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An Act To Ensure Rights to Children for Caretaker Relatives

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

Sec. 1. 18-A MRSA §9-308, sub-§(e), as amended by PL 2001, c. 696, §9, is further amended to read:

(e). The department shall notify the grandparentsrelative of a child when the child is placed for adoption if the department has received notice that the grandparents-wererelative was granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section 4005-E.

Sec. 2. 19-A MRSA §1801, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§ 1801.Short title

This chapter is known and may be cited as the "GrandparentsRelatives Visitation Act."

Sec. 3. 19-A MRSA §1802, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§ 1802.Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

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

2. Aunt. "Aunt" means a biological or adoptive sister of a child's biological or adoptive parent or the spouse of a biological or adoptive brother of a child's biological or adoptive parent.

3. Relative. "Relative" means a grandparent, an aunt, an uncle or a sibling. "Relative" includes a grandparent, aunt, uncle or sibling who is related to a child's biological or adoptive 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.

4. Sibling. "Sibling" means a biological or adoptive brother or sister of a child.

5. Uncle. "Uncle" means a biological or adoptive brother of a child's biological or adoptive parent or the spouse of a biological or adoptive sister of a child's biological or adoptive parent.

Sec. 4. 19-A MRS §1803, as amended by PL 2007, c. 513, §4, is further amended to read:

§ 1803. Petition

1. Standing to petition for visitation rights. A grandparentrelative of a minor child may petition the court for reasonable rights of visitation or access if:

- A. At least one of the child's parents or legal guardians has died;
- B. There is a sufficient existing relationship between the grandparentrelative and the child; or
- C. When a sufficient existing relationship between the grandparentrelative and the child does not exist, a sufficient effort to establish one has been made.

1-A. Sufficient existing relationship; presumption. For purposes of this section, a sufficient existing relationship is presumed to exist between a child and a relative if the child has been intentionally left, without good cause, in the sole financial care and physical custody of that relative for 18 months or longer. The active military service of a parent constitutes good cause under this subsection.

2. Procedure. The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

- A. The grandparentrelative 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 grandparentrelative 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'srelative'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 grandparentrelative.
- C. The court shall determine on the basis of the petition and the affidavit 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.
- 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'srelative'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 grandparentrelative. 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.

3. Best interest of the child. The court may grant a grandparentrelative reasonable rights of visitation or access to a minor child upon finding that rights of visitation or access are in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent's rightful authority over 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 grandparents~~relative, including the amount of previous contact;
- 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 the parent and grandparentrelative to cooperate or to learn to cooperate in child care;
- I. Methods of assisting cooperation and resolving disputes and each person's willingness to use those methods;
- J. Any other factor having a reasonable bearing on the physical and psychological well-being of the child; and
- K. The existence of a ~~grandparent's~~relative's conviction for a sex offense or a sexually violent offense as those terms are defined in Title 34-A, section 11203.

4. Modification or termination. The court may modify or terminate any rights granted under this section as circumstances require. Modification or termination of rights must be consistent with this section.

5. Enforcement. The court may issue any orders necessary to enforce orders issued under this section or to protect the rights of parties.

7. Supervision required; convictions for sexual offenses. Notwithstanding any other provision of this chapter, the court may award a grandparentrelative who is convicted of a child-related sexual offense visitation with a minor ~~grandchild~~child only if the court finds that contact between the grandparentrelative and the child is in the best interest of the child and that adequate provision for the safety of the child can be made. For purposes of this section, "child-related sexual offense" has the same meaning as in section 1653, subsection 6-A.

The court may require that visitation may occur only if there is another person or agency present to supervise visitation. If the court allows a family or household member to supervise ~~grandparent-child~~grandparentrelative-child contact, the court shall establish conditions to be followed during that contact. Conditions include, but are not limited to, those that:

- A. Minimize circumstances when the family of the grandparentrelative who is a sex offender or sexually violent predator would be supervising visits;
- B. Ensure the safety and well-being of the child; and
- C. Require that supervision be provided by a person who is physically and mentally capable of supervising a visit and who does not have a criminal history or history of abuse or neglect.

8. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the grandparentrelative would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the grandparentrelative:

- A. Has been convicted of an offense listed in section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the grandparentrelative was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the grandparentrelative and the minor victim at the time of the offense; or
- B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The grandparentrelative seeking contact with the child may present evidence to rebut the presumption.

Sec. 5. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 19-A, chapter 59, in the chapter headnote, the words "visitation rights of grandparents" are amended to read "visitation rights of relatives" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

SUMMARY

Current law authorizes grandparents to petition for visitation rights to their grandchildren under certain specified conditions. This bill extends the laws governing grandparent visitation to apply to aunts, uncles, spouses of aunts and uncles, siblings and spouses of grandparents. This bill also establishes a presumption that a sufficient existing relationship exists between a child and a relative if the child has been left in the care and custody of the relative for 18 months or more.