

MAINE STATE LEGISLATURE

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Date 5/10/23

(Filing No S-85)

REPORT B

JUDICIARY

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STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT “B” to S P 248, L D 580, “An Act to Improve Family Court Procedure”

Amend the bill by striking out everything after the enacting clause and inserting the following

Sec. 1. 19-A MRSA §1653, sub-§3, ¶O, as amended by PL 2021, c 647, Pt B, §46 and affected by §65, is further amended to read

O A parent’s prior willful misuse of the emergency parental rights and responsibilities order process in section 1653-B or the protection from abuse process in former chapter 101 or chapter 103 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child Such willful misuse may be considered only if established by clear and convincing evidence and if it is further found by clear and convincing evidence that, in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child’s best interest The voluntary dismissal of a motion for an emergency parental rights and responsibilities order or a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the emergency parental rights and responsibilities order process or the protection from abuse process,

Sec. 2. 19-A MRSA §1653-B is enacted to read

§1653-B Emergency parental rights and responsibilities order

1. Motion. A party to an action under this Title concerning parental rights, including actions for divorce, legal separation, parentage or parental rights and responsibilities and post-judgment proceedings arising out of these actions, may file a motion requesting that the court issue an emergency parental rights and responsibilities order with respect to a child on an ex parte basis upon a showing of immediate and present risk of substantial harm

1 to the health or safety of the child A motion may not be filed under this section as part of
 2 a protection from abuse proceeding under chapter 103.

3 **2. Affidavit required.** A motion for an emergency parental rights and responsibilities
 4 order must be accompanied by an affidavit made under oath alleging

5 A The conditions establishing an immediate and present risk of substantial harm to
 6 the health or safety of the child, and

7 B The actions taken by the party filing the request to inform the other party or parties
 8 to the proceeding of the motion or the reasons why the court should consider the request
 9 without requiring notice to the other party

10 **3. Temporary relief.** The court may, in an ex parte proceeding, enter an emergency
 11 parental rights and responsibilities order containing any relief that the court considers
 12 necessary to address the immediate and present risk of substantial harm to the health or
 13 safety of the child An order issued under this subsection may include

14 A An allocation of parental rights and responsibilities between the parties,

15 B Conditions governing parent-child contact, including but not limited to prohibiting
 16 parent-child contact,

17 C Directives regarding the residence of the child, including but not limited to
 18 authorizing or prohibiting relocation of the child, and

19 D Any other relief determined appropriate in the discretion of the court

20 **4. Denial of motion** Before denying a motion for an emergency parental rights and
 21 responsibilities order, the court shall

22 A Allow the moving party to be heard, accompanied by a person of the party's choice,
 23 and

24 B Advise the moving party of the reasons for the denial

25 **5. Service.** A party who files a motion for an emergency parental rights and
 26 responsibilities order under this section shall

27 A If the court issues an order under subsection 3, arrange for the motion, affidavit and
 28 order to be personally served on the other party in a manner allowed by the applicable
 29 rule of civil procedure along with the original complaint or post-judgment motion that
 30 accompanied the motion, if any, or

31 B If the court denies the motion under subsection 4, arrange for the motion, affidavit
 32 and order denying the motion to be served on the other party in a manner allowed by
 33 the applicable rule of civil procedure along with the original complaint or post-
 34 judgment motion that accompanied the motion, if any

35 **6. Hearing.** If the court enters an order under subsection 3, the court shall hold a
 36 hearing within 21 days of the issuance of the order The scope of the hearing is limited to
 37 the necessity of continuing the temporary relief granted in the emergency parental rights
 38 and responsibilities order Nothing in this section limits the court's discretion to continue
 39 the hearing upon the court's own motion or upon the motion of either party If the court
 40 denies the motion under subsection 4, the parties are not entitled to a hearing under this
 41 subsection and the court may enter a scheduling order or any other order that the interests
 42 of justice require

1 7. Dissolution or modification. A party whose parental rights are affected by an
2 emergency parental rights and responsibilities order issued under subsection 3, other than
3 the party who requested the order, may appear and move for the dissolution or modification
4 of the order before the scheduled hearing. The motion must be accompanied by a sworn
5 affidavit. The court shall schedule a hearing on the motion as expeditiously as the interests
6 of justice require.

7 8. Jurisdiction; procedure. A motion for an emergency parental rights and
8 responsibilities order under this section may be reviewed and an order may be issued by a
9 District Court Judge or a family law magistrate. The clerk shall present the motion to a
10 District Court Judge or family law magistrate upon docketing. If no judge or family law
11 magistrate is available at the courthouse in which the request is made, the clerk shall
12 forward the motion to any available judicial officer within the State.

13 **Sec. 3. Working group.** The Maine Commission on Domestic and Sexual Abuse,
14 established in the Maine Revised Statutes, Title 5, section 12004-I, subsection 74-C, shall
15 convene a working group of stakeholders including commission members, representatives
16 of the judicial branch, family law practitioners, members of the Family Law Advisory
17 Commission established in Title 5, section 12004-I, subsection 52-A, representatives of a
18 statewide coalition to end domestic violence and any others that the commission determines
19 to be necessary participants. To the extent possible, the members of the working group
20 must be the same as the members of the working group established pursuant to Resolve
21 2021, chapter 99.

22 **1. Duties** The working group shall review data provided by the judicial branch for at
23 least 2 years following implementation of this Act, including data on the number of requests
24 for emergency parental rights and responsibilities orders filed, the number of emergency
25 parental rights and responsibilities orders issued, the average time between the filing of a
26 request and the hearing on that request, if any, and any other data determined by the judicial
27 branch to be useful for evaluating efficacy of the new process.

28 **2 Report; legislation.** The commission shall submit a report to the joint standing
29 committee of the Legislature having jurisdiction over judiciary matters no later than
30 November 4, 2026. The report must identify the working group's participants, summarize
31 the activities of the working group and include any conclusions made by the working group
32 regarding the effectiveness of the emergency parental rights and responsibilities order
33 process established in Title 19-A, section 1653-B. The report may include the working
34 group's recommendations for further improving the family court response to families with
35 urgent safety concerns. The joint standing committee of the Legislature having jurisdiction
36 over judiciary matters may report out legislation to the 133rd Legislature in 2027 based on
37 the report.

38 **Sec. 4. Appropriations and allocations.** The following appropriations and
39 allocations are made

40	JUDICIAL DEPARTMENT		
41	Courts - Supreme, Superior and District 0063		
42	Initiative	Provides one-time funding for printing costs to update A Guide to Family	
43		Separation in Maine	
44	GENERAL FUND	2023-24	2024-25

COMMITTEE AMENDMENT

COMMITTEE AMENDMENT “B” to S P 248, L D 580 (S-85)

1	All Other	\$10,000	\$0
2			
3	GENERAL FUND TOTAL	<u>\$10,000</u>	<u>\$0</u>
4	Courts - Supreme, Superior and District 0063		
5	Initiative Establishes one Judge position, one Deputy Marshal position and one Assistant		
6	Clerk position effective January 1, 2024 and provides funding for related All Other costs		
7	GENERAL FUND	2023-24	2024-25
8	POSITIONS - LEGISLATIVE COUNT	3 000	3 000
9	Personal Services	\$182,885	\$380,951
10	All Other	\$31,530	\$15,930
11			
12	GENERAL FUND TOTAL	<u>\$214,415</u>	<u>\$396,881</u>
13			
14	JUDICIAL DEPARTMENT		
15	DEPARTMENT TOTALS	2023-24	2024-25
16			
17	GENERAL FUND	\$224,415	\$396,881
18			
19	DEPARTMENT TOTAL - ALL FUNDS	<u>\$224,415</u>	<u>\$396,881</u>

20 **Sec. 5. Effective date.** This Act takes effect January 1, 2024 '

21 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section

22 number to read consecutively

SUMMARY

24 This amendment, which is the minority report of the committee, replaces the bill, which

25 is a concept draft Beginning January 1, 2024, the amendment authorizes a party to a

26 divorce, legal separation, parentage or parental rights and responsibilities proceeding or a

27 post-judgment motion arising out of one of these actions to file a motion requesting that

28 the court issue an ex parte emergency parental rights and responsibilities order on the basis

29 that there is an immediate and present risk of substantial harm to the health or safety of the

30 child The order may be issued by a District Court Judge or a family law magistrate and

31 may include a temporary allocation of parental rights and responsibilities between the

32 parties in the underlying action, conditions of parent-child contact and directives regarding

33 the residence of the child If a judge or magistrate issues an emergency parental rights and

34 responsibilities order ex parte, the court shall hold a hearing within 21 days to determine

35 the need for continuation of the temporary relief granted in the order In the meantime, a

36 party affected by the emergency parental rights and responsibilities order, other than the

37 party that requested the order, may file a motion to modify or to dissolve the order, which

38 the court must hear as expeditiously as the interests of justice require

39 The amendment also directs the Maine Commission on Domestic and Sexual Abuse to

40 convene a working group of stakeholders, similar to the working group established by

41 Resolve 2021, chapter 99, to review data from the judicial branch gathered for at least 2

42 years following implementation of the emergency parental rights and responsibilities order

43 process established in this legislation to evaluate the efficacy of the process The

COMMITTEE AMENDMENT

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COMMITTEE AMENDMENT "B" to S P 248, L D 580 (S-85)

1 amendment directs the commission to submit a report regarding the working group's
2 findings to the joint standing committee of the Legislature having jurisdiction over
3 judiciary matters by November 4, 2026 The committee may report out legislation to the
4 133rd Legislature in 2027 in response to the report

5 **FISCAL NOTE REQUIRED**

6 (See attached)

COMMITTEE AMENDMENT



131st MAINE LEGISLATURE

LD 580

LR 792(03)

An Act to Improve Family Court Procedure

Fiscal Note for Bill as Amended by Committee Amendment "B" (LS-85)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

	FY 2023-24	FY 2024-25	Projections FY 2025-26	Projections FY 2026-27
Net Cost (Savings)				
General Fund	\$224,415	\$396,881	\$410,595	\$424,803
Appropriations/Allocations				
General Fund	\$224,415	\$396,881	\$410,595	\$424,803

Fiscal Detail and Notes

Beginning January 1, 2024, this bill authorizes a party to a family matter involving a child to file a motion requesting that the court issue an ex parte emergency parental rights and responsibilities order under certain circumstances and requires the court to hold a hearing 21 days after issuance on the need for continuation of the order

The bill includes General Fund appropriations to the Judicial Department of \$224,415 in fiscal year 2023-24 and \$396,881 in fiscal year 2024-25 to establish one Judge position, one Deputy Marshal position and one Assistant Clerk position, effective January 1, 2024, to implement the aforementioned process

Any additional costs to the Maine Commission on Domestic and Sexual Abuse associated with establishing a working group to evaluate the efficacy of the process for the emergency parental rights and responsibilities order are expected to be minor and can be absorbed within existing budgeted resources