

MAINE STATE LEGISLATURE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

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 bill by striking out all of section 1.

Further amend the bill in section 14 in subsection 2 in the 9th line (page 6, line 21 in L.D.) by inserting after the following: "may" the following: ', with the court's permission,'

Further amend the bill in section 18 in that part designated "~~§4005-D.~~" by striking out all of subsection 6 (page 8, lines 4 to 8 in L.D.) and inserting in its place the following:

'6. Confidentiality and disclosure limitations. Interested persons, participants and intervenors are subject to the confidentiality and disclosure limitations of section 4008.'

Further amend the bill by striking out all of sections 25 and 26 and inserting in their place the following:

'Sec. 25. 22 MRSA §4021, sub-§§4 and 5 are enacted to read:

4. Audio recording of planned interviews of children. To the extent possible, the department shall audio record all planned questioning of and planned interviews with children. No later than February 1, 2003, the commissioner shall provisionally adopt rules in accordance with Title 5, chapter 375 to establish procedures for the audio recording of planned questioning of and planned interviews with children. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5,

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2 chapter 375, subchapter II-A and must be reviewed before final
3 approval by the joint standing committee of the Legislature
4 having jurisdiction over judiciary matters.

6 Information collected in an interview that was not audio recorded
7 may not be excluded from use in court proceedings solely because
8 the interview was not audio recorded.

10 5. Right to record. A person being questioned or
11 interviewed under this chapter or the parent of a child who is
12 the subject of a proceeding under this chapter may not be
13 prohibited from audio recording the questioning or interview.'

14 Further amend the bill in section 29 in subsection 4 in the
15 3rd line from the end (page 13, line 3 in L.D.) by striking out
16 the following: "section" and inserting in its place the
17 following: 'sections 4041 and'

18 Further amend the bill by inserting after section 31 the
19 following:

21 'Sec. 32. 22 MRSA §4034-A is enacted to read:

23 **§4034-A. Evidence and findings inadmissible**

25 1. Evidence. The exception under section 4034, subsection
26 4 for the admission of evidence that would otherwise be
27 inadmissible hearsay applies to only the preliminary protection
28 hearing under section 4034, subsection 4. Evidence admitted
29 under that exception is not admissible in any other proceeding
30 unless the evidence is admitted pursuant to the laws and rules of
31 evidence applicable to that other proceeding.

32 2. Findings. A finding made at the conclusion of a
33 preliminary protection hearing based on evidence that would
34 otherwise be inadmissible hearsay admitted under section 4034,
35 subsection 4 is not admissible in any other proceeding.'

36 Further amend the bill by striking out all of section 32 and
37 33 and inserting in their place the following:

38 'Sec. 32. 22 MRSA §4035, sub-§2, as enacted by PL 1979, c.
39 733, §18, is amended to read:

40 2. Adjudication. After hearing evidence, the court shall
41 make a finding, by a preponderance of the evidence, as to whether
42 the child is in circumstances of jeopardy to his the child's
43 health or welfare.

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2 A. The court shall make a fresh determination of the
3 question of jeopardy and may not give preclusive effect to
4 the findings of fact made at the conclusion of the hearing
5 under section 4034, subsection 4.

6 B. The court shall make findings of fact on the record upon
7 which the jeopardy determination is made.

8 C. The court shall make a jeopardy determination with
9 regard to each parent who has been properly served.

10 **Sec. 33. 22 MRSA §4035, sub-§3**, as amended by PL 1983, c. 184,
11 §5, is further amended to read:

12 **3. Grounds for disposition.** If the court determines that
13 the child is in circumstances of jeopardy to his the child's
14 health or welfare, the court shall hear any relevant evidence
15 regarding proposed dispositions, including written or oral
16 reports, recommendations or case plans. The court shall then
17 make a written order of any disposition under section 4036. If,
18 after reasonable effort, the department has been unable to serve
19 a parent by the time of the hearing under subsection 1, the court
20 may order any disposition under section 4036 until such time as
21 the parent is served and a jeopardy determination is made with
22 regard to that parent. If possible, this dispositional phase
23 shall must be conducted immediately after the adjudicatory
24 phase. Written materials to be offered as evidence shall must be
25 made available to each party's counsel and the guardian ad litem
26 reasonably in advance of the dispositional phase.'

27 Further amend the bill in section 34 in paragraph G-2 in the
28 3rd line (page 14, line 15 in L.D.) by striking out the
29 following: "section" and inserting in its place the following:
30 'sections 4041 and'

31 Further amend the bill in section 35 in subsection 7-A in
32 the first paragraph in the 3rd line from the end (page 14, line
33 29 in L.D.) by striking out the following: "section" and
34 inserting in its place the following: 'sections 4041 and'

35 Further amend the bill by inserting after section 35 the
36 following:

37 **'Sec. 36. 22 MRSA §4041, sub-§1-A, ¶C**, as enacted by PL 2001,
38 c. 559, Pt. CC, §5, is amended to read:

39 C. Unless excused for good cause shown, at any hearing held
40 under section 4034, subsection 4 or within 10 days of the
41 filing of the petition if a hearing under section 4034,
42 subsection 4 is not held, the department shall present to

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2 the court for review a preliminary rehabilitation and
reunification plan, a plan to avoid removal of the child
4 from home or decision not to commence reunification.

6 (1) A preliminary plan must be developed with the
custodial parent and the department caseworker if the
parent is willing to engage in the development of the
8 plan.

10 (2) The preliminary plan must include the following: a
statement of the problems causing risk to the child
12 identified by the department and by the parent;
preliminary identification by the parent and by the
14 department of services needed; a description of the
visitation plan or explanation of why visits are not
16 scheduled; the names, addresses and telephone numbers
of any relatives or family friends known to the
18 department and parent to be available as resources for
rehabilitation and reunification; and the department's
20 preliminary assessment of any kinship placements.

22 (3) Prior to review by the court, the department shall
provide a copy of the preliminary plan to counsel for
24 the parents, or to the parents if they do not have
counsel, and to the guardian ad litem.

26 (4) The court may review the preliminary plan in a
28 hearing that does not allow testimonial evidence with
all parties and counsel present or may hold a summary
30 hearing at which the court may limit testimony to the
testimony of the caseworker, parent, guardian ad litem,
32 person to whom trial placement was given, foster
parents, preadoptive parents or relatives providing
34 care and may admit evidence, including reports and
records, that would otherwise be inadmissible as
36 hearsay evidence. If, however, the plan includes the
decision not to commence reunification, the hearing in
38 which the court reviews the plan must be a full
evidentiary hearing.

40 (5) The preliminary plan remains in effect until the
42 court enters a jeopardy order under section 4035. A
party may file an amended plan at any time before the
44 jeopardy order is entered with the written agreement of
all parties.'

46 Further amend the bill in section 37 in paragraph A-2 in the
48 3rd line (page 15, line 44 in L.D.) by inserting after the
following: "finds," the following: 'after a full evidentiary
50 hearing and'

2 Further amend the bill by inserting after section 37 the
following:

4 'Sec. 38. 22 MRSA §4041, sub-§2, ¶B-1, as enacted by PL 1997,
6 c. 715, Pt. B, §11, is amended to read:

8 B-1. When the department discontinues efforts to return the
child to a parent, it shall give written notice of this
10 decision to that parent at the parent's last known address.
This notice must include the specific reasons for the
12 department's decision, the specific efforts the department
has made in working with the parent and child and a
14 statement of the parent's rights under section 4038. The
department shall seek an order authorizing it to discontinue
16 reunification efforts. Within 10 days of sending written
notice of the decision to discontinue reunification efforts,
18 the department shall file a motion for approval of
discontinuance of reunification efforts with supporting
20 affidavits. If the parents file a responsive pleading
within 21 days, the court shall conduct a ~~summary proceeding~~
22 ~~in accordance with the provisions of section 4034,~~
subsection 4 full evidentiary hearing. If no responsive
24 pleading is filed, the court may hold a summary hearing in
accordance with the provisions of section 4034, subsection 4
26 or may decide the matter without a hearing.'

28 Further amend the bill by inserting after section 40 the
following:

30 'Sec. 41. 22 MRSA §4087-A, sub-§4-A is enacted to read:

32 4-A. Information for parents in child protective cases.

34 The program, in consultation with appropriate interested parties,
36 shall provide information about child protection laws and
procedures to parents whose children are the subject of child
38 protective investigations and cases under this chapter. The
providing of the information under this subsection does not
40 constitute representation of parents. Parents may seek and
receive information regardless of whether they are represented by
42 legal counsel. The information must be provided free of charge
to parents.

44 The program shall report annually to the joint standing committee
of the Legislature having jurisdiction over judiciary matters,
46 starting February 1, 2003, on the provision of information
required by this subsection.

48 This subsection does not create new rights or obligations
50 concerning the provision of legal advice or representation of

2 parents. Failure to provide information under this subsection
3 does not create a cause of action or have any effect on a child
4 protective proceeding.'

6 Further amend the bill in section 41 in the last line (page
7 17, line 22 in L.D.) by striking out the following: "January
8 31," and inserting in its place the following: 'December 15,'

10 Further amend the bill by striking out all of section 42 and
11 inserting in its place the following:

12 **'Sec. 42. Department of Human Services; report on kinship care.**
13 The Department of Human Services shall report to the joint
14 standing committees of the Legislature having jurisdiction over
15 judiciary matters and health and human services matters before
16 February 1, 2003 on the following:

18 1. A summary of the department's activities and policies
19 concerning care by relatives and placement with relatives;

20 2. Changes in policies and procedures the department is
21 planning to adopt in order to increase care by relatives and
22 placement with relatives; and

24 3. The appropriate process by which the department will
25 inform families involved in child protective cases and their
26 relatives about kinship visitation and placement options.

28 **Sec. 43. Waiver application.** By October 1, 2002, the
29 Department of Human Services shall apply to the United States
30 Department of Health and Human Services, Administration for
31 Children and Families for a waiver under the Social Security Act,
32 42 United States Code 670, Section 470, Title IV-E program to
33 provide services for children, families and guardians determined
34 to be in need of services under the Maine Revised Statutes, Title
35 22, chapter 1071 and to accomplish the goals of this section.

38 1. **Contracts for services and room and board.** The
39 application for the waiver program must include the department
40 and a person responsible for a child to enter into an agreement
41 for services and room and board. A parent or guardian may sign a
42 contract for services to the child and child's family and members
43 of the household in which the child is living. A parent may sign
44 a contract for room and board reimbursement for the household in
45 which the child is living except that reimbursement for room and
46 board may not be paid to the parent. A guardian may sign a
47 contract for room and board reimbursement for the household in
48 which the child is living including, if applicable, the household
49 of the guardian.

2 **2. Reimbursement for services.** The waiver program must
3 allow the department to provide reimbursement for necessary
4 services provided to a child, the child's family and the
5 household in which the child is living. The waiver program must
6 provide reimbursement for services on the same terms that
7 providers are reimbursed for children in the care or custody of
8 the department under Title 22, chapter 1071. Services provided
9 under this subsection must be coordinated with services provided
10 with other departments, including, without limitation, the
11 Department of Behavioral and Developmental Services, the
12 Department of Education, the Department of Public Safety and the
13 Department of Corrections.

14 **3. Reimbursement for room and board.** The waiver program
15 must allow the department to reimburse a child's guardian or
16 other person providing room and board for the child. The waiver
17 program must provide reimbursement for room and board on the same
18 terms that providers are reimbursed for children in the care or
19 custody of the department under Title 22, chapter 1071.

20 **4. Retention of responsibility.** The waiver program must
21 allow the child's parent or guardian to retain responsibility for
22 the child so that decision-making by the parent or guardian is
23 maintained until the earliest of the following 3 events occurs:
24 the parent or guardian enters into an agreement under Title 22,
25 section 4004-A or 4022, in which case the terms of the agreement
26 govern responsibility for the child; the department proceeds with
27 an action under Title 22, chapter 1071 and the court enters an
28 order regarding responsibility for the child; or 2 years elapse
29 from the date of the contract signed under subsection 1. A
30 contract signed under subsection 1 that has terminated under the
31 terms of this subsection may be renewed in the discretion of the
32 department.

34 **Sec. 44. Appropriations and allocations.** The following
35 appropriations and allocations are made.

38 **JUDICIAL DEPARTMENT**

40 **Courts - Supreme, Superior and District**

42 Initiative: Provides funds to support additional
43 court-appointed counsel costs.

44 General Fund	2001-02	2002-03
46 All Other	\$0	\$18,750

48 **Courts - Supreme, Superior and District**

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2 Initiative: Provides funds for one Judge position, 2 Assistant
 Clerk positions and related All Other expenses.

4	General Fund	2001-02	2002-03
	Positions - Legislative Count	(0.000)	(3.000)
6	Personal Services	\$0	\$157,055
	All Other	0	18,375
8			
	General Fund Total	\$0	\$175,430

10	JUDICIAL DEPARTMENT		
12	DEPARTMENT TOTALS	2001-02	2002-03
14	GENERAL FUND	\$0	\$194,180
16	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$194,180

18 **Sec. 45. Effective date.** This Act takes effect October 1, 2002.'

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

24 Further amend the bill by inserting at the end before the
 summary the following:

28 **FISCAL NOTE**

	2001-02	2002-03
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30	APPROPRIATIONS/ALLOCATIONS		
32	General Fund		\$194,180

34 This bill includes General Fund appropriations totalling
 36 \$194,180 in fiscal year 2002-03 for the Judicial Department. It
 provides \$18,750 to support the projected increase in the use of
 38 court-appointed counsel. It also provides \$175,430 for one Judge
 position and 2 Assistant Clerk positions and related costs to
 40 provide for additional and lengthier court hearings and trials.

42 The Department of Human Services will incur additional costs
 under the bill particularly in the purchase of audio recording
 44 equipment to record planned questioning and interviews with
 children. The department believes it can absorb these additional
 46 costs within the already budgeted resources of the department.
 The bill also requires that by October 1, 2002, the Department of
 48 Human Services apply to the federal Administration for Children
 and Families for a waiver to allow for reimbursement for services

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2 and for room and board for children that have not entered into
the care and custody of the department. While the scope and
4 timing of this program will depend on the waiver approved by the
federal government, it is possible there will be an additional
6 cost to the State in the initial year(s) of the waiver program.

8 The child welfare ombudsman program within the Executive
Department will provide information for parents in child
10 protective cases to the extent possible within existing budgeted
resources.

12 The additional costs associated with the provisions
concerning detention hearings can be absorbed by the Department
14 of Corrections utilizing existing budgeted resources.

16 The Department of Corrections, Department of Education,
Department of Behavioral and Developmental Services and the
18 Department of Public Safety will incur some minor additional
costs to coordinate with the Department of Human Services in the
20 provision of certain services authorized by a waiver
application. These costs can be absorbed within the departments'
22 existing budgeted resources.'

24
26 **SUMMARY**

This amendment is the majority report of the Joint Standing
28 Committee on Judiciary. It makes the following changes to the
bill.

30 1. This amendment requires the parents' court-appointed
32 attorney to obtain permission from the judge before representing
the parents in a related family matters proceeding.

34 2. This amendment clarifies that the Department of Human
36 Services must audio record planned interviews and questioning of
children to the extent such recording is possible.

38 3. This amendment removes a section of the bill and
40 replaces it with a section that addresses the same issue, which
is prohibiting the use of evidence that would otherwise be
42 inadmissible hearsay, admitted in the summary preliminary
protection hearing under section 4034, subsection 4, in any other
44 proceeding unless the evidence is admitted pursuant to the
applicable laws and rules of evidence. The hearsay of a child is
46 admissible at the preliminary hearing as well as later hearings.
This amendment also provides that a finding that is based on that
48 evidence is inadmissible in any other proceeding. To the extent
this new provision is inconsistent with recent Maine Law Court
50 decisions, including In re Isaiah B., 1999 ME 174, 740 A.2d 988

(Me. 1999), the holdings of those decisions are overruled prospectively from the effective date of this bill.

This amendment provides that the jeopardy determination made at the jeopardy hearing must be a fresh determination, and the judge can not rely on the findings of fact in the preliminary protection order hearing as precedent to establish jeopardy at the jeopardy hearing. This is consistent with In re Isaiah B., 1999 ME 174, 740 A.2d 988 (Me. 1999).

4. This amendment addresses the recommendation concerning ceasing or not starting efforts to reunify a child that has been removed from the family. This amendment requires that any hearing held in which the issue of ceasing or not starting reunification efforts is determined must be a full evidentiary hearing, and not a summary proceeding. The bill already requires that the determination be based on clear and convincing evidence.

5. This amendment expands the report by the Department of Human Services to the Joint Standing Committee on Judiciary to include a summary of the department's activities and policies concerning kinship care.

6. This amendment revises the provisions concerning disclosure of confidential information by an interested person, participant or intervenor. This amendment specifies that the confidentiality and disclosure provisions of section 4008 apply to interested persons, participants and intervenors. In addition to any statutory sanctions that apply for violating those limitations, a person who discloses confidential information learned in a court proceeding is subject to the court's inherent authority to enforce compliance with court confidentiality orders.

7. This amendment ensures that the clear and convincing evidence standard and the full evidentiary hearing requirements apply to all proceedings concerning an order to cease reunification efforts.

8. This amendment shifts the information program from the State Court Administrator to the ombudsman program established to provide ombudsman services to children and families of the State regarding child welfare services.

9. This amendment deletes the bill's language requiring a finding of jeopardy against both parents. Instead, this amendment authorizes the court to order any disposition, including custody to the department, if there is a determination of jeopardy with regard to one parent and the other parent or custodian has not been located and therefore not properly served with the petition and notice of proceedings as required by

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2 current law. If and when the parent is located, the court may
hold a hearing and make a jeopardy determination with regard to
4 that parent.

6 10. This amendment directs the Department of Human Services
to apply for a waiver to allow for the reimbursement for services
and for room and board for children who have not entered into the
8 care and custody of the department.

10 The amendment also adds an appropriations and allocations
section and a fiscal note to the bill.

12 The amendment makes the bill take effect on October 1, 2002.