

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1224

H.P. 842

House of Representatives, April 7, 2015

An Act To Amend the Child Protective Services Laws

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

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MALABY of Hancock.
Cosponsored by Senator DIAMOND of Cumberland and
Representatives: COREY of Windham, FARNSWORTH of Portland, FREY of Bangor,
HAMANN of South Portland, HARLOW of Portland, O'CONNOR of Berwick, SIROCKI of
Scarborough, Senator: BRAKEY of Androscoggin.

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

2 **Sec. 1. 22 MRSA §4008, sub-§1**, as amended by PL 2007, c. 485, §1 and
3 affected by §2, is further amended to read:

4 **1. Confidentiality of records and information.** All department records that contain
5 personally identifying information and are created or obtained in connection with the
6 department's child protective activities and activities related to a child while in the care or
7 custody of the department, and all information contained in those records, are confidential
8 and subject to release only under the conditions of subsections 2 and 3.

9 Within the department, the records are available only to and may be used only by
10 appropriate departmental personnel and legal counsel for the department in carrying out
11 their functions.

12 ~~Any~~ Except for a child or a parent, legal guardian or custodian of a child who is the
13 subject of the records or information, a person who receives department records or
14 information from the department may use the records or information only for the
15 purposes for which that release was intended.

16 **Sec. 2. 22 MRSA §4008, sub-§2, ¶D**, as amended by PL 1987, c. 744, §3, is
17 repealed.

18 **Sec. 3. 22 MRSA §4008, sub-§2, ¶D-1**, as enacted by PL 2005, c. 300, §4, is
19 repealed.

20 **Sec. 4. 22 MRSA §4008, sub-§2-A** is enacted to read:

21 **2-A. Disclosure upon request.** Except for confidential information under
22 subsection 3-A and absent a compelling reason to withhold a record or information, upon
23 request of a child or counsel, parent, legal guardian or custodian of a child who is
24 reported to be abused or neglected or who is the subject of a report or when the
25 department believes the child may be at risk of harm from the person who is the subject
26 of the records or information, the department shall disclose all records and information in
27 a file to the child or counsel, parent, legal guardian or custodian of the child with
28 protection for identity of reporters and other persons when appropriate. The department
29 may make a motion to the court of a compelling reason to withhold a record or
30 information under this subsection, which must be proved by clear and convincing
31 evidence in an in camera review by the court.

32 **Sec. 5. 22 MRSA §4008, sub-§4**, as amended by PL 1989, c. 502, Pt. D, §18, is
33 further amended to read:

34 **4. Unlawful dissemination; penalty.** A person is guilty of unlawful dissemination
35 if ~~he~~ the person knowingly disseminates records ~~which~~ that are determined confidential
36 by this section, in violation of the mandatory or optional disclosure provisions of this
37 section. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A,
38 section 1252, subsection 2, paragraph E, is punishable by a fine of not more than \$500 or
39 by imprisonment for not more than 30 days. This subsection does not apply to a person

1 who disseminates information that may be in a department record that the person
2 obtained from an independent source.

3 **Sec. 6. 22 MRSA §4008, sub-§5**, as amended by PL 1989, c. 857, §58, is further
4 amended to read:

5 **5. Retention of unsubstantiated child protection services records.** Except as
6 provided in this subsection, the department shall retain unsubstantiated child protective
7 services case records for no more than 18 months following a finding of unsubstantiation
8 and then expunge unsubstantiated case records from all departmental files or archives
9 unless a new referral has been received within the 18-month retention period. An
10 expunged record or unsubstantiated record that should have been expunged under this
11 subsection may not be used for any purpose, including admission into evidence in any
12 administrative or judicial proceeding. Unsubstantiated child protective services records
13 of persons who were eligible for Medicaid services under the federal Social Security Act,
14 Title XIX, at the time of the investigation may be retained for up to 5 years for the sole
15 purpose of state and federal audits of the Medicaid program. Unsubstantiated child
16 protective services case records retained for audit purposes pursuant to this subsection
17 must be stored separately from other child protective services records and may not be
18 used for any other purpose.

19 **Sec. 7. 22 MRSA §4033, sub-§1, ¶A**, as enacted by PL 1979, c. 733, §18, is
20 amended to read:

21 A. The petition and a notice of hearing ~~shall~~ must be served on the parents, legal
22 guardian and custodians, the guardian ad litem for the child and any other party at
23 least 10 days prior to the hearing date. A party may waive this time requirement if
24 the waiver is written and voluntarily and knowingly executed in court before a judge.
25 Service ~~shall~~ must be made in accordance with the ~~District Court Civil~~ Maine Rules
26 of Civil Procedure.

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

29 **2. Notice of preliminary protection order.** If there is to be a request for a
30 preliminary protection order, the petitioner shall, by any reasonable means, ~~attempt to~~
31 notify the parents, legal guardian and custodians of ~~his~~ the intent to request that order and
32 of the time and ~~place~~ court at which ~~he will make~~ the request will be made. If the notice
33 is made to a parent, legal guardian or custodian, the notice must include a clear statement
34 informing the parent, legal guardian or custodian of the right to be heard and to present
35 information or rebuttal evidence at the proceeding. This notice is not required if the
36 petitioner includes in the petition a sworn statement ~~of his belief~~ detailing a sufficient
37 factual basis that:

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

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

1 If a parent, legal guardian or custodian of the child or counsel for the parent, legal
2 guardian or custodian is present or if the provisions of paragraph A or B have not been
3 met, the court proceeding to consider a request for a preliminary protection order under
4 this subsection must allow the parent, legal guardian or custodian or counsel of the
5 parent, legal guardian or custodian to participate and present information or rebuttal
6 evidence at the proceeding. Upon a motion from a parent, legal guardian or custodian of
7 the child or counsel of the parent, legal guardian or custodian, the court shall vacate any
8 preliminary protection order issued under this subsection if a provision of this subsection
9 is violated.

10 **Sec. 9. 22 MRSA §4033, sub-§3**, as amended by PL 1989, c. 819, §5, is further
11 amended to read:

12 **3. Service of preliminary protection order.** If the court makes a preliminary
13 protection order, a copy of the order ~~shall~~ must be served on the parents, legal guardian
14 and custodians by:

15 A. In-hand delivery by the judge or court clerk to any parent, legal guardian,
16 custodian or their counsel who is present when the order is made;

17 B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding
18 the Maine Rules of Civil Procedure, the court may waive service by publication of a
19 preliminary protection order for a party whose whereabouts are unknown if the
20 department shows by affidavit that diligent efforts have been made to locate the
21 party; or

22 C. Another manner ordered by the court.

23 **Sec. 10. 22 MRSA §4033, sub-§3-A**, as enacted by PL 1987, c. 395, Pt. A, §90,
24 is amended to read:

25 **3-A. Information provided to parents.** When the court makes a preliminary
26 protection order on a child who is physically removed from his parents, legal guardian or
27 custodians, the following information ~~shall~~ must be provided to the parents, legal
28 guardian or custodians in written form by the petitioner at the time of removal of the
29 child:

30 A. The assigned caseworker's name and work telephone number;

31 B. The placement with a relative or other location where the child will be taken; and

32 C. A copy of the complete preliminary protection order.

33 This information is not required if the petitioner includes in the petition a sworn statement
34 of ~~his~~ the petitioner's belief that providing the information would cause the threat of
35 serious harm to the child, the substitute care giver, the petitioner or any other person.

36 **Sec. 11. 22 MRSA §4033, sub-§4**, as enacted by PL 1979, c. 733, §18, is
37 amended to read:

38 **4. Service of final protection order.** The court shall deliver in-hand at the court, or
39 send by ordinary mail promptly after it is entered, a copy of the final protection order to

1 the parent's, legal guardian's or custodian's counsel or, if no counsel, to the parents, legal
2 guardian or custodians. The copy of the order ~~shall~~ must include a notice to them of their
3 rights under section 4038. Lack of compliance with this subsection does not affect the
4 validity of the order.

5 **Sec. 12. 22 MRSA §4033, sub-§§6 and 7** are enacted to read:

6 **6. Dissolution or modification.** Notwithstanding any statutory provision to the
7 contrary, for an order issued under subsection 2, paragraph A or B when the parent, legal
8 guardian, custodian or counsel to the parent, legal guardian or custodian was not present,
9 upon 2 days' notice to the petitioner or upon such shorter notice as the court may order, a
10 parent, legal guardian or custodian of the child who is subject to an order may appear and
11 move the dissolution or modification of the order and, in that event, the court shall
12 proceed to hear and determine the motion as expeditiously as the ends of justice require.
13 At that hearing, the petitioner has the burden of justifying a finding in the order that the
14 parent, legal guardian or custodian has challenged by affidavit or sworn testimony. This
15 section may not be construed to abolish or limit any means otherwise available by law for
16 obtaining dissolution, modification or discharge of an order.

17 **7. Appeal.** Notwithstanding the provisions of section 4006, a parent, legal guardian
18 or custodian may appeal an order issued under subsection 2 to the Superior Court; the
19 appeal must be heard on an expedited basis.

20 **Sec. 13. 22 MRSA §4034, sub-§1,** as amended by PL 2001, c. 696, §25, is
21 further amended to read:

22 **1. Request.** A petitioner may add to a child protection petition a request for a
23 preliminary protection order or may request a preliminary protection order separately
24 from the child protection petition. A request for a preliminary protection order must
25 include a sworn summary of facts to support the request and identify the specific services
26 offered and provided under section 4036-B, subsection 3 to prevent the removal of the
27 child from the home.

28 SUMMARY

29 This bill amends the Child and Family Services and Child Protection Act in the
30 following ways.

31 1. It makes clear that the prohibitions on the use of Department of Health and Human
32 Services records and information do not apply to a child or parent, legal guardian or
33 custodian of a child who is the subject of the records or information.

34 2. It allows upon request a child or parent, legal guardian or custodian of a child to
35 receive Department of Health and Human Services records and information concerning
36 the child unless the department can prove by clear and convincing evidence that the
37 records or information should not be released.

1 3. It removes the criminal penalty for a person who disseminates information that
2 may be in Department of Health and Human Services records if the person obtained that
3 information from an independent source.

4 4. It clarifies that unsubstantiated records or information that are expunged or should
5 have been expunged may not be used for any purpose including as evidence in any
6 administrative or judicial proceeding.

7 5. It modifies the notice, conduct and appeal rights concerning proceedings involving
8 preliminary protection orders.

9 6. It clarifies that the petitioner must present and the court must find that reasonable
10 efforts to prevent the removal of a child have been made prior to the issuance of a
11 preliminary protection order.