

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Require Shared Parenting of Minor Children When the Parents Separate

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

Sec. 1. 19-A MRSA §1653, sub-§1, ¶C, as amended by PL 2009, c. 593, §1, is further amended to read:

C. The Legislature finds and declares that, except when a court determines that ~~the best interest of a child would not be served~~ there is proof of domestic abuse, drug use or neglect in the family, it is the public policy of this State to ~~assure~~ ensure that minor children ~~of~~ have frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to ~~encourage~~ order parents to share the rights and responsibilities of child rearing in order to effect this policy.

Sec. 2. 19-A MRSA §1653, sub-§2, ¶A, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

A. When 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~~ proof of domestic abuse, drug use or neglect in the family. The court shall state in its decision the reasons for not ordering a shared parental rights and responsibilities award agreed to by the parents.

Sec. 3. 19-A MRSA §1653, sub-§3, as amended by PL 2009, c. 593, §§2 to 5, is further amended to read:

3. Best interest of child; presumption of shared parenting. The court, in making an award of parental rights and responsibilities with respect to a child, shall apply the standard of the best interest of the child. The court shall start with the presumption that shared parenting is in the best interest of the child unless there is proof of domestic abuse, drug use or neglect in the family. In making decisions regarding the child's residence and parent-child contact, the court shall consider as primary the safety and well-being 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;
- L. The existence of domestic abuse between the parents, in the past or currently, and how that abuse affects:
 - (1) The child emotionally;
 - (2) The safety of the child; and
 - (3) The other factors listed in this subsection, which must be considered in light of the presence of past or current domestic abuse;
- M. The existence of any history of child abuse by a parent;
- N. All other factors having a reasonable bearing on the physical and psychological well-being of the child;
- 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;
- P. If the child is under one year of age, whether the child is being breast-fed;
- 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;

R. If there is a person residing with a parent, whether that person:

- (1) Has been convicted of a crime under Title 17-A, chapter 11 or 12 or a comparable crime in another jurisdiction;
- (2) Has been adjudicated of a juvenile offense that, if the person had been an adult at the time of the offense, would have been a violation of Title 17-A, chapter 11 or 12; or
- (3) Has been adjudicated in a proceeding, in which the person was a party, under Title 22, chapter 1071 as having committed a sexual offense; and

S. Whether allocation of some or all parental rights and responsibilities would best support the child's safety and well-being.

SUMMARY

This bill requires the court to order shared parenting when parents of minor children separate unless the court finds proof of domestic abuse, drug use or neglect in the family. It requires the court to start with the presumption of shared parenting when determining the best interest of the child and to incorporate into the order the sharing of parental rights and responsibilities agreed to by the parents unless there is proof of domestic abuse, drug use or neglect in the family.