

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 Amend the Grandparents Visitation Act**

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

**Sec. 1. 19-A MRSA §1802, sub-§1**, as amended by PL 2015, c. 296, Pt. C, §19 and affected by Pt. D, §1, is further amended to read:

**1. Grandparent.** "Grandparent" is a parent of a child's parent. "Grandparent" includes a parent of a child's parent whose parental rights have been terminated pursuant to Title 18-A, section 9-204 or Title 22, chapter 1071, subchapter 6, ~~but only until the child's adoption.~~

**Sec. 2. 19-A MRSA §1803, sub-§1**, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

**Sec. 3. 19-A MRSA §1803, sub-§1-A** is enacted to read:

**1-A. Standing to petition for visitation rights.** A grandparent of a minor child may petition the court for reasonable rights of visitation if:

A. All parties to a proceeding regarding a petition under this section, including a parent, legal guardian, grandparent, counselor and guardian ad litem of the child, have undergone mediation together at least once a week for 4 consecutive weeks with a mediator or other qualified person and have failed to reach a visitation agreement before the petition is filed. A petition under this paragraph must include a written summary of the mediation provided by the mediator. The grandparents and parents undergoing mediation under this paragraph must share the expense of the mediation; or

B. Mediation has not been undertaken under paragraph A and a parent or legal guardian of the child has died, is missing, is in a persistent vegetative state or is an incapacitated person and the grandparent avers that:

(1) The prior relationship between the grandparent and the child was loving, caring and encouraging and bolstered the child's sense of belonging, history and family continuity;

(2) The child is old enough to express and expresses the child's desire to have visitation with the grandparent; or

(3) There is no valid and substantive reason to deny the reasonable visitation rights for the grandparent.

For purposes of this paragraph, "incapacitated person" has the same meaning as Title 18-A, section 5-101, subsection 1.

**Sec. 4. 19-A MRSA §1803, sub-§2**, as amended by PL 2005, c. 360, §3, is further amended to read:

**2. Procedure.** If the petition is based upon subsection 1-A, paragraph A, the grandparent shall file the petition and the written summary of the mediation with the court and shall serve a copy of both on at least one of the parents or legal guardians of the child. The following procedures apply to petitions for rights of visitation or access under subsection ~~1-A~~, paragraph B ~~or C~~, subparagraph (1), (2) or (3).

A. The grandparent must file with the petition for rights of visitation or access an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child.

B. The parent or legal guardian of the child may file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent.

B-1. The grandparent may file a written response to the response in paragraph B within 21 days of the filing of the response in paragraph B. When the written response under this paragraph is filed with the court, the grandparent shall deliver a copy to at least one of the parents or legal guardians of the child.

C. The court shall determine on the basis of the petition ~~and~~, the affidavit ~~and any responses under paragraphs B and B-1~~ whether it is more likely than not that ~~there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made~~ a condition under subsection 1-A, paragraph B, subparagraph (1), (2) or (3) exists.

D. If the court's determination under paragraph C is in the affirmative, the court may appoint a guardian ad litem as provided in section 1507. The court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. If the court has appointed a guardian ad litem, the court shall also consider the report of the guardian ad litem. The standard for the award of reasonable rights of visitation or access is provided in subsection 3.

**Sec. 5. 19-A MRSA §1803, sub-§3, ¶J**, as amended by PL 2001, c. 665, §5, is repealed.

**Sec. 6. 19-A MRSA §1803, sub-§3, ¶K**, as enacted by PL 2001, c. 665, §6, is amended to read:

K. The existence of a grandparent's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203-;

**Sec. 7. 19-A MRSA §1803, sub-§3, ¶¶L to N** are enacted to read:

L. If a parent of the child has died, the effect on the grieving child of being denied visitation with or access to the grandparent;

M. Any evidence that the parent or legal guardian may not be considering or acting in the best interests of the child; and

N. Any other factor having a reasonable bearing on the physical and psychological well-being of the child.

**Sec. 8. 19-A MRSA §1803, sub-§7**, as enacted by PL 2001, c. 665, §7, is repealed.

**Sec. 9. 22 MRSA §4005-E, sub-§1**, as amended by PL 2007, c. 371, §2, is further amended to read:

**1. Grandparent visitation and access.** A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access under Title 19-A, chapter 59. ~~When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended pursuant to this subsection may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308.~~ Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact.

## SUMMARY

This bill amends the Grandparents Visitation Act and other provisions of law concerning grandparents by:

1. Removing the provision that terminates a grandparent's right to visitation with and access to a grandchild when that grandchild has been adopted;
2. Amends the provisions regarding standing for a grandparent to petition the court for visitation with and access to a grandchild by requiring mediation before the petition is filed, if possible;
3. Amends the provisions regarding standing for a grandparent to petition the court for visitation with and access to a grandchild when the parties are unable to accomplish mediation;
4. Includes, in the criteria included in the best interests of the child for the court to consider when ruling on a grandparent visitation petition, the effect on a grieving child who has lost a parent of being denied visitation with and access to a grandparent and any evidence that a parent or legal guardian of a child is not considering or acting in the best interests of the child; and
5. Removes the provision requiring supervision of a grandparent who is a convicted sex offender and has been granted visitation and access to a grandchild.