

MAINE STATE LEGISLATURE

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L.D. 1224

Date: 4/1/16

(Filing No. H-629)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 842, L.D. 1224, Bill, "An Act To Amend the Child Protective Services Laws"

Amend the bill by striking out all of sections 1 to 5.

Amend the bill by inserting after section 6 the following:

'Sec. 7. 22 MRSA §4008, sub-§7 is enacted to read:

7. Appeal of denial of disclosure of records. A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.'

Amend the bill by striking out all of section 8 (page 2, lines 27 to 41 and page 3, lines 1 to 9 in L.D.) and inserting the following:

'Sec. 8. 22 MRSA §4033, sub-§2, as enacted by PL 1979, c. 733, §18, is amended to read:

2. Notice of preliminary protection order. If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, attempt to notify the parents, legal guardian and custodians of his the intent to request that order and of the time and place at which he will make the request court in which counsel for the parents, legal guardian or custodians may file motions, including motions to modify or

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1 vacate any preliminary protection order issued. This notice is not required if the petitioner
2 includes in the petition a sworn statement ~~of his belief~~ detailing a sufficient factual basis
3 that:

4 A. The child would suffer serious harm during the time needed to notify the
5 parents, legal guardian or custodians; or

6 B. Prior notice to the parents, legal guardian or custodians would increase the risk
7 of serious harm to the child or petitioner.

8 Failure to provide the notice required by this section, after a good faith attempt to do so,
9 does not constitute grounds for denial of a preliminary protection order.'

10 Amend the bill in section 10 in subsection 3-A in the 2nd line (page 3, line 26 in
11 L.D.) by striking out the following: "his" and inserting the following: 'his the child's'

12 Amend the bill by striking out all of section 12 (page 4, lines 5 to 19 in L.D.) and
13 inserting the following:

14 '**Sec. 12. 22 MRSA §4033, sub-§6** is enacted to read:

15 **6. Notice to legal guardians.** When notice is required to be given to the legal
16 guardian of a child, the department shall provide notice to all of the child's legal
17 guardians that are known to the department.'

18 Amend the bill by inserting after section 13 the following:

19 '**Sec. 14. 22 MRSA §4034, sub-§4,** as amended by PL 2001, c. 696, §26, is
20 further amended to read:

21 **4. Summary preliminary hearing.** ~~If the custodial parent appears and does not~~
22 ~~consent, or if a noncustodial parent requests a hearing, then the court shall hold a~~
23 ~~summary preliminary hearing on that order within 14 days but not less than 7 days of its~~
24 ~~issuance or request. If a parent or custodian is not served with the petition before the~~
25 ~~summary preliminary hearing, the parent or custodian may request a subsequent~~
26 ~~preliminary hearing within 10 days after receipt of the petition. The court shall schedule~~
27 a summary preliminary hearing on a preliminary protection order within 14 days but not
28 less than 7 days after issuance of the preliminary protection order, except that counsel for
29 a parent may request that the hearing take place sooner. Upon request of counsel, the
30 court may conduct the summary preliminary hearing as expeditiously as the court
31 determines the interests of justice require. If a parent, custodian or legal guardian appears
32 for the summary preliminary hearing and does not consent to the preliminary protection
33 order, the court shall conduct a hearing at which the petitioner bears the burden of proof.
34 At a summary preliminary hearing, the court may limit testimony to the testimony of the
35 caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent,
36 preadoptive parent or relative providing care and may admit evidence, including reports
37 and records, that would otherwise be inadmissible as hearsay evidence. If after the
38 hearing the court finds by a preponderance of the evidence that returning the child to the
39 child's custodian would place the child in immediate risk of serious harm, it shall
40 continue the order or make another disposition under section 4036. If the court's
41 preliminary protection order includes a finding of an aggravating factor, the court may
42 order the department not to commence reunification or to cease reunification, in which
43 case the court shall conduct a hearing on jeopardy and conduct a permanency planning

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1 hearing. The hearings must commence within 30 days of entry of the preliminary
2 protection order.

3 If the petitioner has not been able to serve a parent, custodian or legal guardian before the
4 scheduled summary preliminary hearing, the parent, custodian or legal guardian may
5 request a subsequent summary preliminary hearing within 10 days after receipt of the
6 petition.'

7 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
8 section number to read consecutively.

9 **SUMMARY**

10 This amendment deletes from the bill sections 1 through 5, which change the
11 confidentiality provisions of the child protective statutes, and instead adds a new
12 administrative hearing process to give parents, custodians and legal guardians an
13 opportunity to seek a review of the discretionary denial of access to information in child
14 protection records. The hearing must be conducted by the Department of Health and
15 Human Services under the Maine Administrative Procedure Act. The parents, custodians
16 and legal guardians can appeal the decision of the hearing officer as a final agency action.

17 This amendment strikes out section 8 of the bill, which addresses notice about a
18 request for a preliminary protection order, and replaces it with language that clarifies that,
19 when the department gives notice that it will be seeking a preliminary protection order,
20 the notice does not include the time and place when the petition will be presented to a
21 judge, but must include the court in which the counsel for the parents, legal guardian or
22 custodians may file motions, including motions to modify or vacate any preliminary
23 protection order that is issued. This amendment also requires that the information
24 provided to the court explaining why notice is not required must include a sworn
25 statement detailing a sufficient factual basis either that the child would suffer serious
26 harm during the time needed to notify the parents, legal guardian or custodians or that
27 prior notice would increase the risk of serious harm to the child or the petitioner. This
28 amendment clarifies that failure to provide the required notice, after a good faith attempt
29 to do so, does not constitute grounds for denial of a preliminary protection order.

30 This amendment amends section 10 to make current law gender-neutral.

31 This amendment deletes section 12, which provides for a new expedited process for
32 dissolving or modifying a preliminary protection order, and instead amends the Maine
33 Revised Statutes, Title 22, section 4034, subsection 4 to allow the summary preliminary
34 hearing to be expedited upon request by the parent's counsel. Upon counsel's request, the
35 court may conduct the summary preliminary hearing, the first hearing opportunity
36 available after the preliminary protection order is issued, as expeditiously as the court
37 determines the interests of justice require.

38 This amendment retains the language in current law that provides that, if the
39 department has not been able to serve a parent, custodian or legal guardian before the
40 scheduled summary preliminary hearing, the parent, custodian or legal guardian may
41 request a subsequent summary preliminary hearing within 10 days after the parent,
42 custodian or legal guardian receives the petition.

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COMMITTEE AMENDMENT "A" to H.P. 842, L.D. 1224

1 This amendment clarifies that when notice is required to be given to a legal guardian
2 of a child, the department is required to provide notice to all of the child's legal guardians
3 that are known to the department.

FISCAL NOTE REQUIRED
(See attached)

COMMITTEE AMENDMENT



127th MAINE LEGISLATURE

LD 1224

LR 983(04)

An Act To Amend the Child Protective Services Laws

Fiscal Note for Bill as Amended by Committee Amendment *A (H-629)*

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the number of civil suits.

The collection of additional filing fees may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Any additional costs to the Department of the Attorney General, the Department of Health and Human Services and the Maine Commission on Indigent Legal Services from the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.