

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

An Act Regarding Guardianships

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

Sec. 1. 18-A MRSA §5-204, sub-§(d), as enacted by PL 2005, c. 371, §2, is amended to read:

(d). The person or persons whose consent is required under subsection (b) do not consent, but the court finds by a ~~preponderance of the~~ clear and convincing 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.

SUMMARY

This bill changes, pursuant to a Law Court decision, the law regarding the appointment of a guardian for an unmarried minor. Under the current law, the probate court may appoint a guardian without the consent of the minor's parents whose rights have not been terminated or the minor's legal custodian when 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. The bill changes the evidentiary standard from a preponderance of the evidence to clear and convincing evidence.