

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1584

S. P. 497

In Senate, March 26, 1973

Referred to the Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Kelley of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Relating to Investigation where Custody of Children are Involved
in a Divorce Action.

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

R. S., T. 19, § 751, repealed and replaced. Section 751 of Title 19 of the Revised Statutes, as amended by chapter 299 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 751. Investigation where custody of children involved

Whenever in any divorce action the custody of a minor child is involved, the court may request the State Department of Health and Welfare to investigate conditions and circumstances of the child and its parents. Upon completion of investigation and at least 10 days before the date of hearing, the department shall forward to all counsel of record copies of its written report which it plans to submit to the court. Upon request of any interested party filed with the court at least 3 days before date of hearing, the court shall require the person making the report to testify at time of hearing, and the report shall not be submitted to the court, nor shall the report, nor any part thereof, be admissible in evidence for any purpose at any hearing relating to such a divorce action, except to show prior inconsistent statements by the person making the report. In the event that any interested party has not filed with the court 3 days before the date of hearing, a request that the court require the person making the report to testify at the time of hearing, the department shall submit its written report to the court before the date of hearing. Whoever participates in making a report under this section or participates in a judicial proceeding resulting therefrom shall be immune from civil or

criminal liability, unless such person acted in bad faith or with malicious purpose.

STATEMENT OF FACT

On occasion in a child custody hearing, irrelevant, erroneous or prejudicial information can be contained in Health and Welfare reports which possibly could inadvertently color the judge's decision. Moreover, if the report contains irrelevant and prejudicial statements that are inadmissible under the rules of evidence, the person testifying obviously cannot give that testimony. In that event, it is unfair to have the judge examine the report containing those statements which he could not hear in the courtroom. In effect, the present law places the judge in a position where he could be prejudiced unnecessarily.

This bill would amend the law to provide that if the person making the report testifies in court, then the report itself will not be filed.