

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1188

S.P. 436

In Senate, March 25, 2009

An Act To Clarify Child Protection Proceedings

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator PERRY of Penobscot.

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

2 **Sec. 1. 22 MRSA §4021, sub-§1**, as amended by PL 2007, c. 586, §§14 and 15, is
3 further amended to read:

4 **1. Subpoenas and obtaining criminal history.** The commissioner, ~~his delegate~~ the
5 commissioner's designee or the legal counsel for the department may:

6 A. Issue ~~subpoenas~~ a subpoena requiring ~~persons~~ a person to disclose or provide to
7 the department information or records in ~~their~~ the person's possession that are
8 necessary and relevant to an investigation of a report of suspected abuse or neglect or
9 suspicious child death, to a subsequent child protection proceeding or to a panel
10 appointed by the department to review child deaths and serious injuries.

11 (1) The department may apply to the District Court to enforce a subpoena.

12 (2) A person who complies with a subpoena is immune from civil or criminal
13 liability that might otherwise result from the act of turning over or providing
14 information or records to the department; ~~and~~.

15 A subpoena requesting a telephone record, utility bill or other personal document of a
16 person under this paragraph must allow the person at least 7 days to disclose or
17 provide the information requested in the subpoena. A person who receives a
18 subpoena under this paragraph requesting a telephone record, utility bill or other
19 personal document of the person may petition the court to quash all or part of the
20 subpoena; and

21 B. Obtain nonconviction data and other criminal history record information under
22 Title 16, chapter 3, subchapter 8 that the commissioner, the commissioner's delegate
23 or the legal counsel for the department considers relevant to an abuse or neglect case
24 or the investigation of a suspicious child death.

25 **Sec. 2. 22 MRSA §4032, sub-§4** is enacted to read:

26 **4. Duty of department.** If the department is the petitioner under subsection 1,
27 paragraph A, at least 10 days prior to any hearing on a matter brought under this section
28 the department shall prepare and provide to the court and all parties to the matter a report
29 detailing the purpose of, service provided for and amount of any expenditure made or
30 authorized by the department to prevent the removal of the child from the child's home or
31 to reunify the child with the child's parents or custodian and to prosecute the matter.

32 **Sec. 3. 22 MRSA §4033, sub-§2**, as enacted by PL 1979, c. 733, §18, is repealed.

33 **Sec. 4. 22 MRSA §4033, sub-§2-A** is enacted to read:

34 **2-A. Notice of preliminary protection order.** A petitioner shall attempt to notify
35 each parent or custodian of a child of the intent to file a request for a preliminary
36 protection order for that child and of the time and place at which the request will be
37 made. The petitioner shall state in sworn testimony or affidavit the specific steps taken to
38 notify each parent or custodian of the child who is the subject of the preliminary
39 protection order or the facts that are the basis for not giving the notice under paragraph A

1 or B. The court shall make specific factual findings of the attempt to notify by the
2 petitioner or of the exception from notification under paragraph A or B in its order
3 concerning the request. If a parent or custodian of the child or counsel for a parent or
4 custodian is present at the time of the request for the preliminary protection order, the
5 parent, custodian or counsel must have the opportunity to review, contest and respond to
6 each fact supporting the attempt for or exception from the notice required by this
7 subsection. If a court approves a preliminary protection order under this section and a
8 parent or custodian of the child or counsel for a parent or custodian is not present at the
9 time of the request for the preliminary protection order, the parent, custodian or counsel
10 must have the opportunity to review, contest and respond to any statement by the
11 petitioner regarding notice required by this subsection at the next hearing held upon the
12 same matter. If a court finds by a preponderance of the evidence that a fact or statement
13 made by the petitioner under this subsection is untruthful or intentionally incomplete or
14 misleading, the individual swearing to the fact or statement may not testify or be called as
15 a witness in the matter and may be found in contempt and sanctioned by the court. Notice
16 under this subsection is not required if:

17 A. The child would suffer serious harm during the time needed to notify the parents
18 or custodian; or

19 B. Prior notice to the parents or custodian would increase the risk of serious harm to
20 the child or petitioner.

21 **Sec. 5. 22 MRSA §4033, sub-§6** is enacted to read:

22 **6. Report.** The District Court shall maintain a record of the number of:

23 A. Preliminary protection proceedings requested;

24 B. Preliminary protection proceeding requests granted;

25 C. Parents or custodians of the child or counsel to a parent or custodian who were
26 present at a preliminary protection proceeding; and

27 D. Preliminary protection requests in which notice was not made pursuant to an
28 exception under subsection 2-A, paragraph A or B.

29 The District Court shall make the information required by this subsection available to the
30 public by request and on a publicly accessible portion of the District Court's website.

31 **Sec. 6. 22 MRSA §4036, sub-§1**, as amended by PL 2005, c. 526, §1, is further
32 amended to read:

33 **1. Disposition.** In a protection order, the court may order one or more of the
34 following:

35 A. No change in custody;

36 B. Departmental supervision of the child and family in the child's home;

37 C. That the child, the custodians, the parents and other appropriate family members
38 accept treatment or services to ameliorate the circumstances related to the jeopardy;

- 1 D. Necessary emergency medical treatment for the child when the custodians are
- 2 unwilling or unable to consent;
- 3 E. Emancipation of the child, if the requirements of Title 15, section 3506-A are met;
- 4 F. Removal of the child from his the child's custodian and granting custody to a
- 5 noncustodial parent, other person or the department;
- 6 F-1. Removal of the perpetrator from the child's home, prohibiting direct or indirect
- 7 contact with the child by the perpetrator and prohibiting other specific acts by the
- 8 perpetrator which the court finds may threaten the child;
- 9 F-2. Visitation between the child and a sibling pursuant to section 4068;
- 10 G. Payment by the parents of a reasonable amount of support for the child as
- 11 determined or modified according to Title 19-A, chapter 63;
- 12 G-2. If the court's jeopardy order includes a finding of an aggravating factor, the
- 13 court may order the department to cease reunification, in which case a permanency
- 14 planning hearing must commence within 30 days of the order to cease reunification;
- 15 or
- 16 H. Other specific conditions governing custody; ~~or.~~
- 17 ~~I. The court may not order and the State may not pay for the defendant to attend a~~
- 18 ~~batterers' intervention program unless the program is certified under Title 19-A,~~
- 19 ~~section 4014.~~

20 The court may not order and the State may not pay for the defendant to attend a batterers'
21 intervention program unless the program is certified under Title 19-A, section 4014.

22 Once a disposition has been ordered under this subsection, unless a party moves the court
23 or the disposition order directly provides otherwise, a dispute concerning the disposition
24 between the department and a party subject to the disposition must be adjudicated by the
25 department pursuant to Title 5, chapter 375, subchapter 4.

26 **Sec. 7. 22 MRSA §4036-B, sub-§4,** as enacted by PL 2003, c. 408, §1, is
27 amended to read:

28 **4. Reasonable efforts to reunify.** The department shall make reasonable efforts to
29 rehabilitate and reunify the family as provided in section 4041, subsection 1-A unless the
30 court has ordered that the department need not commence or may cease reunification
31 pursuant to section 4041, subsection 2. Reasonable efforts include offering and providing
32 appropriate services to the family and do not include caseworker actions or duties. The
33 department shall document the reasonable efforts offered or provided to a family under
34 this subsection on a form produced by the department and approved by the court. In the
35 jeopardy order pursuant to section 4035 and in each judicial review order pursuant to
36 section 4038, the court shall make a finding whether or not the department has made
37 reasonable efforts to rehabilitate and reunify the family.

38 **Sec. 8. 22 MRSA §4037,** as amended by PL 1995, c. 694, Pt. D, §44 and affected
39 by Pt. E, §2, is further amended to read:

- 1 6. Clarifies what constitutes reasonable efforts in the department's requirement to
- 2 rehabilitate or reunify a family;
- 3 7. Clarifies the rights of a parent when a child is in the custody of an adult relative;
- 4 and
- 5 8. Strengthens the provisions requiring placement of a child with an adult relative.