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House of Representatives, March 12, 2015

An Act To Ensure a Continuing Home Court for Cases Involving Children

Reference to the Committee on Judiciary suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative MONAGHAN of Cape Elizabeth.
Cosponsored by Representatives: GIDEON of Freeport, HOBBS of Saco, McCREIGHT of Harpswell, NOON of Sanford.

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

2 **Sec. 1. 4 MRSA §152, sub-§5-A** is enacted to read:

3 **5-A. Concurrent jurisdiction; exclusive, continuing jurisdiction.** Except as
4 provided in paragraph A, original jurisdiction, concurrent with that of the Probate Court,
5 of actions for guardianship, adoption, change of name or other matters implicating
6 custody or other parental rights brought under Title 18-A.

7 A. The District Court has exclusive, continuing jurisdiction of any matter concerning
8 custody or other parental rights of a child, including but not limited to adoption,
9 divorce, parental rights and responsibilities, grandparents rights, protective custody,
10 change of name, guardianship, paternity, termination of parental rights and protection
11 from abuse or harassment, if:

12 (1) An interim or final order concerning the child was entered in the District
13 Court and remains in effect;

14 (2) Proceedings seeking an order under subparagraph (1) are pending in the
15 District Court; or

16 (3) A matter has been removed to the District Court from the Probate Court
17 pursuant to section 251-A, subsection 3.

18 B. The District Court presiding over any matter concerning custody or other parental
19 rights of a minor child shall require all parties to disclose whether they have
20 knowledge of any interim or final order then in effect concerning custody or other
21 parental rights of the minor child, any proceeding to seek such an order or other
22 related actions currently filed or pending before any court of this or another state,
23 including before a Probate Court. If the District Court becomes aware that it has
24 exclusive jurisdiction in such a matter, it shall notify the Probate Court and take all
25 appropriate action to facilitate a transfer of the matter from the Probate Court.

26 **Sec. 2. 4 MRSA §251** is amended to read:

27 **§251. General jurisdiction**

28 Each judge may take the probate of wills and grant letters testamentary or of
29 administration on the estates of all deceased persons who, at the time of their death,
30 where inhabitants or residents of ~~his~~ the judge's county or who, not being residents of the
31 State, died leaving estate to be administered in ~~his~~ the judge's county, or whose estate is
32 afterwards found therein; and has jurisdiction of all matters relating to the settlement of
33 such estates. ~~He~~ A judge may grant leave to adopt children, change the names of persons,
34 appoint guardians for minors and others according to law; and has jurisdiction as to
35 persons under guardianship, and as to whatever else is conferred ~~on him~~ by law, except in
36 cases in which the District Court has exclusive, continuing jurisdiction over a child
37 pursuant to section 152, subsection 5-A or matters that have been removed to the District
38 Court pursuant to section 251-A, subsection 3.

39 **Sec. 3. 4 MRSA §251-A** is enacted to read:

1 **§251-A. Other proceedings involving parental rights; transfer of jurisdiction to**
2 **District Court**

3 **1. Disclosure of orders and proceedings.** The judge of probate presiding over any
4 matter involving guardianship, adoption, change of name or other matters concerning
5 custody or other parental rights of a minor child shall require all parties to disclose
6 whether they have knowledge of any interim or final order then in effect concerning
7 custody or other parental rights of the minor child, any proceeding seeking such an order
8 or other related actions currently filed or pending before any court of this or another state.

9 **2. Transfer to District Court.** If in a matter before the Probate Court concerning a
10 child, a judge of probate becomes aware that the District Court may have issued an
11 interim or final order concerning the custody or other parental rights of a child, or may
12 have before the District Court pending proceedings seeking custody or other parental
13 rights of a child, the judge shall contact the District Court to determine whether the child
14 is under the exclusive, continuing jurisdiction of the District Court pursuant to section
15 152, subsection 5-A. If the judge of probate confirms that the District Court has such
16 jurisdiction, the judge of probate shall transfer the matter to the District Court.

17 **3. Petition by party; rules.** Upon petition by a party to a proceeding involving
18 guardianship, adoption, change of name or other matters concerning custody or other
19 parental rights of a minor child brought in the court of probate, the proceeding may be
20 removed to the District Court under such procedures as the Supreme Judicial Court may
21 by rule provide if any civil matter involving the minor child is pending or has been finally
22 adjudicated in the District Court.

23 **Sec. 4. 18-A MRSA §1-701, sub-§(a),** as enacted by PL 2001, c. 163, §1, is
24 amended to read:

25 (a). If a person desires to have that person's name changed, the person may petition
26 the judge of probate in the county where the person resides. If the person is a minor, the
27 person's legal custodian may petition in the person's behalf. If the person is a minor and
28 the District Court has exclusive, continuing jurisdiction regarding the minor pursuant to
29 Title 4, section 152, subsection 5-A, the proceeding must be filed in or transferred to the
30 District Court.

31 **Sec. 5. 18-A MRSA §5-102, sub-§(a),** as enacted by PL 1979, c. 540, §1, is
32 amended to read:

33 (a). ~~The~~ Subject to the exclusive jurisdiction of the District Court in matters
34 concerning minors as provided in Title 4, section 152, subsection 5-A, the court has
35 exclusive concurrent jurisdiction over guardianship proceedings and has jurisdiction over
36 protective proceedings to the extent provided in section 5-402.

37 **Sec. 6. 18-A MRSA §9-103,** as enacted by PL 1995, c. 694, Pt. C, §7 and affected
38 by Pt. E, §2, is amended to read:

1 **§9-103. Jurisdiction**

2 (a). The Probate Court has ~~exclusive~~ concurrent jurisdiction over the following:

- 3 (1). Petitions for adoption;
- 4 (2). Consents and reviews of withholdings of consent by persons other than a parent;
- 5 (3). Surrenders and releases;
- 6 (4). Termination of parental rights proceedings brought pursuant to section 9-204;
- 7 (5). Proceedings to determine the rights of putative fathers of children whose
- 8 adoptions or surrenders and releases are pending before the Probate Court; and
- 9 (6). Reviews conducted pursuant to section 9-205.

10 (b). The District Court has jurisdiction to conduct hearings pursuant to section 9-205.
11 The District Court has jurisdiction over any matter described in subsection (a) if the
12 proceeding concerns a child over whom the District Court has exclusive, continuing
13 jurisdiction pursuant to Title 4, section 152, subsection 5-A or any matter that has been
14 removed to District Court pursuant to Title 4, section 251-A, subsection 3.

15 **Sec. 7. 18-A MRSA §9-204, sub-§(a)**, as enacted by PL 1995, c. 694, Pt. C, §7
16 and affected by Pt. E, §2, is amended to read:

17 (a). A petition for termination of parental rights may be brought in Probate Court in
18 which an adoption petition is properly filed as part of that adoption petition except when
19 ~~a child protection proceeding is pending or is subject to review by~~ the District Court has
20 exclusive, continuing jurisdiction over the child pursuant to Title 4, section 152,
21 subsection 5-A.

22 **SUMMARY**

23 This bill extends the jurisdiction of the District Court to be concurrent with the courts
24 of probate over matters concerning custody or other parental rights of a child under the
25 Maine Revised Statutes, Title 18-A, including, but not limited to, adoption, termination of
26 parental rights, change of name and guardianship of a minor. The District Court has
27 exclusive, continuing jurisdiction over a matter concerning custody or other parental
28 rights of a child if an interim or final order concerning the child was entered in the
29 District Court and remains in effect, proceedings seeking such an order are pending in the
30 District Court or a matter has been removed to the District Court from the Probate Court.

31 This bill provides that, in any matter concerning custody or other parental rights of a
32 child, the judge of the District Court or the probate judge who is presiding require all
33 parties to disclose whether they have knowledge of any interim or final order then in
34 effect concerning custody or other parental rights of the minor child, any proceeding
35 seeking such an order or other related actions currently filed or pending before any court
36 of this or another state. If the proceeding is in a Probate Court and the judge determines
37 that the District Court has exclusive, continuing jurisdiction, the judge of probate must
38 transfer the case to the District Court.

1 Upon petition by a party to a proceeding involving guardianship, adoption, change of
2 name or other matters concerning custody or other parental rights of a minor child
3 brought in the court of probate, the proceeding may be removed to the District Court
4 under such procedures as the Supreme Judicial Court may by rule provide if any civil
5 matter involving the minor child is pending or has been finally adjudicated in the District
6 Court.