

MAINE STATE LEGISLATURE

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Date:

4/14/22

Majority

(Filing No. H-10/0)

JUDICIARY

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 354, L.D. 480, "An Act To Establish a Presumption of Entitlement to Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding"

Amend the bill in section 1 in subsection 1 in the 5th line (page 1, line 8 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill in section 2 in subsection 1 in the 5th line (page 1, line 18 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill in section 3 in subsection 1 in the 5th line (page 1, line 28 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill by inserting after section 3 the following:

'Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
County Probate Counsel Reimbursement Program N959

Initiative: Provides funding to reimburse counties for the costs of mandated counsel appointed in Probate Court cases.

GENERAL FUND	2021-22	2022-23
All Other	\$0	\$715,500
GENERAL FUND TOTAL	\$0	\$715,500

ADMINISTRATIVE AND FINANCIAL
SERVICES, DEPARTMENT OF

COMMITTEE AMENDMENT

1 DEPARTMENT TOTALS 2021-22 2022-23

2
3 GENERAL FUND \$0 \$715,500

4
5 DEPARTMENT TOTAL - ALL FUNDS \$0 \$715,500

6 HEALTH AND HUMAN SERVICES, DEPARTMENT OF

7 Office of Aging and Disability Services Adult Protective Services Z040

8 Initiative: Provides funding for increased legal costs to the Department of Health and
9 Human Services due to an expected increase in litigation.

10 GENERAL FUND 2021-22 2022-23

11 All Other \$0 \$103,104

12
13 GENERAL FUND TOTAL \$0 \$103,104

14
15 HEALTH AND HUMAN SERVICES,

16 DEPARTMENT OF

17 DEPARTMENT TOTALS 2021-22 2022-23

18
19 GENERAL FUND \$0 \$103,104

20
21 DEPARTMENT TOTAL - ALL FUNDS \$0 \$103,104

22
23 SECTION TOTALS 2021-22 2022-23

24
25 GENERAL FUND \$0 \$818,604

26
27 SECTION TOTAL - ALL FUNDS \$0 \$818,604

28
29 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
30 number to read consecutively.

31 SUMMARY

32 This amendment, which is the majority report of the committee, lowers the threshold
33 of evidence required to rebut the presumption that an attorney must be appointed for an
34 unrepresented adult respondent in a guardianship, conservatorship or other protective
35 arrangement proceeding from the standard of clear and convincing evidence in the bill to a
36 preponderance of the evidence.

37 The amendment also incorporates a fiscal note, which indicates that the requirement
38 that county probate courts appoint an attorney for every adult in a guardianship,
39 conservatorship or other protective arrangement proceeding unless the court finds that the
40 adult knowingly and voluntarily refuses such representation may constitute a state mandate
41 pursuant to Article IX, Section 21 of the Constitution of Maine. Under current law,
42 counties are already required to appoint attorneys to represent indigent adult respondents

ROFS

1 in guardianship, conservatorship or other protective arrangement proceedings if the criteria
2 in the Maine Revised Statutes, Title 18-C, section 5-305, subsection 1, section 5-406,
3 subsection 1 or section 5-507, subsection 1 are met. The majority of the committee agrees
4 that, to the extent that the presumption included in this legislation expands the number of
5 cases in which attorneys will be appointed to represent indigent adult respondents at county
6 expense, it constitutes a state mandate. Accordingly, the amendment includes an
7 appropriation to fund 90% of the costs associated with the expanded number of cases in
8 which attorneys will be appointed to represent indigent adult respondents at county expense
9 as a result of the new presumption.

10 **FISCAL NOTE REQUIRED**
11 (See attached)

**130th MAINE LEGISLATURE****LD 480****LR 646(03)****An Act To Establish a Presumption of Entitlement to Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding****Fiscal Note for Bill as Amended by Committee Amendment****Committee: Judiciary****Fiscal Note Required: Yes***A (M-1610)***Fiscal Note**

State Mandate - Funded

	FY 2021-22	FY 2022-23	Projections FY 2023-24	Projections FY 2024-25
Net Cost (Savings)				
General Fund	\$0	\$818,604	\$818,604	\$818,604
Appropriations/Allocations				
General Fund	\$0	\$818,604	\$818,604	\$818,604

State Mandates

Required Activity	Unit Affected	Local Cost
Requires Probate Courts to appoint an attorney for every adult in a guardianship, conservatorship or other protective arrangement proceeding unless the court finds that the adult knowingly and voluntarily refuses such representation.	County	\$795,000

The required local activities in this bill may represent a state mandate pursuant to the Constitution of Maine. If the bill does require a local unit of government to expand or modify its activities so as to necessitate additional expenditures from local revenue, the state mandate provisions of the Constitution of Maine require either: (1) General Fund appropriations be provided to fund at least 90% of any additional necessitated local costs of the mandate; or (2) a Mandate Preamble be added to the bill and two-thirds of the members of each House vote to exempt the mandate from the funding requirement. If the bill does represent a state mandate and neither one of these actions occurs, the local units of government will not be required to implement the mandated activities.

Fiscal Detail and Notes

This bill includes a General Fund appropriation of \$715,500 beginning in fiscal year 2022-23 to a newly created County Probate Counsel Reimbursement Program in the Department of Administrative and Financial Services to reimburse counties for 90% of the costs of mandated counsel appointed in Probate Court cases. The bill also includes General Fund appropriations to the Department of Health and Human Services of \$103,104 beginning in fiscal year 2022-23 for increased legal costs to the Department of Health and Human Services due to an expected increase in litigation.