~**

26 ~~This section applies to the termination of parental rights and responsibilities with~~
27 ~~respect to a specific child conceived as a result of an act of sexual assault by the parent of~~
28 ~~that child.~~

29 **1. Petitioner.** ~~The~~ A petition for termination of a parent's parental rights and
30 responsibilities with respect to a specific child may be filed by ~~the other another~~ parent or,
31 ~~if the other parent is a minor,~~ the parent or guardian of ~~the other parent~~ a child's minor
32 parent on any grounds set forth in subsection 3. A parent may not file a petition under this
33 section to terminate the parent's own parental rights and responsibilities.

34 **1-A. Filing and contents of petition.** A petition to terminate parental rights and
35 responsibilities must be filed in the District Court and in the same case as a prior
36 adjudication of parental rights and responsibilities, if any. The petition must be sworn and
37 must include at least the following:

38 A. The name and date and place of birth of the child;

39 B. The name and address of the petitioner and the nature of the petitioner's relationship
40 to the child;

41 C. The name of each of the child's parents;

1 D. A summary statement of the alleged facts that the petitioner believes constitute
2 grounds for termination under subsection 2;

3 E. A statement of the effects of a termination order; and

4 F. A statement that the parent whose rights and responsibilities are the subject of the
5 petition to terminate parental rights and responsibilities is entitled to legal counsel in
6 the termination proceedings and that, if the parent wants an attorney and is unable to
7 afford one, the parent should contact the court as soon as possible to request appointed
8 counsel.

9 **2. Petition Grounds for petition.** The petitioner may file a petition with the District
10 Court that requests the termination of the parental rights and responsibilities of the parent
11 and alleges following allegations, if proven, are sufficient grounds to terminate a parent's
12 parental rights and responsibilities under this section:

13 A. ~~That the~~ The parent was convicted of a crime involving sexual assault, as defined
14 in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction,
15 that resulted in the conception of the child; ~~or~~

16 B. ~~That the~~ The child was conceived as a result of an act of sexual assault, as defined
17 in Title 17-A, section 253, 254 or 556, or a comparable crime in another jurisdiction;
18 or

19 C. A final order, other than in a protection from abuse matter under chapter 101, that
20 has been in effect for at least 12 months grants the petitioner exclusive parental rights
21 and responsibilities with respect to all aspects of the child's welfare, with the exception
22 of the right and responsibility for support, without reserving for the parent any rights
23 to make decisions, to have access to records or to have contact with the child, and
24 termination of the parent's parental rights and responsibilities is necessary to protect
25 the child from serious harm or the threat of serious harm.

26 **2-A. Procedure on petition to terminate parental rights and responsibilities.** Once
27 a petition to terminate parental rights and responsibilities is filed, the following procedure
28 applies.

29 A. The court shall appoint an attorney for a parent who is the subject of a petition to
30 terminate parental rights and responsibilities under this section and who is indigent. In
31 a contested action, the court may also appoint counsel for any indigent petitioner who
32 files a petition under this section when the parent who is the subject of the petition is
33 represented by counsel.

34 B. The court shall appoint a guardian ad litem for the child if the petition to terminate
35 parental rights and responsibilities is brought under subsection 2, paragraph C. The
36 appointment may be made at any time, but the court shall make every effort to make
37 the appointment as soon as possible after the commencement of the proceeding.

38 C. The court may hold a status conference prior to scheduling a hearing on the petition
39 to terminate parental rights and responsibilities.

40 D. The court may refer the parties to mediation prior to conducting a hearing on a
41 petition to terminate parental rights and responsibilities.

42 E. A parent may consent to an order terminating the parent's rights and responsibilities
43 after a judge has fully explained the effects of the termination order and if such consent

1 is written and voluntarily and knowingly executed in court. A parent's consent to the
2 order is not a sufficient basis to enter an order in the absence of the findings required
3 in subsection 3-A and any other applicable provisions of this section.

4 F. The federal Indian Child Welfare Act of 1978, United States Code, Title 25, Section
5 1901 et seq., governs all proceedings under this section that pertain to an Indian child
6 as defined in that Act.

7 ~~**3. Termination.** Except as provided in subsection 4, if the petitioner proves the~~
8 ~~allegation in subsection 2, paragraph A by a preponderance of the evidence, the court shall~~
9 ~~terminate the parental rights and responsibilities of the parent. If the petitioner proves the~~
10 ~~allegation in subsection 2, paragraph B by clear and convincing evidence, the court may~~
11 ~~terminate the parental rights and responsibilities of the parent.~~

12 **3-A. Termination.** The court:

13 A. Shall order termination of the parent's parental rights and responsibilities if the
14 court finds based on a preponderance of the evidence that the petitioner has proven the
15 allegations in subsection 2, paragraph A unless the court determines that the exception
16 in subsection 4 applies; or

17 B. May order termination of the parent's parental rights and responsibilities if the court
18 finds based on clear and convincing evidence:

19 (1) That the petitioner has proven the allegations in subsection 2, paragraph B; or

20 (2) That the petitioner has proven the allegations in subsection 2, paragraph C and,
21 if so, that the termination is also in the best interest of the child. Evidence that
22 termination is necessary to protect the child from harm or threat of serious harm
23 may include, but is not limited to, proof of:

24 (a) The parent's conduct demonstrating an intent to permanently forgo all
25 parental duties or relinquish parental claims regarding the child; or

26 (b) The parent's acts of abuse, as defined in section 4002, subsection 1, upon
27 the petitioner or a minor child in the parent's or petitioner's household.

28 Except as provided in this section or in Title 18-C, section 9-204, a court may not terminate
29 the parental rights and responsibilities of a parent on a petition filed by another parent or
30 the parent or guardian of a child's minor parent.

31 **4. Exception.** The court is not required to terminate the parental rights and
32 responsibilities of a parent convicted of gross sexual assault under Title 17-A, section 253,
33 subsection 1, paragraph B that resulted in the conception of the child if:

34 A. The parent or guardian of the other parent filed the petition;

35 B. The other parent informs the court that the sexual act was consensual; and

36 C. The other parent opposes the termination of the parental rights and responsibilities
37 of the parent convicted of the gross sexual assault.

38 **5. Effects of termination order.** An order terminating parental rights and
39 responsibilities under this section has the effects set forth in Title 22, section 4056.

40 **Sec. 3. 22 MRSA §4052, sub-§1,** as amended by PL 1997, c. 715, Pt. B, §12, is
41 further amended to read:

1 **1. Petitioner.** A termination petition may be brought by the ~~eustodian~~ custodial parent
2 of the child, by the parent or guardian of another parent of the child if that parent is a minor,
3 by a person who has filed a petition to adopt the child pursuant to Title 18-C, Article 9 or
4 by the department. If the petitioner is a parent of the child or a parent or guardian of another
5 parent of the child if that parent is a minor, the court shall follow the requirements of Title
6 19-A, section 1658. If the petitioner is also petitioning to adopt the child, the court shall
7 follow the requirements of Title 18-C, section 9-204.

8 **Sec. 4. 22 MRSA §4052, sub-§3,** as amended by PL 1981, c. 369, §14, is further
9 amended to read:

10 **3. Contents of petition.** A termination petition ~~shall~~ must be sworn and ~~shall~~ must
11 include at least the following:

- 12 A. The name, date and place of birth and municipal residence, if known, of the child;
- 13 B. The name and address of the petitioner and the nature of ~~his~~ the petitioner's
14 relationship to the child;
- 15 C. The name and municipal residence, if known, of each of the child's parents;
- 16 D. The names and address of the guardian ad litem of the child in ~~the~~ any related child
17 protection proceeding, parental rights and responsibilities proceeding or adoption
18 proceeding;
- 19 E. A summary statement of the facts ~~which~~ that the petitioner believes constitute the
20 basis for the request for termination;
- 21 F. An allegation ~~which~~ that is sufficient for termination;
- 22 G. A statement of the effects of a termination order; and
- 23 H. A statement that the parents are entitled to legal counsel in the termination
24 proceedings and that, if they want an attorney and are unable to afford one, they should
25 contact the court as soon as possible to request appointed counsel.

26 **Sec. 5. 22 MRSA §4055, sub-§1,** as amended by PL 2017, c. 402, Pt. C, §69 and
27 affected by PL 2019, c. 417, Pt. B, §14, is further amended to read:

28 **1. Grounds.** The court may order termination of parental rights if:

29 A. One of the following conditions has been met:

30 (1) Custody has been removed from the parent under:

- 31 (a) Section 4035 or 4038;
- 32 (b) Title 19-A, section 1502 or 1653;
- 33 (c) Section 3792 prior to the effective date of this chapter; or
- 34 (d) Title 15, section 3314, subsection 1, paragraph C-1; or

35 (2) The petition has been filed as part of an adoption proceeding in Title 18-C,
36 Article 9 or by a parent of the child or a parent or guardian of another parent of the
37 child if that parent is a minor pursuant to Title 19-A, section 1658; and

38 B. Either:

1 (1) The parent consents to the termination. ~~Consent shall be after a judge has fully~~
2 explained the effects of a termination order and such consent is written and
3 voluntarily and knowingly executed in court before a judge. The judge shall
4 explain the effects of a termination order; ~~or~~

5 (2) The court finds, based on clear and convincing evidence, that:

6 (a) Termination is in the best interest of the child; and

7 (b) Either:

8 (i) The parent is unwilling or unable to protect the child from jeopardy
9 and these circumstances are unlikely to change within a time which is
10 reasonably calculated to meet the child's needs;

11 (ii) The parent has been unwilling or unable to take responsibility for the
12 child within a time which is reasonably calculated to meet the child's
13 needs;

14 (iii) The child has been abandoned; or

15 (iv) The parent has failed to make a good faith effort to rehabilitate and
16 reunify with the child pursuant to section 4041-; or

17 (3) In the case of a petition brought as part of an adoption proceeding pursuant to
18 Title 18-C, Article 9 or by a parent of the child or a parent or guardian of another
19 parent of the child if that parent is a minor pursuant to Title 19-A, section 1658,
20 the court finds that the applicable standards for termination of parental rights have
21 been proven.

22 SUMMARY

23 This legislation is proposed by the Family Law Advisory Commission pursuant to the
24 Maine Revised Statutes, Title 19-A, section 354, subsection 2.

25 This bill expands courts' authority to protect children when a parent has been awarded
26 sole parental rights and responsibilities in 2 ways. First, it amends the Maine Uniform
27 Probate Code to ensure the court has authority to appoint a guardian for a minor upon the
28 death of the parent who was awarded exclusive parental rights and responsibilities. Second,
29 it provides a process to allow, in very limited situations, one parent to file a petition to
30 terminate another parent's parental rights and responsibilities outside of an adoption
31 proceeding.

32 The Maine Uniform Probate Code currently allows a court to appoint a guardian for a
33 minor when the court finds the appointment is in the best interest of the minor and the court
34 finds by clear and convincing evidence that the parents are unwilling or unable to exercise
35 their parental rights and responsibilities. The law provides 2 examples of situations in
36 which the parents are unable or unwilling to exercise their parental rights and
37 responsibilities. The bill adds a 3rd example: when the parent to whom a court has awarded
38 exclusive parental rights and responsibilities dies and the court finds by clear and
39 convincing evidence that there is neither a substantial change in circumstances between the
40 time of the order and the parent's death nor other facts that would render a finding based
41 on the order to be inequitable or unjust. Current law provides that when one parent dies,
42 all parental rights and responsibilities pertaining to a child devolve upon the surviving

1 parent. The bill allows a court to appoint a guardian if the deceased parent had been
2 awarded exclusive parental rights and responsibilities, with the now-surviving parent
3 having been given no rights of contact, access to records or decision making, if the order
4 was in effect at the time of the parent's death. The court must find that clear and convincing
5 evidence exists to show that there is neither a substantial change in circumstances between
6 the entry of the exclusive parental rights and responsibilities order and the parent's death
7 nor that other facts exist that would render a finding based on the order to be inequitable or
8 unjust.

9 In current law, Title 19-A, section 1658 allows a petition to terminate the parental rights
10 and responsibilities of a parent who committed sexual assault and the sexual assault
11 resulted in the conception of a child. The bill allows a petition to be filed to terminate the
12 parental rights and responsibilities of a parent in another context: when a final court order
13 awarded exclusive parental rights and responsibilities to another parent and that order has
14 been in effect at least 12 months and the petition alleges that termination of the parent's
15 rights and responsibilities is necessary to protect the child from serious harm or the threat
16 of serious harm. The order must have awarded exclusive parental rights and responsibilities
17 with respect to all aspects of the child's welfare, with the possible exception of the right
18 and responsibility for support, without reserving for the parent any rights to make decisions,
19 to have access to records or to have contact with the child.

20 The bill allows the parent of a child to file a petition to terminate the parental rights
21 and responsibilities of another parent of the child. If the child's parent is a minor, the parent
22 or guardian of the parent who is a minor may file a termination petition.

23 This bill clarifies the procedure for the termination of parental rights and
24 responsibilities once a petition is filed. The court must appoint an attorney for a parent
25 who is the subject of a termination petition and is indigent. If the action is contested and
26 the parent who is the subject of the petition is represented by counsel, then the court may
27 appoint an attorney for any indigent petitioner.

28 If the petition alleges that termination of parental rights and responsibilities is
29 necessary to protect the child from serious harm or threat of serious harm and an order
30 awarding exclusive parental rights and responsibilities has been in effect at least 12 months,
31 the court shall appoint a guardian ad litem.

32 A parent may consent to an order terminating the parent's rights and responsibilities
33 after a judge has fully explained the effects of a termination order and if such consent is
34 written and voluntarily and knowingly executed in court. Even if a parent consents to the
35 termination of that parent's rights and responsibilities, the court must nevertheless still
36 make the required findings. For a petition that is based on an exclusive order of parental
37 rights and responsibilities and that alleges that termination is necessary to protect the child
38 from serious harm or the threat of serious harm, the petitioner must prove by clear and
39 convincing evidence the allegations as well as that termination is in the best interest of the
40 child. Evidence that termination is necessary to protect the child from harm or threat of
41 serious harm may include, but is not limited to, proof of the parent's conduct demonstrating
42 an intent to permanently forgo all parental duties or relinquish parental claims regarding
43 the child or proof of the parent's acts of abuse, as defined in the child protection laws, upon
44 the petitioner or a minor child in the parent's or petitioner's household.

1 The bill provides that, except as provided in Title 19-A, section 1658 and the adoption
2 laws in Title 18-C, a court may not terminate the parental rights and responsibilities of a
3 parent on a petition filed by another parent or the parent or guardian of a child's parent who
4 is a minor.

5 The bill amends the child protection laws to make consistent who may file a petition
6 to terminate the parental rights to a child. The requirements set out in the bill apply when
7 a parent or the parent or guardian of a minor parent is petitioning to terminate another
8 parent's parental rights and responsibilities, but if the petitioner is also petitioning to adopt
9 the child, the requirements of the adoption laws in Title 18-C, Article 9 apply.