

MAINE STATE LEGISLATURE

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R.S.

L.D. 432

DATE: 5/5/99

(Filing No. H-464)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 316, L.D. 432, Bill, "An Act to Adopt the Uniform Child Custody Jurisdiction and Enforcement Act"

Amend the bill in section 3 in that part designated "§1772." in subsection 1 in the last 3 lines (page 58, lines 17 to 20 in L.D.) by striking out the following: "party from whom fees or expenses are sought establishes that the award would be clearly inappropriate" and inserting in its place the following: 'court finds that special circumstances make the award of these expenses unjust'

Further amend the bill in section 3 in that part designated "§1772." by inserting after the "Uniform Comment" (page 59, line 10 in L.D.) the following:

'MAINE COMMENT

The Maine amendment revises the standard for awarding the prevailing party expenses, including all costs, attorney's fees and other fees, to make it consistent with other provisions of Maine law. This change gives the court discretion in awarding expenses if the court finds that special circumstances make the award of all the expenses to the prevailing party unjust.'

Further amend the bill in section 3 in that part designated "§1775." by inserting after the "Uniform Comment" (page 62, line 22 in L.D.) the following:

COMMITTEE AMENDMENT

H. & S.

'MAINE COMMENT

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This section provides prosecutors with the discretion to take any lawful action to locate a child, obtain the return of a child or enforce a child custody determination if any of the specified circumstances exist. It is the intent of the Legislature that prosecutors use their authority under this section, and request the assistance of law enforcement under section 1776, as a last resort only. Use of the authority extended under this section and section 1776 may be appropriate when intervention by the prosecutor and law enforcement is unavoidable, or when intervention by prosecutors and law enforcement will reduce the volatility of a potentially dangerous situation.'

Further amend the bill by inserting before section 4 the following:

'Sec. 4. 19-A MRSA §4004, as enacted by PL 1995, c. 694, Pt. B, §2 and affected by Pt. E, §2, is amended to read:

§4004. Application of other acts

The provisions and limitations of the Uniform Child Custody Jurisdiction and Enforcement Act ~~do not~~ apply to a proceeding under this chapter unless regardless of whether it is joined with another proceeding under section 4010, subsection 2.

Sec. 5. 19-A MRSA §4007, sub-§1, ¶G, as amended by PL 1997, c. 187, §4 and affected by §5, is further amended to read:

G. Either awarding temporary custody of minor children or establishing temporary visitation rights with regard to minor children when the visitation is determined to be in the best interest of the child, or both, as determined in accordance with the best interest of the child pursuant to section 1653, subsections 3 to 6. The court's custody and visitation award ~~shall~~ is not be binding in any separate action involving an award of parental rights and responsibilities pursuant to chapter 55 or in a similar action brought in another jurisdiction exercising child custody jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act;

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1999-00

R.S.

JUDICIAL DEPARTMENT

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**Courts - Supreme, Superior, District
and Administrative**

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All Other \$2,000

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Provides funds for one-time costs associated with printing and distributing forms and manuals.'

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Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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Further amend the bill by inserting at the end before the summary the following:

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FISCAL NOTE

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1999-00

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APPROPRIATIONS/ALLOCATIONS

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General Fund \$2,000

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The Judicial Department will incur additional costs to implement this revised version of the Uniform Child Custody Jurisdiction and Enforcement Act. These costs include additional training costs, updating manuals for court clerks and judges, creating and revising several forms, additional court records and improvements to the Judicial Department's telephone capabilities to enable teleconferencing between judges. The department has requested additional General Fund appropriations of \$52,000 in fiscal year 1999-00 and \$10,000 annually beginning in fiscal year 2000-01; \$40,000 to fund the one-time costs of the telephone improvements; \$2,000 for one-time printing related expenses; and \$10,000 for on-going telephone expenses. While the improved telephone capabilities are the Judicial Department's recommended method to implement this bill, teleconferencing is not required by the bill.

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This bill includes an additional General Fund appropriation of \$2,000 in fiscal year 1999-00 to fund the one-time costs associated with printing and distributing revised manuals and forms. Funding for the teleconferencing capabilities is not included.'

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R d S

SUMMARY

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This amendment makes 3 changes to the bill.

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6 First, it revises the "prevailing party" standard in the
bill with regard to the court's discretion to award all expenses,
including attorney's fees, to the prevailing party. The Uniform
8 Child Custody Jurisdiction and Enforcement Act (UCCJEA) requires
the court to award the prevailing party all expenses unless the
10 other party establishes that the award would be clearly
inappropriate. This amendment uses the standard found elsewhere
12 in Maine law that the court shall award the prevailing party all
expenses unless the court finds that to do so would be unjust. A
14 Maine Comment is added to explain this deviation from the UCCJEA.

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Second, this amendment adds a Maine Comment explaining the
legislative intent that the prosecutor and law enforcement be
18 involved in enforcement of child custody orders only as a last
resort or to avoid a dangerous situation.

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22 Third, this amendment amends the current protection from
abuse laws to take into account the UCCJEA. It makes the law
clear that the UCCJEA applies in all protection from abuse
24 actions. It also provides that a custody order issued in a
protection from abuse action is not binding in a proceeding in
26 another jurisdiction in which the court properly exercises
jurisdiction as the best forum for determination of child custody
28 issues under the UCCJEA.

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The amendment also adds an appropriation section and a
fiscal note to the bill.