

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-ONE

—
H.P. 765 - L.D. 1030

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

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

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

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

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

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

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

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

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

Sec. 2. 19-A MRSA §1658, as repealed and replaced by PL 2015, c. 427, §1, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. A parent may consent to an order terminating the parent's rights and responsibilities after a judge has fully explained the effects of the termination order and if such consent is written and voluntarily and knowingly executed in court. A parent's consent to the order is not a sufficient basis to enter an order in the absence of the findings required in subsection 3-A and any other applicable provisions of this section.

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

G. Proceedings and records under this section are not public unless the court orders otherwise. The Supreme Judicial Court may adopt rules governing requests for access to these proceedings and records.

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

3-A. Termination. The court:

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

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

- (1) That the petitioner has proven the allegations in subsection 2, paragraph B; or
- (2) That the petitioner has proven the allegations in subsection 2, paragraph C and, if so, that the termination is also in the best interest of the child. Evidence that

termination is necessary to protect the child from harm or threat of serious harm may include, but is not limited to, proof of:

(a) The parent's conduct demonstrating an intent to permanently forgo all parental duties or relinquish parental claims regarding the child when that conduct results in harm or threat of harm to the child; or

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

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

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

- A. The parent or guardian of the other parent filed the petition;
- B. The other parent informs the court that the sexual act was consensual; and
- C. The other parent opposes the termination of the parental rights and responsibilities of the parent convicted of the gross sexual assault.

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

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

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

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

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

- A. The name, date and place of birth and municipal residence, if known, of the child;
- B. The name and address of the petitioner and the nature of ~~his~~ the petitioner's relationship to the child;
- C. The name and municipal residence, if known, of each of the child's parents;
- D. The names and address of the guardian ad litem of the child in ~~the~~ any related child protection proceeding, parental rights and responsibilities proceeding or adoption proceeding;
- E. A summary statement of the facts ~~which~~ that the petitioner believes constitute the basis for the request for termination;

- F. An allegation ~~which~~ that is sufficient for termination;
- G. A statement of the effects of a termination order; and
- H. A statement that the parents are entitled to legal counsel in the termination proceedings and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel.

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

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

A. One of the following conditions has been met:

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

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

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

B. Either:

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

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

- (a) Termination is in the best interest of the child; and
- (b) Either:
 - (i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;
 - (ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;
 - (iii) The child has been abandoned; or
 - (iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041; or

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