

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2149

H.P. 1644

House of Representatives, March 4, 2002

**An Act to Implement the Recommendations of the Committee to Review
the Child Protective System.**

Reported by Representative LaVERDIERE for the Committee to Review the Child
Protective System pursuant to Joint Order 2001, H.P. 1385.

Reference to the Joint Standing Committee on Judiciary suggested and printing ordered
under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

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Sec. 1. 4 MRSA §18-C is enacted to read:

§18-C. Information for parents in child protective cases

1. Program. By January 1, 2003, the State Court Administrator, in consultation with appropriate interested parties, shall establish a program to provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under Title 22, chapter 1071. The providing of the information under this program does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

2. Provider. The State Court Administrator shall enter into a contract with one or more private providers, not associated with the Department of Human Services, to operate the program under subsection 1.

3. Report. The State Court Administrator shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the program required by this section.

4. No new rights or obligations. This section does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this section does not create a cause of action or have any effect on a child protective proceeding.

Sec. 2. 15 MRSA §3203-A, sub-§5, ¶D is enacted to read:

D. When a court orders detention or a conditional release that authorizes, even temporarily, the juvenile's removal from the juvenile's home, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders detention or a conditional release, which continues to be governed by the other provisions of this section.

2 **Sec. 3. 15 MRSA §3306-A**, as amended by PL 1999, c. 624, Pt.
B, §16, is further amended by adding at the end a new paragraph
to read:

4
6 When a court orders detention or a conditional release that
authorizes even temporarily the juvenile's removal from the
8 juvenile's home or when a court allows a conditional release
ordered by a juvenile community corrections officer that
10 authorizes, even temporarily, the juvenile's removal from the
juvenile's home to remain in effect, the court shall determine
12 whether reasonable efforts have been made to prevent or eliminate
the need for removal of the juvenile from the juvenile's home or
14 that no reasonable efforts are necessary because of the existence
of an aggravating factor as defined in Title 22, section 4002,
16 subsection 1-B, and whether continuation in the juvenile's home
would be contrary to the welfare of the juvenile. This
18 determination does not affect whether the court orders detention
or a conditional release or allows a conditional release to
20 remain in effect, which continues to be governed by section
3203-A.

22 **Sec. 4. 15 MRSA §3314, sub-§1, ¶C-1**, as amended by PL 1987, c.
720, §5, is further amended to read:

24
26 C-1. The court may commit a juvenile to the custody of the
Department of Human Services when the court has determined
28 that reasonable efforts have been made to prevent or
eliminate the need for removal of the juvenile from his the
30 juvenile's home or that no reasonable efforts are necessary
because of the existence of an aggravating factor as defined
32 in Title 22, section 4002, subsection 1-B, and that
continuation therein would be contrary to the welfare of the
juvenile. The court may not enter an order under this
34 paragraph unless the parents have had notice and an
opportunity to be heard at the dispositional hearing.

36
38 Notwithstanding any other provision of law, the court shall
may not commit a juvenile to the custody of the Department
40 of Human Services unless such notice has been served on the
parents, custodians and the Department of Human Services in
42 accordance with District Court civil rules at least 10 days
prior to the dispositional hearing. A party may waive this
44 time requirement if the waiver is written and voluntarily
and knowingly executed in court before a judge.

46 The Department of Human Services shall provide for the care
and placement of the juvenile as for other children in the
48 department's custody pursuant to the Child and Family
Services and Child Protection Act, Title 22, chapter 1071,
50 subchapter VII.

2 The court may impose conditions that may include
4 participation by the juvenile or the juvenile's parents or
6 legal guardian in treatment services aimed at the
 rehabilitation of the juvenile, reunification of the family
 and improvement of the home environment.

8 **Sec. 5. 15 MRSA §3314, sub-§1, ¶F**, as amended by PL 1997, c.
10 752, §19, is further amended to read:

12 F. The court may commit the juvenile to a Department of
14 Corrections juvenile correctional facility. Whenever a
16 juvenile is committed to a Department of Corrections
18 juvenile correctional facility, the court shall determine
20 whether reasonable efforts have been made to prevent or
22 eliminate the need for removal of the juvenile from the
24 juvenile's home or that no reasonable efforts are necessary
 because of the existence of an aggravating factor as defined
 in Title 22, section 4002, subsection 1-B, and whether
 continuation in the juvenile's home would be contrary to the
 welfare of the juvenile. This determination does not affect
 whether the court orders a commitment to a Department of
 Corrections juvenile correctional facility, which continues
 to be governed by section 3313.

26 **Sec. 6. 15 MRSA §3314, sub-§2**, as amended by PL 1999, c. 624,
28 Pt. A, §8, is further amended to read:

30 **2. Suspended disposition.** The court may impose any of the
32 dispositional alternatives provided in subsection 1 and may
34 suspend its disposition and place the juvenile on a specified
36 period of probation that is subject to such provisions of Title
38 17-A, section 1204 as the court may order and that is
40 administered pursuant to the provisions of Title 34-A, chapter 5,
42 subchapter IV, except that the court may not impose the condition
44 set out in Title 17-A, section 1204, subsection 1-A. The court
46 may impose as a condition of probation that a juvenile must
 reside outside the juvenile's home in a setting satisfactory to
 the juvenile community corrections officer if the court
 determines that reasonable efforts have been made to prevent or
 eliminate the need for removal of the juvenile from the
 juvenile's home or that no reasonable efforts are necessary
 because of the existence of an aggravating factor as defined in
 Title 22, section 4002, subsection 1-B, and that continuation in
 the juvenile's home would be contrary to the welfare of the
 juvenile. Imposition of such a condition does not affect the
 legal custody of the juvenile.

48 Modification of probation is governed by the procedures contained
50 in Title 17-A, section 1202, subsection 2. Termination of

2 probation is governed by the procedures contained in Title 17-A,
3 section 1202, subsection 3. Revocation of probation is governed
4 by the procedures contained in Title 17-A, sections 1205, 1205-B,
5 1205-C and 1206, except that the provisions of those sections
6 requiring a preliminary hearing do not apply and those provisions
7 of Title 17-A, section 1206, subsection 7-A allowing a vacating
8 of part of the suspension of execution apply only to a
9 disposition under subsection 1, paragraph G or H; however, a
10 disposition under subsection 1, paragraph F may be modified to a
11 disposition under subsection 1, paragraph H. If the juvenile is
12 being detained for an alleged violation of probation, the court
13 shall review within 48 hours following the detention, excluding
14 Saturdays, Sundays and legal holidays, the decision to detain the
15 juvenile. Following that review, the court shall order the
16 juvenile's release unless the court finds that there is probable
17 cause to believe that the juvenile has violated a condition of
18 probation and finds, by a preponderance of the evidence, that
19 continued detention is necessary to meet one of the purposes of
20 detention under section 3203-A, subsection 4, paragraph C.

21 **Sec. 7. 15 MRSA §3315, sub-§1**, as amended by PL 1997, c. 752,
22 §24, is further amended to read:

23 **1. Right to review.** Every disposition pursuant to section
24 3314, other than unconditional discharge, must be reviewed not
25 less than once in every 12 months until the juvenile is
26 discharged. The review must be made by a representative of the
27 Department of Corrections unless the juvenile was committed to
28 the Department of Human Services, in which case such review must
29 be made by a representative of the Department of Human Services.
30 A report of the review must be made in writing to the juvenile's
31 parents, guardian or legal custodian. A copy of the report must
32 be forwarded to the program or programs that were reviewed, and
33 the department whose personnel made the review shall retain a
34 copy of the report in their files. The written report must be
35 prepared in accordance with subsection 2. When a juvenile is
36 placed in the custody of the Department of Human Services,
37 reviews and permanency planning hearings must be conducted in
38 accordance with Title 22, section 4038. Title 22, sections 4005,
39 4039 and 4041 also apply.

40
41 **Sec. 8. 15 MRSA §3315-A** is enacted to read:

42 **§3315-A. Termination of parental rights**

43 When a juvenile is in the custody of the Department of Human
44 Services, Title 22, chapter 1071, subchapter VI also applies.

45
46 **Sec. 9. 15 MRSA §3316, sub-§4, ¶B**, as repealed and replaced by
47 PL 1999, c. 127, Pt. B, §6, is amended to read:
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2 B. If a juvenile is placed in a residence outside the
3 juvenile's home pursuant to a voluntary services agreement,
4 the Commissioner of Corrections or the commissioner's
5 designee may request the court to make a determination
6 whether reasonable efforts have been made to prevent or
7 eliminate the need for removal of the juvenile from the
8 juvenile's home or that no reasonable efforts are necessary
9 because of the existence of an aggravating factor as defined
10 in Title 22, section 4002, subsection 1-B, and whether
11 continuation in the juvenile's home would be contrary to the
12 welfare of the juvenile. If requested, the court shall make
13 that determination prior to the expiration of 180 days from
14 the start of the placement and shall review that
15 determination not less than once every 12 months until the
16 juvenile is no longer residing outside the juvenile's home.

18 **Sec. 10. 18-A MRSA §9-308, sub-§(e),** as enacted by PL 1995, c.
19 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

20 (e) The department shall notify the grandparents of a child
21 when the child is placed for adoption if the department has
22 received notice that the grandparents were granted reasonable
23 rights of visitation or access under Title 19-A, chapter 59 or
24 Title 22, section 4005-B 4005-E.

26 **Sec. 11. 22 MRSA §4002, sub-§1-B, ¶A,** as enacted by PL 1997,
27 c. 715, Pt. B, §1, is amended to read:

30 A. The parent has subjected the any child for whom the
31 parent was responsible to aggravated circumstances,
32 including, but not limited to, the following:

34 (1) Rape, gross sexual misconduct, gross sexual
35 assault, sexual abuse, incest, aggravated assault,
36 kidnapping, promotion of prostitution, abandonment,
37 torture, chronic abuse or any other treatment that is
38 heinous or abhorrent to society~~†-er.~~

40 ~~(2)---Refusal for 6 months to comply with treatment~~
41 ~~required in a reunification plan.~~

42 **Sec. 12. 22 MRSA §4002, sub-§1-B, ¶A-1** is enacted to read:

44 A-1. The parent refused for 6 months to comply with
45 treatment required in a reunification plan with regard to
46 the child.

48 **Sec. 13. 22 MRSA §4005, sub-§1, ¶D,** as amended by PL 1997, c.
50 715, Pt. A, §2, is further amended to read:

2 D. The guardian ad litem shall make a written report of the
4 investigation, findings and recommendations, and shall
6 provide a copy of the report to each of the parties
8 reasonably in advance of the hearing, and to the court,
except that the guardian ad litem need not provide a written
report prior to a hearing on a preliminary protection
order. The court may admit the written report into evidence.

10 **Sec. 14. 22 MRSA §4005, sub-§2**, as amended by PL 1983, c. 783,
12 §2, is further amended to read:

14 **2. Parents.** Parents and custodians are entitled to legal
16 counsel in child protection proceedings, except for a request for
18 a preliminary protection order under section 4034 or a petition
20 for a medical treatment order under section 4071, but including
22 hearings on those orders. They may request the court to appoint
24 legal counsel for them. The court, if it finds them indigent,
shall appoint and pay the reasonable costs and expenses of their
legal counsel. The legal counsel appointed by the court under
this section may also represent parents and custodians in a
concurrent family matters action under Title 19-A in which the
only major substantive matters are custody of and contact with
the child. The court shall pay the reasonable costs and expenses
of the legal counsel.

26 **Sec. 15. 22 MRSA §4005-A**, as amended by PL 1997, c. 343, §1,
28 is repealed.

30 **Sec. 16. 22 MRSA §4005-B**, as amended by PL 2001, c. 58, §1,
32 is repealed.

34 **Sec. 17. 22 MRSA §4005-C**, as amended by PL 1999, c. 675, §1,
is repealed.

36 **Sec. 18. 22 MRSA §§4005-D and 4005-E** are enacted to read:

38 **§4005-D. Access to and participating in proceedings**

40 **1. Definitions.** For the purposes of this section, unless
42 the context otherwise indicates, the following terms have the
following meanings.

44 **A. "Foster parent"** means a person who has had a child in
46 that person's home for at least 120 days and who is licensed
as a family foster home under chapter 1663.

48 **B. "Grandparent"** means the biological or adoptive parent of
50 a child's biological or adoptive parent. "Grandparent"
includes the parent of a child's parent whose parental

2 rights have been terminated, but only until the child is
placed for adoption.

4 C. "Interested person" means a person the court has
determined as having a substantial relationship with a child
6 or a substantial interest in the child's well-being, based
8 on the type, strength and duration of the relationship or
interest. A person may request interested person status in
a child protection proceeding either orally or in writing.

10 D. "Intervenor" means a person who is granted intervenor
12 status in a child protective proceeding pursuant to the
Maine Rules of Civil Procedure, Rule 24, as long as
14 intervention is consistent with section 4003.

16 E. "Participant" means a person who is designated as an
interested person under paragraph C and who demonstrates to
18 the court that designation as a participant is in the best
interests of the child and consistent with section 4003. A
20 person may request participant status in a child protection
proceeding either orally or in writing.

22 **2. Interested persons.** Upon request, the court shall
24 designate a foster parent, grandparent, preadoptive parent or a
relative of a child by blood or marriage as an interested person
26 unless the court finds good cause not to do so. The court may
also grant interested person status to other individuals who have
28 a significant relationship to the child, including, but not
limited to, teachers, coaches, counselors or a person who has
30 provided or is providing care for the child.

32 **3. Access to proceedings.** An interested person,
participant or intervenor may attend and observe all court
34 proceedings under this chapter unless the court finds good cause
to exclude the person. The opportunity to attend court
36 proceedings does not include the right to be heard or the right
to present or cross-examine witnesses, present evidence or have
38 access to pleadings or records.

40 **4. Right to be heard.** A participant or an intervenor has
the right to be heard in any court proceeding under this
42 chapter. The right to be heard does not include the right to
present or cross-examine witnesses, present evidence or have
44 access to pleadings or records.

46 **5. Intervention.** An intervenor may participate in any
court proceeding under this chapter as a party as provided by the
48 court when granting intervenor status under Maine Rules of Civil
Procedure, Rule 24. An intervenor has the rights of a party as
50 ordered by the court in granting intervenor status, including the

2 right to present or cross-examine witnesses, present evidence and
have access to pleadings and records.

4 **6. Confidentiality.** An interested person, a participant or
an intervenor may not disclose outside the courtroom any
6 confidential information learned by attending a court proceeding
unless otherwise authorized. Violation of this subsection is
8 subject to sanctions imposed by the court.

10 **§4005-E. Grandparents; visitation and access; placement**

12 **1. Visitation and access.** A grandparent who is designated
as an interested person or a participant under section 4005-D or
14 who has been granted intervenor status under the Maine Rules of
Civil Procedure, Rule 24 may request the court to grant
16 reasonable rights of visitation or access. When a child is
placed in a prospective adoptive home and the prospective
18 adoptive parents have signed an adoptive placement agreement, a
grandparent's right to contact or have access to the child that
20 was granted pursuant to this chapter is suspended. If the
adoption is not final within 18 months of adoptive placement,
22 then the grandparent whose rights of contact or access were
suspended may resume, as a matter of right and without further
24 court order, contact with the child in accordance with the order
granting that contact or access, unless the court determines
26 after a hearing that the contact is not in the child's best
interests. A grandparent's rights of visitation or access
28 terminate when the adoption is finalized pursuant to Title 18-A,
section 9-308. Nothing in this section prohibits prospective
30 adoptive parents from independently facilitating or permitting
contact between a child and a grandparent, especially when a
32 court has previously ordered rights of contact.

34 **2. Placement.** A grandparent who is designated as an
interested person or a participant under section 4005-D or who
36 has been granted intervenor status under the Maine Rules of Civil
Procedure, Rule 24 may request the court to order that the child
38 be placed with the grandparent. A grandparent who has not been
designated as a participant under section 4005-D may make the
40 request for placement in writing. In making a decision on the
request, the court shall give the grandparents priority for
42 consideration for placement if that placement is in the best
interests of the child and consistent with section 4003.

44 **Sec. 19. 22 MRSA §4008, sub-§2, ¶E,** as amended by PL 1993, c.
46 294, §3, is further amended to read:

48 E. A person having the legal responsibility or
50 authorization to educate, care for, ~~evaluate~~ ~~treat~~ or
supervise a child, parent or custodian who is the subject of

2 a record, or a member of a panel appointed by the department
to review child deaths and serious injuries. This includes
4 a member of a treatment team or group convened to plan for
or treat a child or family that is the subject of a record.
6 This may also include a member of a support team for foster
parents, if that team has been reviewed and approved by the
department;

8
10 **Sec. 20. 22 MRSA §4008, sub-§3, ¶F**, as amended by PL 1991, c.
630, §3, is further amended to read:

12 F. The Commissioner of Education when the information
concerns teachers and other professional personnel issued
14 certificates under Title 20-A, persons employed by schools
approved pursuant to Title 20-A or any employees of schools
16 operated by the Department of Education; and

18 **Sec. 21. 22 MRSA §4008, sub-§3, ¶G**, as amended by PL 1995, c.
694, Pt. D, §39 and affected by Pt. E, §2, is further amended to
20 read:

22 G. The prospective adoptive parents. Prior to a child
being placed for the purpose of adoption, the department
24 shall comply with the requirements of Title 18-A, section
9-304, subsection (b) and section 8205+; and

26
28 **Sec. 22. 22 MRSA §4008, sub-§3, ¶H** is enacted to read:

30 H. Upon written request, a person having the legal
authorization to evaluate or treat a child, parent or
custodian who is the subject of a record. This includes a
member of a treatment team or group convened to plan for or
treat a child or family that is the subject of a record.

34
36 **Sec. 23. 22 MRSA §4010-B** is enacted to read:

38 **§4010-B. Written policies**

40 1. Written policies. By February 1, 2003, the department
shall put in writing all policies that direct or guide procedural
and substantive decision making by caseworkers, supervisors and
other department personnel concerning child protective cases.

44 2. Publicly available. By February 1, 2003, the department
shall make available to the public all policies that direct or
guide procedural and substantive decision making by caseworkers,
supervisors and other department personnel concerning child
protective cases. The department shall post and maintain the
policies on a publicly accessible site on the Internet. ..

2 3. Kinship care policies. By September 1, 2002, the
department shall make kinship care policies available in writing to the public.

4
6 4. Rules. this section does not affect the department's
responsibility to adopt rules as otherwise required by law.

8 **Sec. 24. 22 MRSA §4015**, as amended by PL 1985, c. 495, §21,
is further amended to read:

10 **§4015. Privileged or confidential communications**

12
14 The husband-wife and physician and psychotherapist-patient
privileges under the Maine Rules of Evidence and the confidential
quality of communication under Title 16, section 53-B; Title
16 20-A, sections 4008 and 6001, to the extent allowed by applicable
federal law; Title 24-A, section 4224; Title 32, sections 1092-A
18 and 7005; and Title 34-B, section 1207, are abrogated in relation
to required reporting, cooperating with the department or a
20 guardian ad litem in an investigation or other child protective
activity or giving evidence in a child protection proceeding.
22 Information released to the department pursuant to this section
shall must be kept confidential and may not be disclosed by the
24 department except as provided in section 4008.

26 Statements made to a licensed mental health professional in
the course of counseling, therapy or evaluation where the
28 privilege is abrogated under this section may not be used against
the client in a criminal proceeding ~~except to rebut the client's~~
30 ~~testimony--contradicting--those--statements.~~ Nothing in this
section may limit any responsibilities of the professional
32 pursuant to this Act.

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

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

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

50 5. Optional recording. A person being questioned or

2 interviewed under this chapter or the parent of a child who is
3 the subject of a proceeding under this chapter may not be
4 prohibited from recording the questioning or interview.

6 **Sec. 26. 22 MRSA §4031-A** is enacted to read:

8 **§4031-A. Use of hearsay; fresh determination of jeopardy**

10 **1. Findings or orders based on certain evidence**
11 **inadmissible.** If a finding or order from a prior proceeding is
12 based on hearsay or other evidence that is not admissible in the
13 current proceeding, that finding or order is not admissible in
14 the current proceeding.

16 **2. Fresh determination of jeopardy.** The court must make a
17 fresh determination of the question of jeopardy under section
18 4035 and at each subsequent review under section 4038.

20 **Sec. 27. 22 MRSA §4032, sub-§2,** as enacted by PL 1979, c. 733,
21 §18, is amended to read:

22 **2. Contents of petition.** A petition shall must be sworn
23 and shall include at least the following:

24 A. Name, date, place of birth and municipal residence, if
25 known, of each child;

26 B. The name and address of the petitioner and the nature of
27 his the petitioner's relationship to the child;

28 C. Name and municipal residence, if known, of each parent
29 and custodian;

30 D. A summary statement of the facts which that the
31 petitioner believes constitute the basis for the petition;

32 E. An allegation which that is sufficient for court action;

33 F. A request for specific court action;

34 G. A statement that the parents and custodians are entitled
35 to legal counsel in the proceedings and that, if they want
36 an attorney but are unable to afford one, they should
37 contact the court as soon as possible to request appointed
38 counsel; and

39 H. A statement that petition proceedings could lead to the
40 termination of parental rights, under section 4051 et seq.;

2 I. A statement explaining the specific reasonable efforts
3 made to prevent the need to remove the child from the home
4 or to resolve jeopardy;

5 J. The names of relatives who may be able to provide care
6 for the child; and

7 K. The names of relatives who are members of an Indian
8 tribe.

9
10 **Sec. 28. 22 MRSA §4034, sub-§§1 and 2**, as enacted by PL 1979,
11 c. 733, §18, are amended to read:

12
13 **1. Request.** A petitioner may add to a child protection
14 petition a request for a preliminary protection order, ~~which~~
15 ~~shall or may request a preliminary protection order separately~~
16 from the child protection petition. A request for a preliminary
17 protection order must include a sworn summary of facts to support
18 the request.

19
20 **2. Order.** If the court finds by a preponderance of the
21 evidence presented in the sworn summary or otherwise that there
22 is an immediate risk of serious harm to the child, it may order
23 any disposition under section 4036. A preliminary protection
24 order ~~shall~~ automatically ~~expire~~ expires at the time of the
25 issuing of a final protection order under section 4035 or a
26 judicial review order under section 4038.

27
28 **Sec. 29. 22 MRSA §4034, sub-§4**, as amended by PL 1997, c. 715,
29 Pt. A, §4, is further amended to read:

30
31 **4. Summary preliminary hearing.** If the custodial parent
32 appears and does not consent, or if a noncustodial parent
33 requests a hearing, then the court shall hold a summary
34 preliminary hearing on that order within ~~10~~ 14 days but not less
35 than 7 days of its issuance or request. If a parent or custodian
36 is not served with the petition before the summary preliminary
37 hearing, the parent or custodian may request a subsequent
38 preliminary hearing within 10 days after receipt of the
39 petition. The petitioner bears the burden of proof. At a
40 summary preliminary hearing, the court may limit testimony to the
41 testimony of the caseworker, parent, custodian, guardian ad
42 litem, foster parent, preadoptive parent or relative providing
43 care and may admit evidence, including reports and records, that
44 would otherwise be inadmissible as hearsay evidence. If after
45 the hearing the court finds by a preponderance of the evidence
46 that returning the child to the child's custodian would place the
47 child in immediate risk of serious harm, it shall continue the
48 order or make another disposition under section 4036. If the
49 court's preliminary order includes a finding of an aggravating
50

2 factor, the court may order the department not to commence
3 reunification or to cease reunification in accordance with
4 section 4042, in which case the court shall conduct a hearing on
5 jeopardy and conduct a permanency planning hearing. The hearings
6 must commence within 30 days of entry of the preliminary order.

7 **Sec. 30. 22 MRSA §4034, sub-§5**, as amended by PL 1997, c. 715,
8 Pt. A, §5, is further amended to read:

9 **5. Contents of order.** The preliminary protection order
10 must include a notice to the parents and custodians of their
11 right to counsel, as required under section 4032, subsection 2,
12 paragraph G and, if the order was made without consent, notice of
13 the date and time of the summary preliminary hearing. The order
14 must include a notice to the parent or custodian that if a parent
15 or custodian is not served with the petition before the summary
16 preliminary hearing, the parent or custodian is entitled to
17 request a subsequent preliminary hearing within 10 days after
18 receipt of the petition. The order must include a notice that
19 visitation must be scheduled within 7 days of the issuance of the
20 order unless there is a compelling reason not to schedule
21 visitation.

22 **Sec. 31. 22 MRSA §4034, sub-§6** is enacted to read:

23 **6. Visitation.** When the court issues a preliminary
24 protection order, the court shall order the department to
25 schedule visitation with the child's parents and siblings within
26 7 days of the issuance of the order, unless there is a compelling
27 reason not to schedule such visitation.

28 **Sec. 32. 22 MRSA §4035, sub-§2**, as enacted by PL 1979, c. 733,
29 §18, is amended to read:

30 **2. Adjudication.** After hearing evidence, the court shall
31 make a finding, by a preponderance of the evidence, as to whether
32 the child is in circumstances of jeopardy to his the child's
33 health or welfare. The court shall state the evidence on which
34 the finding is based. The court shall make a specific finding
35 concerning jeopardy for each parent.

36 **Sec. 33. 22 MRSA §4035, sub-§3**, as amended by PL 1983, c. 184,
37 §5, is further amended to read:

38 **3. Grounds for disposition.** If the court determines that
39 the child is in circumstances of jeopardy to his the child's
40 health or welfare, the court shall hear any relevant evidence
41 regarding proposed dispositions, including written or oral
42 reports, recommendations or case plans. The court shall then
43 make a written order of any disposition under section 4036.

2 although the court may order the child to be placed in the
3 department's custody only if the court determines that the child
4 is in circumstances of jeopardy to the child's health or welfare
5 with regard to both parents. If possible, this dispositional
6 phase shall must be conducted immediately after the adjudicatory
7 phase. Written materials to be offered as evidence shall must be
8 made available to each party's counsel and the guardian ad litem
reasonably in advance of the dispositional phase.

10 **Sec. 34. 22 MRSA §4036, sub-§1, ¶G-2,** as enacted by PL 1997, c.
11 715, Pt. A, §11, is amended to read:

12
13 G-2. If the court's jeopardy order includes a finding of an
14 aggravating factor, the court may order the department to
15 cease reunification in accordance with section 4042, in
16 which case a permanency planning hearing must commence
17 within 30 days of the order to cease reunification.

18
19 **Sec. 35. 22 MRSA §4038, sub-§7-A,** as enacted by PL 1997, c.
20 715, Pt. B, §10, is amended to read:

21
22 **7-A. Permanency planning hearing.** The court shall conduct
23 a permanency planning hearing and shall determine a permanency
24 plan within 12 months of the time a child is considered to have
25 entered foster care and every 12 months thereafter, unless
26 subsequent reviews are no longer required pursuant to subsection
27 1-A. If the court's jeopardy ruling includes a finding of an
28 aggravating factor, the court may order the department to cease
29 reunification in accordance with section 4042, in which case a
30 permanency planning hearing must commence within 30 days of the
31 order to cease reunification.

32
33 A. A child is considered to have entered foster care on the
34 date of the first judicial finding that the child has been
35 subjected to child abuse or neglect or on the 60th day after
36 removal of the child from home, whichever occurs first.

37
38 B. The permanency plan for the child must contain
39 determinations on the following issues.

40
41 (1) The permanency plan must determine whether and
42 when, if applicable, the child will be:

43
44 (a) Returned to the parent. Before the court may
45 enter an order returning the custody of the child
46 to a parent, the parent must show that the parent
47 has carried out the responsibilities set forth in
48 section 4041, subsection 1, paragraph B; that to
49 the court's satisfaction the parent has rectified
50 and resolved the problems that caused the removal

1
2 of the child from home and any subsequent problems
3 that would interfere with the parent's ability to
4 care for and protect the child from jeopardy; and
5 that the parent can protect the child from
6 jeopardy;

7 (b) Placed for adoption, in which case the
8 department shall file a petition for termination
9 of parental rights;

10 (c) Referred for legal guardianship; or

11 (d) Placed in another planned permanent living
12 arrangement when the department has documented to
13 the court a compelling reason for determining that
14 it would not be in the best interests of the child
15 to be returned home, be referred for termination
16 of parental rights or be placed for adoption, be
17 placed with a fit and willing relative, or be
18 placed with a legal guardian.
19

20
21 (2) In the case of a child placed in foster care
22 outside the state in which the parents of the child
23 live, the permanency plan must determine whether the
24 out-of-state placement continues to be appropriate and
25 in the best interests of the child.
26

27 (3) In the case of a child who is 16 years of age or
28 older, the permanency plan must determine the services
29 needed to assist the child to make the transition from
30 foster care to independent living.
31

32 C. The court shall consider, but is not bound by, the
33 wishes of the child in making a determination under this
34 subsection if the child is 12 years of age or older.
35

36 **Sec. 36. 22 MRSA §4041, sub-§2, ¶A-1**, as enacted by PL 1997, c.
37 715, Pt. B, §11, is repealed.

38 **Sec. 37. 22 MRSA §4041, sub-§2, ¶A-2** is enacted to read:

39 A-2. The court may order that the department need not
40 commence or may cease reunification efforts only if the
41 court finds, in accordance with section 4042, at least one
42 of the following:

43 (1) The existence of an aggravating factor; or

44 (2) That continuation of reunification efforts is
45 inconsistent with the permanency plan for the child.
46

2 (a) When 2 placements with the same parent have
4 failed and the child is returned to the custody of
6 the department, the court shall make a finding
8 that continuation of reunification efforts is
10 inconsistent with the permanency plan for the
12 child and order the department to cease
 reunification unless the parent demonstrates that
 reunification should be continued and the court
 determines reunification efforts to be in the best
 interests of the child.

14 (b) If the permanency plan provides for a
16 relative or other person to have custody of the
18 child and the court has ordered custody of the
20 child to that relative or other person, the court
22 shall make a finding that continuation of
24 reunification efforts is inconsistent with the
 permanency plan for the child and order the
 department to cease reunification unless the
 parent demonstrates that reunification should be
 continued and the court determines reunification
 efforts to be in the best interests of the child.

26 **Sec. 38. 22 MRSA §4042** is enacted to read:

28 **§4042. Standard to cease reunification efforts**

30 The court may order the department to not commence or to
32 cease rehabilitation and reunification efforts only if the court
 has made its findings concerning reunification based on clear and
 convincing evidence.

34 **Sec. 39. 22 MRSA §4052, sub-§2-A, ¶B,** as enacted by PL 1997,
36 c. 715, Pt. B, §14, is amended to read:

38 B. A court order includes a finding of an aggravating
40 factor and an order to cease reunification in accordance
 with section 4042.

42 **Sec. 40. 22 MRSA §4055, sub-§1, ¶A,** as amended by PL 1995, c.
44 694, Pt. D, §48 and affected by Pt. E, §2, is further amended to
 read:

46 A. One of the following conditions has been met:

48 (1) Custody has been removed from the parent under:

50 (a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653; or

(c) Section 3792 prior to the effective date of this chapter; or

(d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; and

Sec. 41. Representation of parents; pilot project. The Supreme Judicial Court shall establish a pilot project in one or more locations to provide representation to parents in child protective proceedings on a contract basis with one or more attorneys or firms. The Supreme Judicial Court shall evaluate the quality, effectiveness, adequacy and timeliness of the representation and the costs as compared to the traditional provision of court-appointed counsel. The Supreme Judicial Court shall report its conclusions and recommendations concerning the pilot project to the joint standing committee of the Legislature having jurisdiction over judiciary matters by January 31, 2003.

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

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

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

SUMMARY

This bill contains the legislative recommendations of the Committee to Review the Child Protective System, created by Joint Order 2001, H.P. 1385. A full discussion of all the committee's recommendations is contained in the committee's final report, submitted to the Joint Standing Committee on Judiciary in January 2002.

This bill amends the Maine Juvenile Code to be consistent with federal law and the child protective statutes with regard to juveniles who are ordered by the court to be removed from their

2 homes. Before ordering removal, the court must make a finding as
4 to whether reasonable efforts have been made to prevent or
6 eliminate the need for removal of the juvenile from the
8 juvenile's home, or that no reasonable efforts are necessary
because of the existence of an aggravating factor as defined in
the Maine Revised Statutes, Title 22, section 4002, subsection
1-B, and continuation in the juvenile's home would be contrary to
the welfare of the juvenile. This determination does not affect
whether the court orders detention or a conditional release.

10
12 This bill makes clear that when the juvenile is ordered into
14 the custody of the Department of Human Services, the child
16 protective requirements apply and the court must conduct the
permanency planning hearings and judicial reviews required in
child protective cases.

18 This bill makes clear that the Juvenile Court, when ordering
20 a juvenile into the custody of the Department of Human Services,
22 may impose conditions that may include participation by the
24 juvenile or the juvenile's parents or legal guardian in treatment
services aimed at the rehabilitation of the juvenile,
reunification of the family and improvement of the home
environment.

26 This bill requires the State Court Administrator to consult
28 with appropriate interested parties and establish a program to
30 provide information about the child protective system to
32 parents. The program will provide information for parents at any
34 stage in child protective proceedings. This is in addition to
36 the parents' legal counsel. The program must be conducted under
38 contract by one or more private providers. The provision of the
information is not legal representation. This bill does not
create any rights for the parents or any other person. Failure
to establish the program or provide information does not affect
the rights of the parents in the case that do not already exist.
The State Court Administrator must report every year to the joint
standing committee of the Legislature having jurisdiction over
judiciary matters about the program.

40 Current law provides a definition of "aggravating factor."
42 It is significant because an aggravating factor can be the basis
44 for a cease-reunification order, and gives the court the ability
46 to put the case on a fast track towards termination of parental
48 rights. If a parent has committed rape, gross sexual misconduct,
50 gross sexual assault or other actions that are heinous and
abhorrent to society against the child who is the subject of the
petition, the court may find the existence of an aggravating
factor. If the parent has committed the same act against a
different child, however, no aggravating finding may be made,
even if the victim is another child in the household. This is

2 inconsistent with the termination provisions, which allow the
3 court to presume that a parent is unfit if the parent has acted
4 in a heinous or abhorrent manner towards any child. This section
5 changes the definition of aggravating factor to apply to any
6 child for whom the parent was responsible. This expands the
7 number of parents with an aggravating factor to include people
8 who have behaved in a way that the statute currently defines to
be so extreme as to indicate a lack of rehabilitative potential.

10 Current law requires the guardian ad litem to provide a
11 written report to the court and parties. In some cases, a
12 question has been raised as to whether the report may be
13 considered by the court as evidence. Most courts do rely on the
14 reports when orders are issued. This bill clarifies the law to
15 provide that the court may admit as evidence the guardian's
16 report.

18 This bill clarifies the statute with regard to the scope of
19 the authority of a parent's court-appointed attorney. There are
20 situations in which there is a family matters proceeding, such as
21 a divorce or other action to determine parental rights and
22 responsibilities, that is taking place at the same time as a
23 child protective proceeding involving the same child. The change
24 makes it clear that the parent's attorney, appointed by the court
25 to represent the parent in the child protective proceeding, may
26 also represent that parent in the family matters proceeding if
27 the only major substantive issues in the family matters
28 proceeding are custody of and contact with the child.

30 The bill rewrites the statutes governing access to and
31 participation in child protective proceedings for nonparties.
32 Three tiers are established. "Interested persons" may observe
33 court proceedings, but have no opportunity to speak during the
34 proceeding. The judge may designate as an "interested person"
35 any person who has a substantial relationship with the child or a
36 substantial interest in the child's well-being, based on the
37 type, strength and duration of the relationship or interest. The
38 following will be designated as "interested persons" upon
39 request, unless the court finds good cause not to do so: foster
40 parents, grandparents, preadoptive parents and a relative of the
41 child by blood relation or marriage. The provision allows others
42 who have a significant relationship with the child to qualify as
43 "interested persons." This includes, but is not limited to,
44 teachers, coaches, counselors and child care providers.

46 Participants are individuals that qualify as interested
47 persons and request participant status, which will allow them an
48 opportunity to be heard in the child protective proceeding. The
49 court may designate an individual as a participant if the
50 individual demonstrates to the court that the designation is in

2 the best interests of the child and is consistent with the
purposes of the child protective laws. Although participants
4 have the right to speak, they do not have the right to
cross-examine witnesses, present their own witnesses or evidence
or have access to pleadings or records.

6
8 The 3rd tier is that of intervenors. This bill eliminates
special provisions for certain persons who seek intervenor
10 status. The Maine Rules of Civil Procedure, Rule 24 governs to
whom the court may grant intervenor status, although the court
12 must still determine that granting intervenor status is
consistent with the purposes of the child protective laws. As in
14 any other civil case, once a court has granted an individual
intervenor status, that intervenor becomes a party to the
proceeding.

16
18 A grandparent is not required to seek intervenor status in
order to seek visitation with or access to the child, or to ask
20 the court to order that the child be placed with the
grandparent. Current procedures and opportunities for
22 grandparents are otherwise retained. The grandparent must simply
be designated as an interested person, although being designated
24 a participant or being granted intervenor status also puts the
grandparent in the position to make requests to the court.

26 The bill requires the Department of Human Services to
28 release upon written request relevant confidential records to
persons who have the legal authorization to evaluate or treat a
child or a family member.

30
32 The bill requires the Department of Human Services to
produce decision-making policies in writing and make them
publicly available. It requires the department to post the most
34 current policies on a publicly accessible site on the Internet.
The policies must address kinship care and placement.

36
38 Current law abrogates the mental health evidentiary
privileges under the Maine Rules of Evidence and state and
40 federal law in relation to child protective activities. The
statute describing the domestic or family violence counseling
42 privilege acknowledges this abrogation. This bill includes in
the child protective laws a corresponding recognition of the
domestic or family violence privilege.

44
46 When a parent in a child protective action faces criminal
charges relating to the abuse of the child, the parent is often
48 reluctant to engage in treatment for fear this will be used
against the parent in the criminal action. Current law limits
50 the use in the criminal court of the patient's statements to a
mental health professional. The bill amends the statute to

2 provide that the statements may not be used at all in the
3 criminal case, so that parents will not hesitate to enter into
4 services in the child protective proceeding because criminal
charges are pending.

6 The Department of Human Services is required, to the extent
7 possible, to record all planned questioning of and interviews
8 with children. The department must adopt rules to establish
9 procedures to record interviews; the rules are major substantive
10 rules. The fact that an interview was not recorded does not by
11 itself require the exclusion of the information collected in the
12 interview.

14 This bill also clarifies that any person who is being
15 questioned or interviewed may record the questioning or interview.

16 The restrictions on the admissibility of evidence in a
17 preliminary protection order hearing are more liberal than in
18 other proceedings, at least in part to allow the court to act
19 when the child is in immediate danger. If a finding is made
20 based on that evidence, the finding is admissible and given at
21 least some precedential weight under current law and procedures
22 in subsequent proceedings even though the underlying evidence
23 would not be admissible in those proceedings. This bill enacts a
24 new provision of law that prohibits the admissibility of a
25 finding or order from a previous proceeding if the evidence that
26 the finding or order was based on would not be admissible in the
27 current proceeding. To the extent this new provision is
28 inconsistent with recent Maine Law Court decisions, including In
29 re Isaiah B, 1999 ME 174, 740 A.2d 988, the holdings of those
30 decisions are overruled prospectively from the effective date of
31 this Act.

34 The bill requires the court to state on which evidence the
35 jeopardy finding or order is based. This will identify findings
36 based on otherwise inadmissible evidence.

38 This bill amends the statute listing the information that
39 must be included in a child protective petition. The additions
40 are consistent with the department's responsibilities under
41 federal and state laws. The petition must include a statement of
42 the reasonable efforts made to prevent the need to remove the
43 child from the home or to resolve jeopardy. The petition must
44 include the names of relatives who may be able to provide care
45 for the child. The petition must also include the names of
46 relatives who are members of an Indian tribe.

48 Current law provides that the preliminary protection order
49 expires once a jeopardy order is issued. This bill amends the
50 statute to clarify that a request for a preliminary protection

2 order may be added to the petition, as is currently provided, or
3 may be filed independently. The preliminary protection order
4 then expires after a jeopardy order or a judicial review order is
5 issued.

6 Current law provides that if the court's preliminary
7 protection order includes a finding of an aggravating factor, the
8 court may order the department not to commence reunification or
9 to cease reunification, in which case a permanency hearing must
10 commence within 30 days. This bill amends the law to provide
11 that the court must conduct a hearing on jeopardy, which can be
12 combined with the permanency planning hearing. This avoids
13 authorizing the court to hold a permanency planning hearing
14 before finding jeopardy.

16 Current law provides that if the court determines that the
17 child is in circumstances of jeopardy to the child's health or
18 welfare, the court shall hear evidence regarding the proposed
19 dispositions and shall make a written order of disposition. The
20 question has been raised in various courts whether a finding that
21 the custodial parent presents jeopardy is sufficient, or whether
22 the court must find that each parent presents jeopardy to the
23 child before custody to the department is ordered. This issue
24 comes up when there is a noncustodial parent, particularly one
25 who lives out of the State. This bill amends the statute to
26 provide that the court must make a specific finding concerning
27 jeopardy for each parent. It authorizes the court to order
28 custody to the department only if the court finds the child is in
29 jeopardy with regard to both parents.

30 This bill removes the department's responsibilities to
31 pursue reunification of the family if the permanency plan for the
32 child calls for custody with a relative and the court has ordered
33 custody of the child to that relative.

36 Current law allows the court to order the Department of
37 Human Services to either not commence or to cease efforts to
38 reunify the family based on a finding by the preponderance of the
39 evidence. The bill allows the court to make such an order only
40 if the court has found by clear and convincing evidence that
41 reunification is not in the best interests of the child.

42 This bill slightly adjusts the timing of the preliminary
43 protection hearing after a preliminary protection order is
44 issued. In many cases, the preliminary protection order has been
45 issued on a Friday and the hearing scheduled for the next
46 business day, the following Monday, leaving the parents with too
47 little time to work with an attorney, collect relevant
48 information and prepare their case. The bill provides that the
49 hearing can not be held less than 7 days after the order is
50

2 issued and must be held before 14 days have passed since the
3 issuance of the order.

4 The bill corrects a conflict in the statute by clarifying
5 that annual permanency planning reviews are not required for a
6 child protective case if the facts of the case fall into one of
7 the 4 categories listed earlier in the same section of statute.
8 The Maine Revised Statutes, Title 22, section 4038, subsection
9 1-A provides that no subsequent review is required unless a party
10 petitions for a review or the court orders a review, once certain
11 custody orders are made.

12 The bill requires the court to order the department to
13 schedule visitation with the child's parents and siblings within
14 7 days of the issuance of the order. Such visitation is not
15 required if there is a compelling reason not to.

16 The bill directs the Supreme Judicial Court to consider
17 establishing a pilot project to provide representation to parents
18 in child protective proceedings on a contract basis with one or
19 more attorneys or firms. A similar pilot project was undertaken
20 to provide representation for criminal defendants.

21 The bill requires the Department of Human Services to report
22 to the joint standing committee of the Legislature having
23 jurisdiction over judiciary matters and health and human services
24 matters about planned changes to increase care by relatives and
25 placement with relatives, and how the department will inform
26 families about visitation and placement options for relatives.

27 Current law lists the provisions under which a court may
28 have ordered a child to be removed from the home before
29 termination of parental rights may be considered. This bill adds
30 a cross-reference to the Maine Juvenile Code under which the
31 Juvenile Court may order the child removed from the home.