

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 280

S.P. 102

In Senate, February 2, 1993

An Act to Amend the Child Protection Laws.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot. (BY REQUEST).

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

2 **Sec. 1. 22 MRSA §4021, sub-§3, ¶D** is enacted to read:

4 D. If the department interviews a child at a police station
6 or in the presence of a law enforcement officer, the
8 department shall:

10 (i) Provide the parent or parents with legal
12 responsibility for the child the opportunity to have
14 counsel present during the interview; or

14 (ii) Videotape the interview.

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

20 2. **Order.** If the court finds ~~by a preponderance of the~~
22 ~~beyond a reasonable doubt from~~ evidence presented in the sworn
24 summary or otherwise that there is an immediate risk of serious
26 harm to the child, it may order any disposition under section
28 4036. A preliminary protection order ~~shall~~ automatically ~~expire~~
30 expires at the time of the issuing of a final protection order
32 under section 4035.

34 **Sec. 3. 22 MRSA §4034, sub-§4**, as amended by PL 1983, c. 184,
36 §4, is further amended to read:

38 4. **Preliminary hearing.** If the custodial parent appears and
40 does not consent, or if a noncustodial parent requests a hearing,
42 then the court shall hold a preliminary hearing on that order
44 within 10 days of its issuance or request, unless all parties
46 agree to a later date. The petitioner ~~shall bear~~ bears the burden
48 of proof. If, after the hearing, the court finds, ~~by a~~
50 ~~preponderance of the~~ beyond a reasonable doubt from evidence,
 that returning the child to ~~his~~ the child's custodian would place
 ~~him~~ the child in immediate risk of serious harm, it shall
 continue the order or make another disposition under section 4036.

Sec. 4. 22 MRSA §4035, sub-§2, as enacted by PL 1979, c. 733,
 §18, is amended to read:

 2. **Adjudication.** After hearing evidence, the court shall
 make a finding, ~~by a preponderance of the evidence~~ beyond a
 reasonable doubt, whether the child is in circumstances of
 jeopardy to ~~his~~ the child's health or welfare.

Sec. 5. 22 MRSA §4038, sub-§6, as amended by PL 1989, c. 270,
 §13, is further amended to read:

2 6. Disposition. The court may make any further order,
based-on-a-preponderance-of-evidence,--that-is-authorized-under
3 ~~section-4036~~ that would be authorized under section 4035.

4 Sec. 6. 22 MRSA §4041, sub-§4 is enacted to read:

6 4. Parental visitation procedures. The department shall
8 establish rules regarding the procedures for parental visitation
10 with a child in the department's custody when that visitation
12 occurs at a departmental office. The rules must provide, but are
14 not limited to, standards for determining the frequency and
16 duration of visits and persons who may or must be present during
18 visitations.

20 Sec. 7. Appointment. The Governor shall appoint a person to
22 fill the position of Child Welfare Services Ombudsman within 30
24 days after the effective date of this Act.

26 STATEMENT OF FACT

28 This bill raises the standard of proof in child protection
30 proceedings from a "preponderance of the evidence" to "beyond a
reasonable doubt." The bill requires that when the Department of
Human Services interviews a child in a police station or in the
presence of a law enforcement officer, the parents have the right
to have counsel present or to have the interview videotaped. The
bill also requires the department to establish procedures for
parental visitation at departmental offices and provides for the
appointment of the child welfare services ombudsman.