

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1422

H.P. 1011

House of Representatives, February 18, 1999

An Act Requiring Notice to Be Given to Alleged Perpetrators.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative PIEH of Bremen.

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

Sec. 1. 22 MRSA §4002, sub-§1-C is enacted to read:

1-C. Alleged perpetrator. "Alleged perpetrator" means a person other than the parent who is alleged to have contributed to the abuse or neglect of a child.

Sec. 2. 22 MRSA §4005, sub-§3 is enacted to read:

3. Alleged perpetrator. An alleged perpetrator may be represented by legal counsel in child protective proceedings, except for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings under section 4034.

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

A. The petition and a notice of hearing shall must be served on the parents and custodians, the guardian ad litem for the child, an alleged perpetrator and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service shall must be made in accordance with the District Court Civil Rules.

Sec. 4. 22 MRSA §4033, sub-§3, as amended by PL 1989, c. 819, §5, is further amended to read:

3. Service of preliminary protection order. If the court makes a preliminary protection order, a copy of the order shall must be served on the parents and, custodians and alleged perpetrator by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is made;

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or

C. Another manner ordered by the court.

Sec. 5. 22 MRSA §4033, sub-§4, as enacted by PL 1979, c. 733, §18, is amended to read:

4. **Service of final protection order.** The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's ~~or~~, custodian's and alleged perpetrator's counsel or, if no counsel, to the parents ~~or~~, custodians and alleged perpetrator. The copy of the order shall must include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

Sec. 6. 22 MRSA §4033, sub-§6 is enacted to read:

6. Effect of proceedings. The alleged perpetrator is entitled to fully participate in child protective proceedings except for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings under section 4034. A finding in favor of an alleged perpetrator bars criminal proceedings arising out of the same facts. A finding against an alleged perpetrator is inadmissible in a criminal proceeding against the alleged perpetrator; however, any testimony of the alleged perpetrator may be used in a criminal proceeding.

SUMMARY

This bill requires notification of alleged perpetrators in child protective proceedings and grants them the right to testify and present evidence in those proceedings. It provides that a criminal case may not be brought against the alleged perpetrator if the court finds in favor of the alleged perpetrator. If the court does not find in favor of the alleged perpetrator, that testimony may be used in a criminal proceeding.