

# MAINE STATE LEGISLATURE

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R. of S.

L.D. 2149

DATE: *April 3, 2002* (Filing No. S-*569*)

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STATE OF MAINE  
SENATE  
120TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT "*A*" to COMMITTEE AMENDMENT "A" to H.P. 1644, L.D. 2149, Bill, "An Act to Implement the Recommendations of the Committee to Review the Child Protective System"

Amend the amendment by inserting after the 4th indented paragraph after the title the following:

'Further amend the bill by inserting after section 18 the following:

'**Sec. 19. 22 MRSA §4006, 3rd ¶**, as repealed and replaced by PL 1997, c. 715, Pt. A, §3, is amended to read:

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and ~~are not~~ appealable may be appealed to the Superior Court. Appeals from any order under sections other than section 4035, 4054 or 4071 must be expedited. Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court.

**Sec. 20. 22 MRSA §4007, sub-§1**, as amended by PL 1985, c. 495, §17, is further amended to read:

**1. Procedures.** All child protection proceedings shall ~~must~~ must be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall ~~must~~ must be recorded. All proceedings and records shall ~~must~~ must be ~~closed~~ open to the public, unless the court orders otherwise.

**SENATE AMENDMENT**

R. of S.

2           **Sec. 21. 22 MRSA §4007, sub-§7** is enacted to read:

4           7. Discovery scheduling order; failure to comply. As soon  
6           as practicable, the court shall enter an order scheduling the  
8           completion of discovery. If the department fails to comply with  
          the scheduling order, the court shall vacate the protection order  
          issued under this chapter.'

10           Further amend the bill in section 23 by striking out all of  
12           the amending clause (page 9, line 35 in L.D.) and inserting in  
          its place the following:

14           '**Sec. 23. 22 MRSA §§4010-B and 4010-C** are enacted to read:'

16           Further amend the bill in section 23 by inserting at the end  
18           the following:

20           '**§4010-C. Personal liability**

22           Notwithstanding Title 14, chapter 741, an employee of the  
24           department who intentionally or knowingly violates a department  
26           policy, a rule adopted by the department or any provision of this  
          chapter is civilly liable for damages and attorney's fees and  
          costs incurred by the parent or custodian of a child involved in  
          a proceeding under this chapter.'

28           Further amend the amendment in section 25 in subsection 4 in  
30           the blocked paragraph in the 2nd line (page 2, line 6 in  
          amendment) by striking out the following: "not"

32           Further amend the amendment by inserting after section 44  
34           the following:

36           '**Sec. 45. Appropriations and allocations.** The following  
          appropriations and allocations are made.

38           **HUMAN SERVICES, DEPARTMENT OF**

40           **Child Welfare Services**

42           Initiative: Provides funds for the contracting of paralegal  
44           services to meet all court-ordered discovery schedules and  
          avoid the court's vacating protection orders.

46 <b>General Fund</b>	<b>2001-02</b>	<b>2002-03</b>
All Other	\$0	\$600,000'

48

R. of S.

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1644,  
L.D. 2149

Further amend the amendment by relettering or renumbering  
any nonconsecutive Part letter or section number to read  
consecutively.

**FISCAL NOTE**

The amendment includes a General Fund appropriation of  
\$600,000 in fiscal year 2002-03 for the increased costs to the  
Department of Human Services of contracting for paralegal  
services to meet all court-ordered discovery schedules. The  
appropriation will fund on a contract basis the services of 10  
paralegals. These funds are in addition to the \$304,016  
appropriated in Public Law 2001, chapter 559, Part CC, section 8  
for the department to contract for the services of 5 paralegals.  
Under the amendment, failure to meet discovery scheduling orders  
will result in the court's vacating protection orders.

The amendment's provision for an expedited appeal of  
interlocutory orders to the Superior Court is expected to create  
a substantial number of appeals, requiring additional General  
Fund appropriations for judicial and clerk resources as well as  
court-appointed counsel. The exact amount required can not be  
determined at this time but is expected to exceed \$250,000  
annually.

The amendment's requirement that all child protection  
proceedings be open to the public is likely to result in  
additional hearings and an increase in related costs, including  
the cost of court-appointed counsel. The ability of the affected  
departments to absorb these costs can not be determined at this  
time.

**SUMMARY**

This amendment provides for an expedited appeal of  
interlocutory orders to the Superior Court.

The amendment provides that all proceedings and records are  
open to the public, unless a court orders otherwise.

The amendment requires the court to issue an order  
scheduling discovery in child protective cases. If the  
department does not comply with the provision of discovery as  
required by the discovery scheduling order, the court is required  
to vacate the protective order, regardless of whether it is a  
preliminary protection order or any other protection order issued  
under this chapter.

R. of S.

SENATE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 1644,  
L.D. 2149

2           This amendment provides that a Department of Human Services  
employee is personally liable for damages as well as attorney's  
4       fees and costs if the employee intentionally or knowingly  
violates a department policy, a rule adopted by the department or  
6       any provision of the chapter governing child protective cases.

8           This amendment allows the court to exclude any information  
collected in a planned interview with a child if the interview  
10       was not audio recorded.

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SPONSORED BY:

(Senator McALEVEY)



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COUNTY: York

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