

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1187

H.P. 824

House of Representatives, March 28, 2017

An Act To Amend the Child Protective Services Statutes

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 Representatives: CHAPMAN of Brooksville, NADEAU of Winslow,
PICCHIOTTI of Fairfield, SAMPSON of Alfred.

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

2 **Sec. 1. 22 MRSA §4003, sub-§3-A**, as enacted by PL 2005, c. 374, §1, is
3 amended to read:

4 **3-A. Kinship placement.** Place children who are taken from the custody of their
5 parents with ~~an adult~~ a relative ~~when~~ whenever possible. There is a rebuttable
6 presumption that placement with a relative is in the best interests of the child;

7 **Sec. 2. 22 MRSA §4005-E, sub-§2**, as amended by PL 2007, c. 371, §2, is
8 further amended to read:

9 **2. Placement.** A relative who is designated as an interested person or a participant
10 under section 4005-D or who has been granted intervenor status under the Maine Rules of
11 Civil Procedure, Rule 24 may request the court to order that the child be placed with the
12 relative. A relative who has not been designated as a participant under section 4005-D
13 may make the request for placement in writing. In making a decision on the request, the
14 court shall make placement with a relative a priority for consideration for placement if
15 that placement is in the best interests of the child and consistent with section 4003. There
16 is a rebuttable presumption that placement with a relative is in the best interests of the
17 child, if such placement does not substantially interfere with reunification efforts.

18 **Sec. 3. 22 MRSA §4007, sub-§7** is enacted to read:

19 **7. Parent's right to hear evidence before testifying.** In any hearing held by the
20 court prior to issuing an order in a child protection proceeding, a parent of the child who
21 is the subject of the proceeding has the right to hear all evidence presented, except for
22 testimony by the guardian ad litem, prior to testifying in the hearing.

23 **Sec. 4. 22 MRSA §4034, sub-§4**, as amended by PL 2015, c. 501, §10, is further
24 amended to read:

25 **4. Summary preliminary hearing.** The court shall schedule a summary
26 preliminary hearing on a preliminary protection order within 14 days but not less than 7
27 days after issuance of the preliminary protection order, except that counsel for a parent
28 may request that the hearing take place sooner. Upon request of counsel, the court may
29 conduct the summary preliminary hearing as expeditiously as the court determines the
30 interests of justice require. If a parent, custodian or legal guardian appears for the
31 summary preliminary hearing and does not consent to the preliminary protection order,
32 the court shall conduct a hearing at which the petitioner bears the burden of proof. At a
33 summary preliminary hearing, the court may limit testimony to the testimony of the
34 caseworker, parent, custodian, legal guardian, guardian ad litem, foster parent,
35 preadoptive parent or relative providing care and may admit evidence, including reports
36 and records, that would otherwise be ~~inadmissible~~ inadmissible as hearsay evidence. If
37 after the hearing the court finds by ~~a preponderance of the~~ clear and convincing evidence
38 that returning the child to the child's custodian would place the child in immediate risk of
39 serious harm, it shall continue the order or make another disposition under section 4036.
40 If the court's preliminary protection order includes a finding of an aggravating factor, the

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

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

9 **Sec. 5. 22 MRSA §4034, sub-§§7 and 8** are enacted to read:

10 **7. Proportional use.** The department shall limit its total filings for preliminary
11 protection orders in a calendar year to no more than 50% of the total number of child
12 protection petitions filed in that same calendar year.

13 **8. Report.** The department shall provide annual updates to the joint standing
14 committee of the Legislature having jurisdiction over judiciary matters and the joint
15 standing committee of the Legislature having jurisdiction over health and human services
16 matters as to the number of preliminary protection orders it has requested in the previous
17 calendar year and the total number of child protection petitions it has filed in that same
18 calendar year.

19 SUMMARY

20 This bill makes the following changes to the laws governing child protective services.

21 1. It changes the standard for determining when placement of a child in custody is in
22 the best interests of the child to include a rebuttable presumption that placement with a
23 relative is in the best interests of the child, if placement with that relative does not
24 substantially interfere with reunification efforts with the birth parents.

25 2. It provides that in any hearing held by the court prior to issuing an order in a child
26 protection proceeding, a parent of the child who is the subject of the proceeding has the
27 right to hear all evidence presented, except for testimony by the guardian ad litem, prior
28 to testifying in the hearing.

29 3. It changes the standard of proof required for a preliminary protection order from a
30 preponderance of the evidence to clear and convincing evidence.

31 4. It requires that the Department of Health and Human Services limit its use of
32 preliminary protection orders to no more than 50% of the total child protection petitions it
33 has filed in a calendar year.

34 5. It requires the department to report to the Legislature annually as to its use of the
35 preliminary protection order relative to child protection petitions.