



128th MAINE LEGISLATURE

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Legislative Document

No. 282

H.P. 215

House of Representatives, January 31, 2017

**An Act To Support Caregivers When Children Have Been
Abandoned by Their Parents**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PICCHIOTTI of Fairfield.
Cosponsored by Representatives: BLACK of Wilton, CHACE of Durham, GUERIN of
Glenburn, HAWKE of Boothbay Harbor, MALABY of Hancock, NADEAU of Winslow,
SIROCKI of Scarborough, STROM of Pittsfield.

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

2 **Sec. 1. 18-A MRSA §5-101, sub-§(1-A), ¶(a),** as enacted by PL 2005, c. 371,
3 §1, is amended to read:

4 (a). In determining the best interest of the child the court shall consider the following
5 factors:

- 6 (1) The wishes of the party or parties as to custody;
- 7 (2) The reasonable preference of the child, if the court considers the child to be
8 of sufficient age to express preference;
- 9 (3) The child's primary caregiver;
- 10 (4) The bonding and attachment between each party and the child;
- 11 (5) The interaction and interrelationship of the child with a party or parties,
12 siblings and any other person who may significantly affect the child's best
13 interest;
- 14 (6) The child's adjustment to home, school and community;
- 15 (7) The length of time the child has lived in a stable, satisfactory environment
16 and the desirability of maintaining continuity;
- 17 (8) The permanence, as a family unit, of the existing or proposed home;
- 18 (8-A) If there has been a demonstrated lack of consistent participation by a party,
19 the current capacity and disposition of the party to comply with the duties
20 imposed upon a parent by the parent-child relationship;
- 21 (9) The mental and physical health of all individuals involved;
- 22 (10) The child's cultural background;
- 23 (11) The capacity and disposition of the parties to give the child love, affection
24 and guidance and to continue educating and raising the child in the child's culture
25 and religion or creed, if any;
- 26 (12) The effect on the child of the actions of an abuser if related to domestic
27 violence that has occurred between the parents or other parties; and
- 28 (13) All other factors having a reasonable bearing on the physical and
29 psychological well-being of the child.

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

32 (d). The person or persons whose consent is required under subsection (b) do not
33 consent, but the court finds by a preponderance of the evidence that there is a de facto
34 guardian and a demonstrated lack of consistent participation by the nonconsenting parent
35 or legal custodian of the unmarried minor. The court may appoint the de facto guardian
36 as guardian if the appointment is in the best interest of the child. The court may appoint
37 the de facto guardian as guardian over the objection of the parent or legal custodian when

1 the court finds that the parent or legal custodian is currently unwilling or unable to
2 comply with the duties imposed upon a parent by the parent-child relationship.

3 **Sec. 3. 18-A MRSA §5-212, sub-§(d)**, as amended by PL 2005, c. 371, §5, is
4 further amended to read:

5 (d). The court may not terminate the guardianship in the absence of the guardian's
6 consent unless the court finds by a preponderance of the evidence that the termination is
7 in the best interest of the ward. The petitioner has the burden of showing by a
8 preponderance of the evidence that termination of the guardianship is in the best interest
9 of the ward. If the court does not terminate the guardianship, the court may dismiss
10 subsequent petitions for termination of the guardianship unless there has been a
11 substantial change of circumstances. A party opposing the termination has the burden of
12 proving by a preponderance of the evidence that the parent is currently unfit to regain
13 custody of the minor ward. In determining whether a parent is unfit to regain custody, if
14 the guardian was appointed because of a demonstrated lack of consistent participation by
15 the parent, the court shall require the parent to show by a preponderance of the evidence
16 that the parent is willing and able to comply with the duties imposed upon a parent by the
17 parent-child relationship.

18 SUMMARY

19 This bill addresses concerns of caretaker relatives and others who take on the care
20 and custody of a child when the child's parents have essentially abandoned the child to
21 the caregiver's care and custody. When the arrangement is without a formal guardianship
22 appointment and without a power of attorney executed by the parent, the caregiver may
23 be considered a de facto guardian after sufficient time has elapsed with a demonstrated
24 lack of consistent participation by the parent. A de facto guardian may petition the court
25 to be appointed as a guardian when the parent does not consent to the appointment if the
26 court finds a demonstrated lack of consistent participation by the parent. Current law
27 provides that the duties of a parent include, but are not limited to, providing the child with
28 necessary food, clothing, shelter, health care and education and a nurturing and consistent
29 relationship and other care and control necessary for the child's physical, mental and
30 emotional health and development.

31 The bill amends the list of factors the court must consider to determine the best
32 interest of the child when deciding whether to appoint a guardian for the child to add, if
33 there has been a demonstrated lack of consistent participation by a parent, the current
34 capacity and disposition of the parent to comply with the duties imposed upon a parent by
35 the parent-child relationship.

36 The bill provides that, if the parent or legal custodian objects to the appointment of
37 the de facto guardian as the guardian for the child, the court may appoint the de facto
38 guardian as the guardian if the court finds that the parent or legal custodian is currently
39 unwilling or unable to comply with the duties imposed upon a parent by the parent-child
40 relationship.

1 The bill provides that, after the de facto guardian is appointed the guardian and the
2 parent petitions the court to terminate the guardianship, a party opposing the termination
3 has the burden of proving by a preponderance of the evidence that the parent seeking to
4 terminate the guardianship is currently unfit to regain custody of the child. In
5 determining whether a parent is unfit to regain custody, if the guardian was appointed
6 because of a demonstrated lack of consistent participation by the parent, the court shall
7 require the parent to show by a preponderance of the evidence that the parent is willing
8 and able to comply with the duties imposed upon a parent by the parent-child
9 relationship.