

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 320

H. P. 275

House of Representatives, January 20, 1981

Submitted by the Department of Human Services pursuant to Joint Rule 24.

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

EDWIN H. PERT, Clerk

Presented by Representative Soule of Westport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT Amending the Child and Family Services and Child Protection Act.

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

Sec. 1. 22 MRSA § 4005, sub-§ 1, ¶ A, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for medical treatment order under section 4071, **but including hearings on those orders**, shall appoint a guardian ad litem for the child.

Sec. 2. 22 MRSA § 4005, sub-§ 2 first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for medical treatment order under section 4071, **but including hearings on those orders**.

Sec. 3. 22 MRSA § 4008, sub-§ 1, as enacted by PL 1979, c. 733, § 18, is amended by adding at the end a new sentence to read:

Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a Class E crime, provided that notwithstanding Title 17-A, section 4-A, subsection 4, no imprisonment shall be imposed.

Sec. 4. 22 MRSA § 4014, sub-§ 1, as enacted by PL 1979, c. 733, § 18, is amended to read:

1. Reporting and proceedings. A person participating in good faith in reporting under this subchapter, or in a related child protection investigation or proceeding, is immune from any criminal or civil liability that might otherwise result from these actions.

Sec. 5. 22 MRSA § 4015, as enacted by PL 1979, c. 733, § 18, is amended to read:

§ 4015. Privileged or confidential communications

The husband-wife and physician and psychotherapist-patient privileges under the rules of evidence and the confidential quality of communication ~~under Title 20, sections 805 and 806, Title 24-A, section 4224 and Title 32, section 7005~~ **between any professional person and his patient or his client, except that between attorney and client,** are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding.

Sec. 6. 22 MRSA § 4031, sub-§ 1, ¶ B, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

The Probate Court shall have concurrent jurisdiction to hear petitions under ~~sections 4032 and 4034~~ **this chapter.**

Sec. 7. 22 MRSA § 4033, sub-§ 1, ¶ A, last sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

Service shall be made in accordance with the District Court Civil Rules **or by another manner ordered by the Court.**

Sec. 8. 22 MRSA § 4033, sub-§ 1, ¶ B, as enacted by PL 1979, c. 733, § 18, is amended to read:

B. If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the ~~State department in accordance with the District Court Civil Rules.~~

Sec. 9. 22 MRSA § 4034, sub-§ 2, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate ~~risk~~ **threat** of serious harm to the child, it may order any disposition under section 4036.

Sec. 10. 22 MRSA § 4034, sub-§ 4, as enacted by PL 1979, c. 733, § 18, is amended to read:

4. Preliminary hearing. If there is no consent, or if a noncustodial parent requests a hearing, then the court shall hold a preliminary hearing on that order

within ~~10~~ 21 days of its issuance ~~the order~~ or request, unless all parties agree to a later date. **If a noncustodial parent requests a hearing, all parents, custodians and petitioners shall have notice of the hearing in accordance with the District Court Civil Rules or by another manner ordered by the Court.** The petitioner shall bear the burden of proof. If, after the hearing, the court finds, by a preponderance of the evidence, that returning the child to his custodian would place him in immediate ~~risk~~ **threat** of serious harm, it shall continue the order or make another disposition under section 4036.

Sec. 11. 22 MRSA § 4036, sub-§ 1, ¶ F, as enacted by PL 1979, c. 733, § 18, is amended to read:

F. Removal of the child from his custodian and granting custody to a noncustodial parent, other person or the department; **orders granting custody to the department shall not specify where the child is to be placed;**

Sec. 12. 22 MRSA § 4037, last sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

Custody shall not include the right to ~~place the child for~~ **initiate adoption proceedings** without parental consent, except as provided under Title 19, section 532.

Sec. 13. 22 MRSA § 4038, sub-§ 1, as enacted by PL 1979, c. 733, § 18, is amended to read:

1. **Mandated review.** If the court has made a final protection order **under section 4038,** it shall review the case at least once within 18 months of the original order, unless the child has been adopted or emancipated. **No mandated review shall be required if the child was ordered into the custody of the department under section 3792 before the effective date of chapter 1071.**

Sec. 14. 22 MRSA § 4038, sub-§ 3, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

Notice of judicial review shall be given in accordance with the District Court Civil Rules **or by another manner ordered by the Court.**

Sec. 15. 22 MRSA § 4041, sub-§ 1, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

When a child has been ordered into the custody of the department under section 4035 or 4038, **or pursuant to a petition filed under section 3792 before the effective date of chapter 1071,** it shall provide, arrange or coordinate services to facilitate the rehabilitation of parents and reunification of the ~~parents and child with his~~ **family.**

Sec. 16. 22 MRSA § 4051, first sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

A petition for termination of parental rights shall be brought in the court that

issued the final protection order, in the court that issued the divorce decree if there has been no final protection order, or in the district where the child resides if there has been no final protection order or divorce decree.

Sec. 17. 22 MRSA § 4052, sub-§ 2, as enacted by PL 1979, c. 733, § 18, is amended to read:

2. **Time filed.** A termination petition may be brought no earlier than 3 months after disposition under section 4036 or under Title 19, section 752 or under the child protection or divorce law of another state or country.

Sec. 18. 22 MRSA § 4052, sub-§ 3, ¶ D, as enacted by PL 1979, c. 733, § 18, is amended to read:

D. The names and address of the guardian ad litem of the child in ~~the~~ any related child protection proceeding;

Sec. 19. 22 MRSA § 4053, last sentence, as enacted by PL 1979, c. 733, § 18, is amended to read:

Service shall be made in accordance with the District Court Civil Rules or by another manner ordered by the Court.

Sec. 20. 22 MRSA § 4055, sub-§ 1, ¶ A, sub-¶ (3), as enacted by PL 1979, c. 733, § 18, is amended to read:

(3) Section 3792 pursuant to a petition filed prior to the effective date of this chapter; and

Sec. 21. 22 MRSA § 4055, sub-§ 1, ¶ B, sub-¶ (2), div. (a), as enacted by PL 1979, c. 733, § 18, is amended to read:

(a) The parent is unwilling or unable to protect the child from jeopardy, or has failed to maintain contact with the child, or has refused to take responsibility for the child;

STATEMENT OF FACT

The purpose of this bill is to amend the Child and Family Services and Child Protection Act as follows: To expand the service and notice of hearing provisions; to broaden the jurisdiction of the Probate Court; to extend the maximum period between a preliminary protection order and hearing on that order from 10 to 21 days; to expand the abrogation of confidential communications provision; to clarify the applicability of the mandated review provision and the family reunification provision; to clarify the applicability of the termination of parental rights provisions and to expand the grounds upon which parental rights may be terminated; to bring the Act in compliance with the federal Child Abuse Prevention and Treatment Act of 1978 and the Adoption Assistance and Child Welfare Act of 1980.