

MAINE STATE LEGISLATURE

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Date: 2/22/16

Majority
JUDICIARY

(Filing No. H- 522)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 609, L.D. 890, Bill, "An Act To Ensure a Continuing Home Court for Cases Involving Children"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

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

5-A. Actions involving minors under Title 18-A. Exclusive jurisdiction of actions for guardianship, adoption, change of name or other matters involving custody or other parental rights brought under Title 18-A if proceedings involving custody or other parental rights with respect to a minor child, including but not limited to adoption, divorce, parental rights and responsibilities, grandparents' rights, protective custody, change of name, guardianship, paternity, termination of parental rights and protection from abuse or harassment, are pending in the District Court.

A. The District Court presiding over any matter involving custody or other parental rights with respect to a minor child shall require all parties to disclose whether they have knowledge of:

(1) Any interim or final order then in effect concerning custody or other parental rights with respect to the minor child;

(2) Any proceeding involving custody or other parental rights with respect to the minor child currently filed or pending before any court of this State or another state, including before a probate court in this State; or

(3) Any other related action currently filed or pending before any court of this State or another state, including before a probate court in this State.

B. If the District Court presiding over any matter involving custody or other parental rights with respect to a minor child becomes aware that a proceeding for guardianship, adoption or change of name or another matter involving custody or other parental rights with respect to the minor child is pending in a probate court in

COMMITTEE AMENDMENT

1 this State, the District Court shall notify the Probate Court and take appropriate action
2 to facilitate a transfer of the matter from the Probate Court;

3 **Sec. 2. 4 MRSA §157, sub-§1, ¶A**, as amended by PL 2015, c. 377, §1, is further
4 amended to read:

5 A. The Governor, subject to review by the joint standing committee of the
6 Legislature having jurisdiction over judiciary matters and to confirmation by the
7 Legislature, shall appoint to the District Court ~~38~~ 39 judges. At least one judge must
8 be appointed from each district who is a resident of a county in which the district lies,
9 except that in District 3 there must be 2 judges appointed who are residents of a
10 county in which the district lies; in District 6 there must be 2 judges appointed who
11 are residents of a county in which the district lies; and in District 9 there must be 2
12 judges appointed who are residents of a county in which the district lies. Each
13 District Court Judge has a term of office of 7 years.

14 To be eligible for appointment as a District Judge, a person must be a member of the
15 bar of the State. The term "District Judge" includes the Chief Judge and Deputy
16 Chief Judge.

17 **Sec. 3. 4 MRSA §251** is amended to read:

18 **§251. General jurisdiction**

19 Each judge may take the probate of wills and grant letters testamentary or of
20 administration on the estates of all deceased persons who, at the time of their death,
21 where inhabitants or residents of ~~his~~ the judge's county or who, not being residents of the
22 State, died leaving estate to be administered in ~~his~~ the judge's county, or whose estate is
23 afterwards found therein; and has jurisdiction of all matters relating to the settlement of
24 such estates. ~~He~~ A judge may grant leave to adopt children, change the names of persons,
25 appoint guardians for minors and others according to law; and has jurisdiction as to
26 persons under guardianship, and as to whatever else is conferred ~~on him~~ by law, except in
27 cases in which the District Court has jurisdiction over a child pursuant to section 152,
28 subsection 5-A.

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

30 **§251-A. Other proceedings involving parental rights; transfer to District Court**

31 **1. Disclosure of orders and proceedings.** The judge of probate presiding over any
32 matter involving guardianship, adoption or change of name or another matter involving
33 custody or other parental rights with respect to a minor child shall require all parties to
34 disclose whether they have knowledge of:

35 A. Any interim or final order then in effect concerning custody or other parental
36 rights with respect to the minor child;

37 B. Any proceeding involving custody or other parental rights with respect to the
38 minor child currently filed or pending before any court of this State or another state,
39 including the District Court; or

40 C. Any other related action currently filed or pending before any court of this State
41 or another state, including the District Court.

1 **2. Transfer to District Court.** If in a matter before the Probate Court concerning a
2 minor child a judge of probate becomes aware that a proceeding involving custody or
3 other parental rights with respect to the minor child is pending in the District Court, the
4 judge shall notify the District Court and take appropriate action to facilitate a transfer of
5 the matter to the District Court.

6 **Sec. 5. 18-A MRSA §1-701, sub-§(a),** as enacted by PL 2001, c. 163, §1, is
7 amended to read:

8 **(a).** If a person desires to have that person's name changed, the person may petition
9 the judge of probate in the county where the person resides. If the person is a minor, the
10 person's legal custodian may petition in the person's behalf. If there is a proceeding
11 involving custody or other parental rights with respect to the minor pending in the District
12 Court, the petition must be filed in the District Court.

13 **Sec. 6. 18-A MRSA §5-102, sub-§(a),** as enacted by PL 1979, c. 540, §1, is
14 amended to read:

15 **(a).** ~~The~~ Subject to Title 4, section 152, subsection 5-A, the court has exclusive
16 jurisdiction over guardianship proceedings and has jurisdiction over protective
17 proceedings to the extent provided in section 5-402.

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

20 **§9-103. Jurisdiction**

21 **(a).** ~~The~~ Subject to Title 4, section 152, subsection 5-A, the Probate Court has
22 exclusive jurisdiction over the following:

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

30 **(b).** The District Court has jurisdiction to conduct hearings pursuant to section 9-205.
31 The District Court has jurisdiction over any matter described in subsection (a) if the
32 proceeding concerns a child over whom the District Court has exclusive jurisdiction
33 pursuant to Title 4, section 152, subsection 5-A.

34 **Sec. 8. 18-A MRSA §9-204, sub-§(a),** as enacted by PL 1995, c. 694, Pt. C, §7
35 and affected by Pt. E, §2, is amended to read:

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

1 **Sec. 9. Appropriations and allocations.** The following appropriations and
2 allocations are made.

3 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

4 **Mental Health Services - Children 0136**

5 Initiative: Deappropriates funding from the Department of Health and Human Services,
6 Mental Health Services - Children account to offset the additional court costs of having
7 all pending matters concerning a child and family unit addressed by a single District
8 Court Judge.

9	GENERAL FUND	2015-16	2016-17
10	All Other	\$0	(\$412,750)
11			
12	GENERAL FUND TOTAL	<u>\$0</u>	<u>(\$412,750)</u>

13	HEALTH AND HUMAN SERVICES,		
14	DEPARTMENT OF (FORMERLY DHS)		
15	DEPARTMENT TOTALS	2015-16	2016-17
16			
17	GENERAL FUND	\$0	(\$412,750)
18			
19	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>(\$412,750)</u>

20 **JUDICIAL DEPARTMENT**

21 **Courts - Supreme, Superior and District 0063**

22 Initiative: Provides funds for one Judge position, one Deputy Marshal position and one
23 Assistant Clerk position due to an anticipated increase in the number of district court
24 cases involving children.

25	GENERAL FUND	2015-16	2016-17
26	POSITIONS - LEGISLATIVE COUNT	0.000	3.000
27	Personal Services	\$0	\$297,950
28	All Other	\$0	\$114,800
29			
30	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$412,750</u>

31	JUDICIAL DEPARTMENT		
32	DEPARTMENT TOTALS	2015-16	2016-17
33			
34	GENERAL FUND	\$0	\$412,750

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2	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$412,750</u>
3	SECTION TOTALS	2015-16	2016-17
4			
5	GENERAL FUND	\$0	\$0
6			
7	SECTION TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$0</u>
8			

SUMMARY

10 This amendment is the majority report of the Joint Standing Committee on Judiciary.

11 This amendment replaces the bill but retains the overall concept of establishing one
12 court in which proceedings involving custody and other parental rights with respect to a
13 child will take place. The bill proposes that the District Court would have exclusive,
14 continuing jurisdiction in all such proceedings if there is a pending action in the District
15 Court or if a final judgment involving the child had been entered in the District Court.

16 This amendment extends the jurisdiction of the District Court to include exclusive
17 jurisdiction over matters involving custody or other parental rights of a child under the
18 Maine Revised Statutes, Title 18-A, including, but not limited to, adoption, termination of
19 parental rights, change of name and guardianship of a minor, if proceedings concerning
20 the child are pending in the District Court.

21 This amendment provides that, in any matter involving custody or other parental
22 rights of a child, the judge of the District Court or the probate judge who is presiding
23 must require all parties to disclose whether the parties have knowledge of any existing
24 order or if any proceeding involving custody or other parental rights is currently filed or
25 pending or if any other related action is pending before any court of this State or another
26 state. If the proceeding is in a probate court in this State, the judge of probate must
27 transfer the case to the District Court.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



127th MAINE LEGISLATURE

LD 890

LR 1014(02)

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

Fiscal Note for Bill as Amended by Committee Amendment *A (H-522)*
 Committee: Judiciary
 Fiscal Note Required: Yes

Fiscal Note

	FY 2015-16	FY 2016-17	Projections FY 2017-18	Projections FY 2018-19
Net Cost (Savings)				
General Fund	\$0	\$0	\$14,897	\$30,540
Appropriations/Allocations				
General Fund	\$0	\$0	\$14,897	\$30,540

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$412,750 in fiscal year 2016-17 for the Judicial Department for one Judge position, one Deputy Marshall position and one Assistant Clerk position due to an anticipated increase in the number of district court cases involving children.

The Office of Child and Family Services within the Department of Human Services has indicated to the Judiciary Committee that having all actively pending matters concerning a child and family unit addressed by a single District Court Judge will provide efficiencies and reduce workload within the OFCS. Accordingly, the OFCS has offered, and the bill includes, an offsetting General Fund deappropriation to the Department of Human Services of \$412,750 in fiscal year 2016-17.