

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1320

H.P. 918

House of Representatives, March 15, 2005

An Act To Amend the Child and Family Services and Protection Act

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative VAUGHAN of Durham.

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

2
4 **Sec. 1. 18-A MRSA §9-304, sub-§(b), ¶(6)**, as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

6 (6) The department, the licensed child-placing agency or
8 other person who acts to place or assist in placing the
10 child for adoption shall file the information collected with
12 the court and, if it appears that the adoption will be
14 granted and this information has not previously been made
16 available to the adoptive parents pursuant to ~~Title 22, section 4008, subsection 3, paragraph C~~ or Title 22, section 8205, the court shall make the information available to the adoptive parents, prior to issuing the decree pursuant to subsection (f), with protection for the identity of persons other than the child.

18 **Sec. 2. 18-A MRSA §9-305, sub-§(b)**, as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

20 (b) The judge may conduct an inspection in camera of
22 records of relevant child protective proceedings and may disclose
24 only that information necessary for the determination of any
26 issue before the court. Any disclosure of information must be
 done pursuant to Title 22, section 4008, subsection 3 1.

28 **Sec. 3. 22 MRSA §4003, sub-§4**, as amended by PL 1999, c. 731, Pt. AA, §4, is further amended to read:

30 **4. Permanent plans for care and custody.** Promote the early
32 establishment of permanent plans for the care and custody of
34 children who cannot be returned to their family. It is the intent
36 of the Legislature that the department reduce the number of
 children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983; and

38 **Sec. 4. 22 MRSA §4003, sub-§5**, as enacted by PL 1999, c. 731, Pt. AA, §5, is amended to read:

42 **5. Report.** Require the department to report monthly to the
44 joint standing committees of the Legislature having jurisdiction
46 over appropriations and financial affairs and health and human
48 services matters, beginning in July 2000, on the status of
 children served by the Bureau of Child and Family Services. The report must include, at a minimum, information on the department's caseload, the location of the children in the department's custody and the number of cases of abuse and neglect

2 that were not opened for assessment. This information must be
3 identified by program and funding source; and

4 **Sec. 5. 22 MRSA §4003, sub-§6** is enacted to read:

6 **6. Priorities of department.** Require that the priorities
7 of the department are the preservation of the family first, the
8 placement of the child with the closest appropriate next of kin
9 second and placement of the child in foster care only as a last
10 resort.

12 **Sec. 6. 22 MRSA §4008, sub-§1**, as enacted by PL 1979, c. 733,
13 §18, is amended to read:

14 **1. Confidentiality of records.** All ~~Any~~ department records
15 which ~~contain personally identifying information and are~~ record
16 created or obtained in connection with the department's child
17 protective activities and activities related to a child while in
18 the care or custody of the department are ~~confidential and~~
19 ~~subject to release only under the conditions of subsections 2 and~~
20 ~~3~~ is open to the public except in cases when a court determines
21 that the record should be sealed due to explicit sexual content.
22 ~~Within the department, the records shall be available only to and~~
23 ~~used by appropriate departmental personnel and legal counsel for~~
24 ~~the department in carrying out their functions.~~

26 **Sec. 7. 22 MRSA §4008, sub-§2**, as amended by PL 2001, c. 696,
27 §17, is repealed.

30 **Sec. 8. 22 MRSA §4008, sub-§3**, as amended by PL 2003, c. 673,
31 Pt. Z, §§2 to 4, is repealed.

32 **Sec. 9. 22 MRSA §4008, sub-§6, ¶¶A and B**, as enacted by PL
33 2003, c. 673, Pt. W, §1, are amended to read:

36 A. The department may charge fees for the services listed in
37 paragraph B to any person except the following:

38 (1) A parent in a child protection proceeding, an
39 attorney who represents a parent in a child protection
40 proceeding or a guardian ad litem in a child protection
41 proceeding when the parent, attorney or guardian ad
42 litem requests the service for the purposes of the
43 child protection proceeding;

46 (2) An adoptive parent or prospective adoptive parent
47 who requests records relating to the child who has been
48 or might be adopted;

2 (3) A person having the legal authorization to
evaluate or treat a child, parent or custodian who is
4 the subject of a record, including a member of a
treatment team or group convened to plan for or treat a
6 child or family that is the subject of a record; the
record must be requested for the purpose of evaluating
8 or treating the child, parent or custodian who is the
subject of the record;

10 (4) Governmental entities of this State that are not
engaged in licensing; and

12 (5) Governmental entities of any county or
14 municipality of this State that are not engaged in
licensing.

16 A request or order by a court for disclosure of records
18 ~~pursuant to subsection 3, paragraph B~~ must be deemed to have
been made by the person requesting that the court order the
20 disclosure.

22 B. The department may charge fees for the following
services:

24 (1) Researching its records to determine whether a
26 particular person is named in the records;

28 (2) Receiving and responding to a request for
disclosure of department records, ~~whether or not the~~
30 ~~department grants the request~~; and

32 (3) Disclosing department records.

34 **Sec. 10. 22 MRSA §4008, sub-§6, ¶F**, as enacted by PL 2003, c.
673, Pt. W, §1, is repealed.

36 **Sec. 11. 22 MRSA §4008-A**, as enacted by PL 1997, c. 328, §1,
38 is repealed.

40 **Sec. 12. 22 MRSA §4012, sub-§3** is enacted to read:

42 3. Liability for false report. A person who makes a
44 report, including the information required in subsection 2,
paragraph F, that is inaccurate and malicious commits a Class D
crime pursuant to Title 17-A, section 509.

46 **Sec. 13. 22 MRSA §4014, sub-§1**, as amended by PL 1987, c. 395,
48 Pt. A, §89, is further amended to read:

2 **1. Reporting and proceedings.** A person, including an agent
4 of the department, participating in good faith in reporting under
6 this subchapter or participating in a related child protection
8 investigation or proceeding, including, but not limited to, a
10 multidisciplinary team, out-of-home abuse investigating team or
12 other investigating or treatment team, is immune from any
14 criminal or civil liability for the act of reporting or
participating in the investigation or proceeding. Good Except
for conduct described in subsection 4, good faith does not
include instances when a false report is made and the person
knows the report is false. Nothing in this section may be
construed to bar criminal or civil action regarding perjury or
regarding the abuse or neglect which led to a report,
investigation or proceeding.

16 **Sec. 14. 22 MRSA §4014, sub-§4** is enacted to read:

18 **4. Limited immunity for state employees.** Notwithstanding
20 the provisions of Title 14, chapter 741, an employee of the
department is not immune from liability for conduct with
malicious intent or for severe dereliction of duty.

22 **Sec. 15. Commission to Study Termination of Parental Rights.** The
24 Commission to Study Termination of Parental Rights, referred to
in this section as "the commission," is established.

26 1. The commission consists of 8 members, including 4
28 members from the Joint Standing Committee on Health and Human
30 Services appointed by the chair of the committee, of whom 2 must
be from the political party with the 2nd-highest number of
32 members in the Legislature, and 4 members from the Joint Standing
Committee on Judiciary appointed by the chair of the committee,
34 of whom 2 must be from the political party with the 2nd-highest
number of members in the Legislature.

36 2. The first-named Senate member is the Senate chair of the
38 commission and the first-named House of Representatives member is
the House chair of commission.

40 3. All appointments must be made no later than 30 days
42 following the effective date of this Act. The appointing
authorities shall notify the Executive Director of the
44 Legislative Council once all appointments have been completed.
Within 15 days after appointment of all members, the chairs shall
46 call and convene the first meeting of the commission.

48 4. The commission shall study the standard for when the
termination of parental rights is warranted.

2 5. The Legislative Council may provide staff assistance to
the commission.

4 6. The members of the commission are entitled to receive
the legislative per diem, as defined in the Maine Revised
6 Statutes, Title 3, section 2, and reimbursement for travel and
other necessary expenses for their attendance at authorized
8 meetings of the commission.

10 7. The commission shall submit a report no later than
December 7, 2005 that includes its findings and recommendations,
12 including suggested legislation, to the Joint Standing Committee
on Health and Human Services and the Legislative Council. The
14 commission is not authorized to introduce legislation. Upon
receipt and review of the report, the Joint Standing Committee on
16 Health and Human Services may report out a bill to the Second
Regular Session of the 122nd Legislature.

18 8. If the commission requires a limited extension of time
to complete its study and make its report, it may apply to the
20 Legislative Council, which may grant an extension.

22 9. The chairs of the commission, with assistance from the
24 commission staff, shall administer the commission's budget.
Within 10 days after its first meeting, the commission shall
26 present a work plan and proposed budget to the Legislative
Council for its approval. The commission may not incur expenses
28 that would result in the commission's exceeding its approved
budget. Upon request from the commission, the Executive Director
30 of the Legislative Council shall promptly provide the commission
chairs and staff with a status report on the commission budget,
32 expenditures incurred and paid and available funds.

34

SUMMARY

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This bill amends the Child and Family Services and Child
38 Protection Act in the following ways:

40 1. It lists the priorities of the Department of Health and
Human Services in child protection matters as preservation of the
42 family first, placement of the child with the closest appropriate
next of kin second and placement in foster care only as a last
44 resort;

46 2. It makes child protection records open to the public
except in cases when a court determines the records should be
48 sealed due to sexually explicit content;

2 3. It makes people liable for the crime of false public
4 report for reports of suspected child abuse or neglect to the
6 Department of Health and Human Services if the reports, including
the identification of the people, are inaccurate and malicious;
and

8 4. It makes Department of Health and Human Services
10 employees in child protective matters civilly and criminally
12 liable for conduct with malicious intent or for severe
dereliction of duty.

14 This bill also creates a commission to study the standard
for when the termination of parental rights is appropriate.