

# MAINE STATE LEGISLATURE

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L.D. 1906

STATE OF MAINE  
HOUSE OF REPRESENTATIVES (Filing No. H-882)  
109TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1787, L.D. 1906, Bill, "AN ACT Establishing the Child and Family Services and Child Protection Act."

Amend the Bill in section 9 by striking out all of the amending clause and inserting in its place the following:

'Sec. 9. 19 MRSA §532, as amended by PL 1979, c. 325, §1 and as repealed and replaced by PL 1979, c. 391, is amended to read:

Further amend the Bill in section 18 in that part designated "§40" in subsection 5 in the first line (same in L.D.) by inserting after the underlined words "who has" the underlined word 'legal'

Further amend the Bill in section 18 in that part designated "§4005." in subsection 1 by striking out all of the first line (same in L.D.) and inserting in its place the following: '1. Child; guardian ad litem. The following provisions shall govern guardians ad litem.'

Further amend the Bill in section 18 in that part designated "§4005." in subsection 1 by striking out all of paragraph A and inserting in its place the following:

'A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for medical treatment under section 4071, shall appoint a guardian ad litem for the child. His reasonable costs and expenses shall be paid by the District Court. The appointment shall be made as soon as possible after the proceeding is initiated.'

Further amend the Bill in section 18 in that part designated "§4008." in subsection 2 by inserting after paragraph A the following:

'B. An advocacy agency conducting an investigation under chapter 961;'

Further amend the Bill in section 18 in that part designated "§4008." in subsection 2 by relettering paragraphs B to E to be paragraphs C to F.

Further amend the Bill in section 18 in that part designated "§4010." by striking out all of subsection 2 and inserting in its place the following:

'2. Treatment to be considered if requested. When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parent.'

Further amend the Bill in section 18 in that part designated "§4023." in subsection 4 by striking out all of the first line and inserting in its place the following:

'4. Contacting parents. The following procedures shall apply.'

Further amend the Bill in section 18 in that part designated "§4023." in subsection 4 by inserting after paragraph B the following:

'C. If a parent or custodian objects to medical treatment, it shall be discontinued within 6 hours of receiving the objection.'

Further amend the Bill in section 18 in that part designated "§4031." in subsection 1 by striking out all of the first line (same in L.D.) and inserting in its place the following:

'1. Jurisdiction. The following provisions shall govern jurisdiction.'

Further amend the Bill in section 18 in that part designated "§4031." in subsection 1 by striking out all of paragraph B and inserting in its place the following:

'B. The Probate Court shall have concurrent jurisdiction

to hear petitions under sections 4032 and 4034. The Probate Court may transfer a case to the District Court on the motion of any party or its own motion. The Probate Court order shall remain in effect unless modified by the District Court.'

Further amend the Bill in section 18 in that part designated "§4031." in subsection 3 by striking out all of the first sentence and inserting in its place the following: 'The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19, chapter 16, the Uniform Child Custody Jurisdiction Act, shall not apply to child protection proceedings.'

Further amend the Bill in section 18 in that part designated "§4036." in subsection 1 by striking out all of paragraph F and inserting in its place the following:

'F. Removal of the child from his custodian and granting custody to a noncustodial parent, other person or the department.'

Further amend the Bill in section 18 in that part designated "§4041." in subsection 2 by striking out all of the first line (same in L.D.) and inserting in its place the following:

'2. Discontinuation of services. The following provisions shall govern discontinuation of services.'

Further amend the Bill in section 18 in that part designated "§4055." in subsection 1, paragraph B, subparagraph (2) in the first line (same in L.D.) by striking out the underlined words "clear and convincing" and inserting in their place the underlined words 'a preponderance of the'

Further amend the Bill by adding at the end before the Statement of Fact the following:

'Sec. 22. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

JUDICIAL DEPARTMENT

Personal Services	\$ 300
All Other	<u>37,800</u>
Total	\$38,100'

Fiscal Note  
amendment

The appropriation on this / reflects the additional cost to the courts of the provision for automatic review of child protection proceedings contained in the new Title 22, section 4038. This provision will require the following estimated costs to the Judicial Department:

Additional clerical time	300
Postage and supplies	300
Appointed counsel	22,500
Appointed guardian ad litem	<u>15,000</u>
Total	\$38,100

If the requirement for a guardian ad litem in section 4005, subsection 1, paragraph A were removed, it is estimated that this would save the courts approximately \$17,500, including \$2,500 of present expenditures. However, the removal of this provision would also make the state ineligible to receive \$46,000 in federal grants under the Child Abuse and Neglect Prevention and Treatment Act. Thus, removing this requirement would effectively cost the state money.

The bill contains no appropriation for the Department of Human Services. The bill may reduce the department's costs for custody and foster care, as it will allow the department to place children in other settings, such as adoptions. However, the bill will also result in additional court hearing and legal expenses for the department. The department is requesting no additional appropriation for these anticipated expenses as they would prefer to have the bill enacted during this session. They will assess the effect of the bill on departmental operations during the coming year.

#### Statement of Fact

This amendment clarifies the language in several sections of the bill. It also requires the appointment of a guardian ad litem for children in child protection proceedings, provides for parental objections to medical treatment given to a child as part of short-term emergency services, continues the present jurisdiction of the Probate Courts in child protection proceedings, removes the burden of proof on noncustodial parents and others when they seek custody in child protection proceedings and changes the burden of proof from "clear and convincing" to "preponderance of the evidence" in proceedings to terminate parental rights. In addition, the amendment adds an appropriation and fiscal note.

The bill is in conflict with L.D. 1881. It is the intention of the Legislature that if both bills are enacted, this bill shall amend the conflicting provisions of L.D. 1881 and take precedence and effect; but the appropriation of L.D. 1881 shall still be effective.

The bill is also in conflict with L.D.'s 1813, 1821 and 1835. It is the intention of the Legislature that if both those bills and this bill are enacted, all bills shall be read together and

take effect together.

The bill is also in conflict with L.D. 1829. It is the intention of the Legislature that if both that bill and this bill are enacted, they shall be read together and both shall take effect.

Reported by the Committee on Judiciary  
Reproduced and distributed under the direction of the Clerk of the  
House  
3/11/80 (Filing No. H-882)