

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1079

H.P. 825

House of Representatives, February 22, 2001

**An Act to Protect Families by Easing the Standard of Proof for Certain
Child Protection Hearings.**

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative MENDROS of Lewiston.
Cosponsored by Senator DAVIS of Piscataquis and
Representatives: DUGAY of Cherryfield, DUPREY of Hampden, KASPRZAK of Newport,
MICHAEL of Auburn, O'BRIEN of Augusta, PERRY of Bangor, SNOWE-MELLO of
Poland, TRACY of Rome.

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

2 **Sec. 1. 22 MRSA §4034, sub-§2**, as enacted by PL 1979, c. 733,
4 §18, is amended to read:

6 **2. Order.** If the court finds by a ~~preponderance of the~~
8 clear and convincing evidence presented in the sworn summary or
otherwise that there is an immediate risk of serious harm to the
10 child, it may order any disposition under section 4036. A
preliminary protection order ~~shall~~ automatically ~~expire~~ expires
12 at the time of the issuing of a final protection order under
section 4035.

14 **Sec. 2. 22 MRSA §4034, sub-§4**, as amended by PL 1997, c. 715,
Pt. A, §4, is further amended to read:

16 **4. Summary preliminary hearing.** If the custodial parent
18 appears and does not consent, or if a noncustodial parent
requests a hearing, then the court shall hold a summary
20 preliminary hearing on that order within 10 days of its issuance
or request. If a parent or custodian is not served with the
22 petition before the summary preliminary hearing, the parent or
custodian may request a subsequent preliminary hearing within 10
24 days after receipt of the petition. The petitioner bears the
burden of proof. At a summary preliminary hearing, the court may
26 limit testimony to the testimony of the caseworker, parent,
custodian, guardian ad litem, foster parent, preadoptive parent
28 or relative providing care and may admit evidence, including
reports and records, that would otherwise be inadmissible as
30 hearsay evidence. If after the hearing the court finds by a
~~preponderance of the~~ clear and convincing evidence that returning
32 the child to the child's custodian would place the child in
immediate risk of serious harm, it shall continue the order or
34 make another disposition under section 4036. If the court's
preliminary order includes a finding of an aggravating factor,
36 the court may order the department not to commence reunification
or to cease reunification, in which case a permanency planning
38 hearing must commence within 30 days of entry of the preliminary
order.

40 **Sec. 3. 22 MRSA §4035, sub-§2**, as enacted by PL 1979, c. 733,
42 §18, is amended to read:

44 **2. Adjudication.** After hearing evidence, the court shall
46 make a finding, by a ~~preponderance of the~~ clear and convincing
evidence, whether the child is in circumstances of jeopardy to
48 ~~his~~ the child's health or welfare.

50 **Sec. 4. 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,
3 based on ~~a-preponderance-of~~ clear and convincing evidence, that
4 is authorized under section 4036.

6

SUMMARY

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10 This bill amends the Child and Family Services and Child
11 Protection Act to decrease the standard of proof from a
12 preponderance of the evidence to clear and convincing evidence
13 that a court uses in determining whether to grant a preliminary
14 child protection petition, a jeopardy order or the review of a
15 jeopardy order.