

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1609

H.P. 1186

House of Representatives, March 13, 2001

An Act to Provide a Family Bill of Rights.

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 Representatives: CRESSEY of Baldwin, DUGAY of Cherryfield, MICHAEL of Auburn, O'BRIEN of Augusta, PERRY of Bangor, SHERMAN of Hodgdon, Senator: SHOREY of Washington.

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

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Sec. 1. 22 MRSA §4005, sub-§1, ¶D, as amended by PL 1997, c. 715, Pt. A, §2, is further amended to read:

6 D. The guardian ad litem shall make a written report of the
8 investigation, findings and recommendations, and shall
10 provide a copy of the report to each of the parties
12 reasonably at least 3 days in advance of the hearing, and to
14 the court, except that the guardian ad litem need not
16 provide a written report prior to a hearing on a preliminary
protection order. The report must include an itemization of
the time and services the guardian ad litem has performed.
The failure of the guardian ad litem to comply with this
paragraph precludes the court from considering the
recommendations of the guardian ad litem.

18 **Sec. 2. 22 MRSA §4005, sub-§1,** as amended by PL 1999, c. 251,
20 §2, is further amended by adding at the end a new paragraph to
read:

22 The court may reject the guardian ad litem's report if it finds
24 that the guardian ad litem failed to comply with this subsection
or the guardian ad litem standards and rules adopted by the
26 Supreme Judicial Court. The court shall remove from the
proceeding a guardian ad litem who fails to substantially comply
28 with responsibilities under this subsection or the standards and
rules adopted by the Supreme Judicial Court.

30 **Sec. 3. 22 MRSA §4005-A, sub-§4** is enacted to read:

32 **4. Intervention by long-term foster parents.** Long-term
34 foster parents, under section 4064, subsection 1, may intervene
in any proceeding in cases in which parental rights have been
terminated.

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38 **Sec. 4. 22 MRSA §4007, sub-§1,** as amended by PL 1985, c. 495,
§17, is further amended to read:

40 **1. Procedures.** All child protection proceedings shall must
42 be conducted according to the rules of civil procedure and the
rules of evidence, except as provided otherwise in this chapter.
44 All the proceedings shall must be recorded. ~~All proceedings and
46 records shall be closed to the public, unless the court orders
otherwise.~~ All proceedings and records are to be open to the
48 public unless the court for good cause orders otherwise. The
court may not close the proceedings or records to the public
solely for the purpose of maintaining confidentiality of conduct
of the department.

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2 **Sec. 5. 22 MRSA §4036, sub-§1, ¶C**, as enacted by PL 1979, c.
733, §18, is amended to read:

4 C. That the child, the custodians, the parents and other
6 appropriate family members accept treatment or services to
ameliorate the circumstances related to the jeopardy and
8 that the department provide that treatment or services
regardless of whether the department has custody of the
10 child;

12 **Sec. 6. 22 MRSA §4036, sub-§§6, 7 and 8** are enacted to read:

14 **6. Need for services.** A child may not be ordered into the
16 custody of the department or remain in the custody of the
18 department for the sole purpose of receiving services. When the
20 department claims the need for services for a parent or child is
22 a factor in determining risk of serious harm or remediation of
jeopardy, the department must file with the court a detailed
assessment of department-provided community services and funding
mechanisms within the community and a detailed report of the
department's advocacy efforts for community services and its
coordination with other state agencies to provide such services.

24 **7. Refusal of services.** The department may not terminate or
26 suspend services or seek the dismissal of any child protection
28 proceeding because a child in its custody refuses to participate
in the department's permanency plan.

30 **8. Conference of relatives regarding placement.** Before
32 placement of a child with a person other than the child's parent
34 pursuant to subsection 1, paragraph F, the court or guardian ad
36 litem may convene a conference of the child's relatives who have
38 a potential interest in determining a placement that is in the
40 best interests of the child. The court or the guardian ad litem
42 shall provide for the child's relatives to be given information
44 relevant to the determination of the placement of the child. The
46 relatives must be permitted to make custody recommendations to
48 the court, including a recommendation that the child reside with
one or more of the relatives. The court shall place the child in
the custody of the relative recommended by the relatives unless
the child's parent objects to the placement or the court
determines that there is good cause to reject the relatives'
placement recommendation. Relatives participating pursuant to
this subsection are immune from liability arising out of the
custody proceedings. For purposes of this subsection, "relative"
means a grandparent, aunt, uncle, sibling or cousin more than 18
years of age of the child.

SUMMARY

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4 This bill amends the Child and Family Services and Child
Protection Act to do the following:

6 1. It requires the guardian ad litem to provide a written
8 report to the parties at least 3 days prior to the child
10 protection proceeding and detail the time and services the
guardian ad litem has provided on behalf of the child. Failure
of the guardian ad litem to comply requires the court to ignore
the recommendations of the guardian ad litem;

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14 2. It allows the court to dismiss a guardian ad litem who
fails to comply with the guardian ad litem standards and rules
adopted by the Maine Supreme Judicial Court;

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18 3. It allows long-term foster parents to intervene in any
proceeding where parental rights have been terminated;

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22 4. It changes the confidentiality of proceedings by
requiring them to be public, except when the court for good
reason determines that the record and proceedings are closed;

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26 5. It affects the services provided by the Department of
Human Services by requiring the department to provide services to
the child regardless of whether the department has custody of the
child and requires the department to continue services even if
the child fails to participate in the department's permanency
plan; and

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32 6. It authorizes the court or guardian ad litem to hold a
conference of the relatives of the child and allows the relatives
to determine the placement of the child, unless the parent
objects or the court determines that there is good cause to
ignore the recommendation of the relatives. A relative who
participates in the conference is granted civil immunity.

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