

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

DATE: 4-3-02

(Filing No. H-1079)

MINORITY  
JUDICIARY

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44

Reproduced and distributed under the direction of the Clerk of the House.

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

COMMITTEE AMENDMENT "B" 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 inserting after section 18 the following:

**'Sec. 19. 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 ~~shall~~ must be conducted according to the rules of civil procedure and the

2 rules of evidence, except as provided otherwise in this chapter.  
3 All the proceedings shall must be recorded. All proceedings and  
4 records shall must be closed open to the public, unless the court  
orders otherwise.'

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

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

10 4. Audio recording of planned interviews of children. To  
12 the extent possible, the department shall audio record all  
14 planned questioning of and planned interviews with children. No  
16 later than February 1, 2003, the commissioner shall provisionally  
18 adopt rules in accordance with Title 5, chapter 375 to establish  
20 procedures for the audio recording of planned questioning of and  
22 planned interviews with children. Rules adopted pursuant to this  
subsubsection are major substantive rules as defined in Title 5,  
chapter 375, subchapter II-A and must be reviewed before final  
approval by the joint standing committee of the Legislature  
having jurisdiction over judiciary matters.

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

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

32 Further amend the bill in section 29 in subsection 4 in the  
34 3rd line from the end (page 13, line 3 in L.D.) by striking out  
the following: "section" and inserting in its place the  
36 following: 'sections 4041 and'

38 Further amend the bill by inserting after section 31 the  
following:

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

42 **§4034-A. Evidence and findings inadmissible**

44 1. Evidence. The exception under section 4034, subsection  
46 4 for the admission of evidence that would otherwise be  
48 inadmissible hearsay applies to only the preliminary protection  
hearing under section 4034, subsection 4. Evidence admitted  
under that exception is not admissible in any other proceeding  
unless the evidence is admitted pursuant to the laws and rules of  
50 evidence applicable to that other proceeding.

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

6 Further amend the bill by striking out all of section 32 and  
7 33 and inserting in their place the following:

8  
9 'Sec. 32. 22 MRSA §4035, sub-§2, as enacted by PL 1979, c.  
10 733, §18, is amended to read:

11  
12 **2. Adjudication.** After hearing evidence, the court shall  
13 make a finding, by a preponderance of the evidence, as to whether  
14 the child is in circumstances of jeopardy to his the child's  
15 health or welfare.

16  
17 A. The court shall make a fresh determination of the  
18 question of jeopardy and may not give preclusive effect to  
19 the findings of fact made at the conclusion of the hearing  
20 under section 4034, subsection 4.

21  
22 B. The court shall make findings of fact on the record upon  
23 which the jeopardy determination is made.

24  
25 C. The court shall make a jeopardy determination with  
26 regard to each parent who has been properly served.

27  
28 **Sec. 33. 22 MRSA §4035, sub-§3,** as amended by PL 1983, c. 184,  
29 §5, is further amended to read:

30  
31 **3. Grounds for disposition.** If the court determines that  
32 the child is in circumstances of jeopardy to his the child's  
33 health or welfare, the court shall hear any relevant evidence  
34 regarding proposed dispositions, including written or oral  
35 reports, recommendations or case plans. The court shall then  
36 make a written order of any disposition under section 4036. If,  
37 after reasonable effort, the department has been unable to serve  
38 a parent by the time of the hearing under subsection 1, the court  
39 may order any disposition under section 4036 until such time as  
40 the parent is served and a jeopardy determination is made with  
41 regard to that parent. If possible, this dispositional phase  
42 shall must be conducted immediately after the adjudicatory  
43 phase. Written materials to be offered as evidence shall must be  
44 made available to each party's counsel and the guardian ad litem  
45 reasonably in advance of the dispositional phase.'

46  
47 Further amend the bill in section 34 in paragraph G-2 in the  
48 3rd line (page 14, line 15 in L.D.) by striking out the  
49 following: "section" and inserting in its place the following:  
50 'sections 4041 and'

2 Further amend the bill in section 35 in subsection 7-A in  
the first paragraph in the 3rd line from the end (page 14, line  
4 29 in L.D.) by striking out the following: "section" and  
inserting in its place the following: 'sections 4041 and'

6  
8 Further amend the bill by inserting after section 35 the  
following:

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

12  
14 C. Unless excused for good cause shown, at any hearing held  
under section 4034, subsection 4 or within 10 days of the  
filing of the petition if a hearing under section 4034,  
16 subsection 4 is not held, the department shall present to  
the court for review a preliminary rehabilitation and  
18 reunification plan, a plan to avoid removal of the child  
from home or decision not to commence reunification.

20  
22 (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  
24 plan.

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

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

42  
44 (4) The court may review the preliminary plan in a  
hearing that does not allow testimonial evidence with  
all parties and counsel present or may hold a summary  
46 hearing at which the court may limit testimony to the  
testimony of the caseworker, parent, guardian ad litem,  
48 person to whom trial placement was given, foster  
parents, preadoptive parents or relatives providing  
50 care and may admit evidence, including reports and

2 records, that would otherwise be inadmissible as  
3 hearsay evidence. If, however, the plan includes the  
4 decision not to commence reunification, the hearing in  
5 which the court reviews the plan must be a full  
6 evidentiary hearing.

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

12 Further amend the bill in section 37 in paragraph A-2 in the  
13 3rd line (page 15, line 44 in L.D.) by inserting after the  
14 following: "finds," the following: 'after a full evidentiary  
15 hearing and'

16 Further amend the bill by inserting after section 37 the  
17 following:

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

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

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

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

42 **4-A. Information for parents in child protective cases.**  
43 The program, in consultation with appropriate interested parties,

2 shall provide information about child protection laws and  
4 procedures to parents whose children are the subject of child  
6 protective investigations and cases under this chapter. The  
8 providing of the information under this subsection does not  
10 constitute representation of parents. Parents may seek and  
12 receive information regardless of whether they are represented by  
14 legal counsel. The information must be provided free of charge  
16 to parents.

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

16 This subsection does not create new rights or obligations  
18 concerning the provision of legal advice or representation of  
20 parents. Failure to provide information under this subsection  
22 does not create a cause of action or have any effect on a child  
24 protective proceeding.'

22 Further amend the bill in section 41 in the last line (page  
24 17, line 22 in L.D.) by striking out the following: "January  
26 31," and inserting in its place the following: 'December 15,'

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

28 **'Sec. 42. Department of Human Services; report on kinship care.**  
30 The Department of Human Services shall report to the joint  
32 standing committees of the Legislature having jurisdiction over  
34 judiciary matters and health and human services matters before  
36 February 1, 2003 on the following:

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

36 2. Changes in policies and procedures the department is  
38 planning to adopt in order to increase care by relatives and  
40 placement with relatives; and

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

44 **Sec. 43. Waiver application.** By October 1, 2002, the  
46 Department of Human Services shall apply to the United States  
48 Department of Health and Human Services, Administration for  
50 Children and Families for a waiver under the Social Security Act,  
42 United States Code 670, Section 470, Title IV-E program to  
44 provide services for children, families and guardians determined

to be in need of services under the Maine Revised Statutes, Title 22, chapter 1071 and to accomplish the goals of this section.

4           **1. Contracts for services and room and board.** The  
6 application for the waiver program must include the department  
8 and a person responsible for a child to enter into an agreement  
10 for services and room and board. A parent or guardian may sign a  
12 contract for services to the child and child's family and members  
14 of the household in which the child is living. A parent may sign  
16 a contract for room and board reimbursement for the household in  
18 which the child is living except that reimbursement for room and  
20 board may not be paid to the parent. A guardian may sign a  
22 contract for room and board reimbursement for the household in  
24 which the child is living including, if applicable, the household  
26 of the guardian.

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

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

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

50







2 **SUMMARY**

4 This amendment is the minority report of the Joint Standing  
6 Committee on Judiciary. The differences from the majority report  
8 are that the court may exclude any information collected in an  
10 interview with a child when the interview was not audio recorded  
12 and that all proceedings and records are open to the public,  
14 unless a court orders otherwise.

16 This amendment makes the following additional changes to the  
18 bill.

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

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

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

44 4. This amendment addresses the recommendation concerning  
46 ceasing or not starting efforts to reunify a child that has been  
48 removed from the family. This amendment requires that any  
50 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.

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

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

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

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

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

26           9. This amendment deletes the bill's language requiring a  
28 finding of jeopardy against both parents. Instead, this  
amendment authorizes the court to order any disposition,  
30 including custody to the department, if there is a determination  
of jeopardy with regard to one parent and the other parent or  
32 custodian has not been located and therefore not properly served  
with the petition and notice of proceedings as required by  
34 current law. If and when the parent is located, the court may  
hold a hearing and make a jeopardy determination with regard to  
36 that parent.

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

42           The amendment also adds a fiscal note to the bill.

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

**COMMITTEE AMENDMENT**