

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1550

H.P. 1140 House of Representatives, May 13, 1987
Submitted by the Department of Human Services pursuant to
Joint Rule 24.

Reference to the Committee on Human Resources suggested
and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative McPHERSON of Eliot.
Cosponsored by Representatives MACOMBER of South
Portland, BEGLEY of Waldoboro, and Senator KERRY of York.

STATE OF MAINE

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

1 AN ACT to Amend the Child and Family Services
2 and Child Protection Act.
3

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

6 Sec. 1. 22 MRSA §4007, sub-§2, as enacted by PL
7 1979, c. 733, §18, is amended to read:

8 2. Interviewing children. The court may inter-
9 view a child witness in chambers, with only the
10 guardian ad litem and counsel present, provided that
11 the statements made are a matter of record. ~~The court~~
12 ~~may--admit--and--consider--oral--or--written--evidence--of~~
13 ~~out-of-court-statements-made-by-a-child,--and--may--rely~~
14 ~~on-that-evidence-to-the-extent-of-its-prebative--val-~~
15 ~~ue.~~ Child witnesses may include other children who
16 are not the subject of the proceeding but whose tes-
17 timony is relevant to the proceeding.

1 Sec. 2. 22 MRSA §4007, sub-§3, as enacted by PL
2 1979, c. 733, §18, is repealed and the following en-
3 acted in its place:

4 3. Motion for examination. At any time during
5 the proceeding, the court may order that a child,
6 parent, alleged parent, person frequenting the house-
7 hold, person having custody at the time of the al-
8 leged abuse or neglect or person seeking care or cus-
9 tody of the child be examined pursuant to District
10 Court Civil Rules, Rule 35.

11 Sec. 3. 22 MRSA §4007, sub-§6 is enacted to
12 read:

13 6. Out-of-court statements by children. The
14 court may admit and consider oral or written evidence
15 of out-of-court statements made by a child and may
16 rely on that evidence to the extent of its probative
17 value. This includes statements made by a child who
18 is not the subject of the proceeding but whose state-
19 ments are relevant to the proceeding.

20 Sec. 4. 22 MRSA §4008, sub-§2, ¶G, as enacted by
21 PL 1983, c. 354, §2, is amended to read:

22 G. Any agency or department involved in licensing
23 or approving homes for the placement of children,
24 with protection for identity of reporters and
25 other persons when appropriate.

26 Sec. 5. 22 MRSA §4014, sub-§1, as amended by PL
27 1983, c. 783, §5, is further amended to read:

28 1. Reporting and proceedings. A person partici-
29 pating in good faith in reporting under this subchap-
30 ter, or participating in a related child protection
31 investigation or proceeding, cooperating with the de-
32 partment or a guardian ad litem in an investigation
33 in a child protection proceeding is immune from any
34 criminal or civil liability for the act of reporting
35 or participating in the investigation or proceeding
36 that reporting, cooperating or giving evidence.
37 Nothing in this section may be construed to bar crim-
38 inal or civil action regarding perjury or regarding
39 the abuse or neglect which led to a report, investi-
40 gation or proceeding.
41

1 **Sec. 6. 22 MRSA §4024 is enacted to read:**

2 §4024. Interim care

3 1. Interim care. A child may be taken into inter-
4 im care by a law enforcement officer without order
5 by the court when the officer has reasonable grounds
6 to believe that the child is in immediate risk of seri-
7 ous harm and that immediate care is necessary for
8 his protection.

9 2. Limit. Under no circumstances may the child
10 be held for more than 6 hours.

11 3. Notification. Prior to or upon initiating inter-
12 im care, the law enforcement officer or department
13 shall take reasonable steps to notify a custodian of
14 the action being taken and services being provided.

15 4. Placement. The department shall designate a
16 placement for the child.

17 5. Services and consent to treatment. The de-
18 partment may provide emergency services, including
19 consent for the child to receive necessary emergency
20 medical treatment.

21 6. Reimbursement. The department may obtain, by
22 agreement or court order, reimbursement from a parent
23 for the support of a child who receives interim care.
24 An agency may also receive reimbursement from a par-
25 ent subject to its contract or written agreement with
26 the department.

27 **Sec. 7. 22 MRSA §4031, sub-§1, ¶B, as enacted by**
28 **PL 1979, c. 733, §18, is repealed.**

29 **Sec. 8. 22 MRSA §4031, sub-§1, ¶C, as enacted by**
30 **PL 1985, c. 547, is amended to read:**

31 C. The Probate Court and the Superior Court
32 shall have jurisdiction to act on requests for
33 preliminary child protection orders under section
34 4034. As soon as the action is taken by the Pro-
35 bate Court or the Superior Court, the matter
36 shall be transferred to the District Court.

1 Sec. 9. 22 MRSA §4033, sub-§3, ¶B, as enacted by
2 PL 1979, c. 733, §18, is amended to read:

3 B. Service in accordance with the District Court
4 Civil Rules. Notwithstanding the Civil Rules,
5 service by publication of a preliminary protec-
6 tion order shall be complete 5 days after a sin-
7 gle publication, except that such service is not
8 required for a noncustodial parent whose where-
9 abouts are unknown; or

10

STATEMENT OF FACT

11

12 This bill adds to the Maine Revised Statutes, Ti-
13 tle 22, section 4007, subsection 2, interviews of
14 other children which could include other children in
that family or household or in another household.

15

16 Revising Title 22, section 4007, serves 2 pur-
17 poses. First, it clarifies how the District Court is
18 to handle motions for psychological, medical or pa-
19 ternity examinations by providing that the District
20 Court Civil Rules will govern such motions, thereby
21 providing an established body of law for the parties
22 and court to utilize. Second, because of the recent
23 Law Court decision in In Re: Michael V., there have
24 been some questions about motions for examinations.
25 This revision makes it clear that the court has the
26 discretion to deal with such requests and connects
this section to establish rules regarding discovery.

27

28 Section 1 amends Title 22, section 4007, subsec-
29 tion 1, and section 3 enacts subsection 6 which makes
30 it clearer that out-of-court statements made by the
31 child are not limited to interviews conducted by the
court in chambers.

32

33 In addition, the department permits optional dis-
34 closure to other departments, such as the Department
35 of Mental Health and Mental Retardation and the De-
36 partment of Corrections, which place children. The
37 addition of licensing to this section clarifies and
38 specifically authorizes disclosure which is currently
39 taking place, upon the advice of the assistant attor-
ney general, under Title 22, section 4008, subsection

1 1: "Within the department, the records shall be
2 available only to and used by appropriate departmen-
3 tal personnel and legal counsel for the department in
4 carrying out their functions."

5 Title 22, section 4014, subsection 1, allays con-
6 cerns that some providers have had about confiden-
7 tiality and disclosure related to child and family
8 services activities subsequent to the report of sus-
9 pected child abuse or neglect and specifically ad-
10 dresses immunity from liability when sharing informa-
11 tion during all phases of a child and family services
12 case.

13 The interim care 6-hour hold by law enforcement
14 provision in the Maine Juvenile Code, Title 15, sec-
15 tion 3501, is used on occasion in child protection
16 cases when the child is in immediate risk of serious
17 harm in order to give the Department of Human Ser-
18 vices caseworker time to request a preliminary pro-
19 tection order from the court. In order to make the
20 authorization clear, it should also be stated in Ti-
21 tle 22, chapter 1071. The language proposed deletes
22 references to detention and criminal matters which
23 are irrelevant in this context and sets the standard
24 for this intervention within the context of Title 22,
25 chapter 1071, i.e., immediate risk of serious harm.

26 The 72-hour short-term emergency services, Title
27 22, section 4024, is used when parents are unavaila-
28 ble. This bill specifically provides for 6-hour in-
29 terim care when parents object.

30 The jurisdiction for child protection matters was
31 amended by the addition of Title 22, section 4031,
32 subsection 1, paragraph C, regarding the Superior
33 Court, effective February 28, 1986. In the interests
34 of consistency and because the District Court is the
35 primary court for child protection matters, Title 22,
36 section 4031, subsection 1, should be amended to pro-
37 vide for automatic transfer from Probate Court to the
38 District Court. Section 7 of the bill repeals para-
39 graph B regarding Probate Court jurisdiction and sec-
40 tion 8 adds Probate Court, along with Superior Court
41 jurisdiction.

1 When the whereabouts of a parent are unknown, it
2 is difficult to arrange for service by publication
3 within 5 days for the hearing on a preliminary pro-
4 tection order. Continuances because of publication
5 problems may deprive a custodial parent of a prompt
6 hearing.

7 Service by publication would still be required
8 for the absent parent prior to the subsequent hearing
9 on the basic child protection petition.

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