LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

SECOND REGULAR SESSION
January 2, 2002 to April 25, 2002

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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higher learning must be submitted to the directors prior to June 1st of each even-numbered year, beginning in 2002. The plans for state-supported institutions of higher learning must be submitted to the directors prior to June 1st of each odd-numbered year, beginning in 2003;

C. Appoint an employee in the agency or state-supported institution of higher learning to be responsible for ensuring the development and implementation of agency activities under the initiative; and

D. Establish standards for leasing or building state facilities consistent with the initiative.

Each agency and state-supported institution of higher learning shall fund costs associated with implementing this initiative from within existing budgeted resources.

4. Reporting. ~~Beginning on January 1, 2003, and biennially thereafter, the~~ The directors shall jointly report on the activities of all state agencies under the initiative to the joint standing committee of the Legislature having jurisdiction over natural resources matters and the joint standing committee of the Legislature having jurisdiction over state government matters. The directors must submit their report for state agencies other than the state-supported institutions of higher learning no later than January 1, 2003, and biennially thereafter, and must submit their report for state-supported institutions of higher learning no later than January 1, 2004, and biennially thereafter. The report must identify the successes of and the obstacles to implementation of the initiative and may include recommendations for any statutory changes necessary to accomplish the initiative.

Sec. 2. State-supported institutions of higher learning to use existing budgeted resources. The University of Maine System, the Maine Maritime Academy and the Maine Technical College System must utilize existing budgeted resources to comply with the requirements of the Maine Revised Statutes, Title 38, section 343-H, except that the University of Maine System is not required to utilize more than $300,000 of its existing budgeted resources to comply with the audit provisions of Title 38, section 343-H, subsection 3, paragraph A. If the University of Maine System is not able to fully comply with the audit provisions of Title 38, section 343-H, subsection 3, paragraph A after expending $300,000 of its existing budgeted resources on those audit provisions, the Chancellor of the University of Maine System shall include a request to fund all remaining tasks necessary to fully comply with those audit provisions in the report submitted by the directors of the Clean Government Initiative as provided in Title 38, section 343-H, subsection 4. That request must include a detailed budget specifying how the University of Maine System spent the first $300,000 of existing budgeted resources towards compliance of those audit provisions and specifying the cost and the timetable for completing each task required to achieve full compliance with those audit provisions.

See title page for effective date.

CHAPTER 696

H.P. 1644 - L.D. 2149

An Act to Implement the Recommendations of the Committee to Review the Child Protective System

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

Sec. 1. 15 MRSA §3203-A, sub-§5, ¶D is enacted to read:

D. When a court orders detention or a conditional release that authorizes, even temporarily, the juvenile's removal from the juvenile's home, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders detention or a conditional release, which continues to be governed by the other provisions of this section.

Sec. 2. 15 MRSA §3306-A, as amended by PL 1999, c. 624, Pt. B, §16, is further amended by adding at the end a new paragraph to read:

When a court orders detention or a conditional release that authorizes even temporarily the juvenile's removal from the juvenile's home or when a court allows a conditional release ordered by a juvenile community corrections officer that authorizes, even temporarily, the juvenile's removal from the juvenile's home to remain in effect, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders detention or a conditional release or allows a condi-

tional release to remain in effect, which continues to be governed by section 3203-A.

Sec. 3. 15 MRSA §3314, sub-§1, ¶C-1, as amended by PL 1987, c. 720, §5, is further amended to read:

C-1. The court may commit a juvenile to the custody of the Department of Human Services when the court has determined that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from ~~his~~ the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation therein would be contrary to the welfare of the juvenile. The court may not enter an order under this paragraph unless the parents have had notice and an opportunity to be heard at the dispositional hearing.

Notwithstanding any other provision of law, the court ~~shall~~ may not commit a juvenile to the custody of the Department of Human Services unless such notice has been served on the parents, custodians and the Department of Human Services in accordance with District Court civil rules at least 10 days prior to the dispositional hearing. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge.

The Department of Human Services shall provide for the care and placement of the juvenile as for other children in the department's custody pursuant to the Child and Family Services and Child Protection Act, Title 22, chapter 1071, subchapter VII.

The court may impose conditions that may include participation by the juvenile or the juvenile's parents or legal guardian in treatment services aimed at the rehabilitation of the juvenile, reunification of the family and improvement of the home environment.

Sec. 4. 15 MRSA §3314, sub-§1, ¶F, as amended by PL 1997, c. 752, §19, is further amended to read:

F. The court may commit the juvenile to a Department of Corrections juvenile correctional facility. Whenever a juvenile is committed to a Department of Corrections juvenile correctional facility, the court shall determine whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders a commitment to a Department of Corrections juvenile correctional facility, which continues to be governed by section 3313.

Sec. 5. 15 MRSA §3314, sub-§2, as amended by PL 1999, c. 624, Pt. A, §8, is further amended to read:

2. Suspended disposition. The court may impose any of the dispositional alternatives provided in subsection 1 and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section 1204 as the court may order and that is administered pursuant to the provisions of Title 34-A, chapter 5, subchapter IV, except that the court may not impose the condition set out in Title 17-A, section 1204, subsection 1-A. The court may impose as a condition of probation that a juvenile must reside outside the juvenile's home in a setting satisfactory to the juvenile community corrections officer if the court determines that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Modification of probation is governed by the procedures contained in Title 17-A, section 1202, subsection 2. Termination of probation is governed by the procedures contained in Title 17-A, section 1202, subsection 3. Revocation of probation is governed by the procedures contained in Title 17-A, sections 1205, 1205-B, 1205-C and 1206, except that the provisions of those sections requiring a preliminary hearing do not apply and those provisions of Title 17-A, section 1206, subsection 7-A allowing a vacating of part of the suspension of execution apply only to a disposition under subsection 1, paragraph G or H; however, a disposition under subsection 1, paragraph F may be modified to a disposition under subsection 1, paragraph H. If the juvenile is being detained for an alleged violation of probation, the court shall review within 48 hours following the detention, excluding Saturdays, Sundays and legal holidays, the decision to detain the juvenile. Following that review, the court shall order the juvenile's release unless the court finds that there is probable cause to believe that the juvenile has violated a condition of probation and finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of

detention under section 3203-A, subsection 4, paragraph C.

Sec. 6. 15 MRSA §3315, sub-§1, as amended by PL 1997, c. 752, §24, is further amended to read:

1. Right to review. Every disposition pursuant to section 3314, other than unconditional discharge, must be reviewed not less than once in every 12 months until the juvenile is discharged. The review must be made by a representative of the Department of Corrections unless the juvenile was committed to the Department of Human Services, in which case such review must be made by a representative of the Department of Human Services. A report of the review must be made in writing to the juvenile's parents, guardian or legal custodian. A copy of the report must be forwarded to the program or programs that were reviewed, and the department whose personnel made the review shall retain a copy of the report in their files. The written report must be prepared in accordance with subsection 2. When a juvenile is placed in the custody of the Department of Human Services, reviews and permanency planning hearings must be conducted in accordance with Title 22, section 4038. Title 22, sections 4005, 4039 and 4041 also apply.

Sec. 7. 15 MRSA §3315-A is enacted to read:

§3315-A. Termination of parental rights

When a juvenile is in the custody of the Department of Human Services, Title 22, chapter 1071, subchapter VI also applies.

Sec. 8. 15 MRSA §3316, sub-§4, ¶B, as repealed and replaced by PL 1999, c. 127, Pt. B, §6, is amended to read:

B. If a juvenile is placed in a residence outside the juvenile's home pursuant to a voluntary services agreement, the Commissioner of Corrections or the commissioner's designee may request the court to make a determination whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. If requested, the court shall make that determination prior to the expiration of 180 days from the start of the placement and shall review that determination not less than once every 12 months until the juvenile is no longer residing outside the juvenile's home.

Sec. 9. 18-A MRSA §9-308, sub-§(e), as enacted by PL 1995, c. 694, Pt. C, §7 and affected by Pt. E, §2, is amended to read:

(e) The department shall notify the grandparents of a child when the child is placed for adoption if the department has received notice that the grandparents were granted reasonable rights of visitation or access under Title 19-A, chapter 59 or Title 22, section ~~4005-B~~ 4005-E.

Sec. 10. 22 MRSA §4002, sub-§1-B, ¶A, as enacted by PL 1997, c. 715, Pt. B, §1, is amended to read:

A. The parent has subjected ~~the~~ any child for whom the parent was responsible to aggravated circumstances, including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society~~; or~~.

~~(2) Refusal for 6 months to comply with treatment required in a reunification plan.~~

Sec. 11. 22 MRSA §4002, sub-§1-B, ¶A-1 is enacted to read:

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.

Sec. 12. 22 MRSA §4005, sub-§1, ¶D, as amended by PL 1997, c. 715, Pt. A, §2, is further amended to read:

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations~~,~~ and shall provide a copy of the report to each of the parties reasonably in advance of the hearing~~,~~ and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence.

Sec. 13. 22 MRSA §4005-A, as amended by PL 1997, c. 343, §1, is repealed.

Sec. 14. 22 MRSA §4005-B, as amended by PL 2001, c. 58, §1, is repealed.

Sec. 15. 22 MRSA §4005-C, as amended by PL 1999, c. 675, §1, is repealed.

Sec. 16. 22 MRSA §§4005-D and 4005-E are enacted to read:

§4005-D. Access to and participating in proceedings

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Foster parent" means a person who has had a child in that person's home for at least 120 days and who is licensed as a family foster home under chapter 1663.

B. "Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption.

C. "Interested person" means a person the court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing.

D. "Intervenor" means a person who is granted intervenor status in a child protective proceeding pursuant to the Maine Rules of Civil Procedure, Rule 24, as long as intervention is consistent with section 4003.

E. "Participant" means a person who is designated as an interested person under paragraph C and who demonstrates to the court that designation as a participant is in the best interests of the child and consistent with section 4003. A person may request participant status in a child protection proceeding either orally or in writing.

2. Interested persons. Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child by blood or marriage as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.

3. Access to proceedings. An interested person, participant or intervenor may attend and observe all court proceedings under this chapter unless the court finds good cause to exclude the person. The opportunity to attend court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

4. Right to be heard. A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

5. Intervention. An intervenor may participate in any court proceeding under this chapter as a party as provided by the court when granting intervenor status under Maine Rules of Civil Procedure, Rule 24. An intervenor has the rights of a party as ordered by the court in granting intervenor status, including the right to present or cross-examine witnesses, present evidence and have access to pleadings and records.

6. Foster parents, preadoptive parents and relatives providing care. The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and an opportunity to be heard in any review or hearing to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records. This subsection may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the review or hearing solely on the basis of the notice and opportunity to be heard.

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a review or hearing in its entirety under this subsection unless specifically excluded by decision of the presiding judge.

7. Confidentiality and disclosure limitations. Interested persons, participants and intervenors are subject to the confidentiality and disclosure limitations of section 4008.

§4005-E. Grandparents; visitation and access; placement

1. Visitation and access. A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access. When a child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended may resume, as a matter of right and without further court order, contact with the child in

accordance with the order granting that contact or access, unless the court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact.

2. Placement. A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to order that the child be placed with the grandparent. A grandparent who has not been designated as a participant under section 4005-D may make the request for placement in writing. In making a decision on the request, the court shall give the grandparents priority for consideration for placement if that placement is in the best interests of the child and consistent with section 4003.

Sec. 17. 22 MRSA §4008, sub-§2, ¶E, as amended by PL 1993, c. 294, §3, is further amended to read:

E. A person having the legal responsibility or authorization to educate, care for~~, evaluate, treat~~ or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department;

Sec. 18. 22 MRSA §4008, sub-§3, ¶F, as amended by PL 1991, c. 630, §3, is further amended to read:

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; ~~and~~

Sec. 19. 22 MRSA §4008, sub-§3, ¶G, as amended by PL 1995, c. 694, Pt. D, §39 and affected by Pt. E, §2, is further amended to read:

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-A, section 9-304, subsection (b) and section 8205~~.~~; and

Sec. 20. 22 MRSA §4008, sub-§3, ¶H is enacted to read:

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record.

Sec. 21. 22 MRSA §4010-B is enacted to read:

§4010-B. Written policies

1. Written policies. By February 1, 2003, the department shall put in writing all policies that direct or guide procedural and substantive decision making by caseworkers, supervisors and other department personnel concerning child protective cases.

2. Publicly available. By February 1, 2003, the department shall make available to the public all policies that direct or guide procedural and substantive decision making by caseworkers, supervisors and other department personnel concerning child protective cases. The department shall post and maintain the policies on a publicly accessible site on the Internet.

3. Kinship care policies. By September 1, 2002, the department shall make kinship care policies available in writing to the public.

4. Rules. This section does not affect the department's responsibility to adopt rules as otherwise required by law.

Sec. 22. 22 MRSA §4015, as amended by PL 1985, c. 495, §21, is further amended to read:

§4015. Privileged or confidential communications

The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 1092-A and 7005; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section ~~shall~~ must be kept confidential and may not be disclosed by the department except as provided in section 4008.

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding ~~except to rebut the client's testimony contradicting those statements~~. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

Sec. 23. 22 MRSA §4021, sub-§§4 and 5 are enacted to read:

4. Audio recording of planned interviews of children. To the extent possible, the department shall audio record all planned questioning of and planned interviews with children. No later than February 1, 2003, the commissioner shall provisionally adopt rules in accordance with Title 5, chapter 375 to establish procedures for the audio recording of planned questioning of and planned interviews with children. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over judiciary matters.

Information collected in an interview that was not audio recorded may not be excluded from use in court proceedings solely because the interview was not audio recorded.

5. Right to record. A person being questioned or interviewed under this chapter or the parent of a child who is the subject of a proceeding under this chapter may not be prohibited from audio recording the questioning or interview.

Sec. 24. 22 MRSA §4032, sub-§2, as enacted by PL 1979, c. 733, §18, is amended to read:

2. Contents of petition. A petition ~~shall~~ must be sworn and ~~shall~~ include at least the following:

A. Name, date, place of birth and municipal residence, if known, of each child;

B. The name and address of the petitioner and the nature of ~~his~~ the petitioner's relationship to the child;

C. Name and municipal residence, if known, of each parent and custodian;

D. A summary statement of the facts ~~which~~ that the petitioner believes constitute the basis for the petition;

E. An allegation ~~which~~ that is sufficient for court action;

F. A request for specific court action;

G. A statement that the parents and custodians are entitled to legal counsel in the proceedings and that, if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel; ~~and~~

H. A statement that petition proceedings could lead to the termination of parental rights~~,~~ under section 4051 et seq.;

I. A statement explaining the specific reasonable efforts made to prevent the need to remove the child from the home or to resolve jeopardy;

J. The names of relatives who may be able to provide care for the child; and

K. The names of relatives who are members of an Indian tribe.

Sec. 25. 22 MRSA §4034, sub-§§1 and 2, as enacted by PL 1979, c. 733, §18, are amended to read:

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order~~, which shall~~ or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request.

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order ~~shall~~ automatically ~~expire~~ expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.

Sec. 26. 22 MRSA §4034, sub-§4, as amended by PL 1997, c. 715, Pt. A, §4, is further amended to read:

4. Summary preliminary hearing. If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing, then the court shall hold a summary preliminary hearing on that order within ~~10~~ 14 days but not less than 7 days of its issuance or request. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and

records, that would otherwise be inadmissable as hearsay evidence. If after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary order.

Sec. 27. 22 MRSA §4034, sub-§5, as amended by PL 1997, c. 715, Pt. A, §5, is further amended to read:

5. Contents of order. The preliminary protection order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition. The order must include a notice that visitation must be scheduled within 7 days of the issuance of the order unless there is a compelling reason not to schedule visitation.

Sec. 28. 22 MRSA §4034, sub-§6 is enacted to read:

6. Visitation. When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.

Sec. 29. 22 MRSA §4034-A is enacted to read:

§4034-A. Evidence and findings inadmissible

1. Evidence. The exception under section 4034, subsection 4 for the admission of evidence that would otherwise be inadmissible hearsay applies to only the preliminary protection hearing under section 4034, subsection 4. Evidence admitted under that exception is not admissible in any other proceeding unless the evidence is admitted pursuant to the laws and rules of evidence applicable to that other proceeding.

2. Findings. A finding made at the conclusion of a preliminary protection hearing based on evidence that would otherwise be inadmissible hearsay admitted under section 4034, subsection 4 is not admissible in any other proceeding.

Sec. 30. 22 MRSA §4035, sub-§2, as enacted by PL 1979, c. 733, §18, is amended to read:

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to ~~his~~ the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4.

B. The court shall make findings of fact on the record upon which the jeopardy determination is made.

C. The court shall make a jeopardy determination with regard to each parent who has been properly served.

Sec. 31. 22 MRSA §4035, sub-§3, as amended by PL 1983, c. 184, §5, is further amended to read:

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to ~~his~~ the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible, this dispositional phase ~~shall~~ must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence ~~shall~~ must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

Sec. 32. 22 MRSA §4038, sub-§7-A, as enacted by PL 2001, c. 559, Pt. CC, §3 is further amended to read:

7-A. Permanency planning hearing. The court shall conduct a permanency planning hearing and shall determine a permanency plan within 12 months of the time a child is considered to have entered foster care and every 12 months thereafter, unless subsequent reviews are no longer required pursuant to subsection 1-A. If the court's jeopardy ruling includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a

permanency planning hearing must commence within 30 days of the order to cease reunification.

A. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first.

B. The permanency plan for the child must contain determinations on the following issues.

(1) The permanency plan must determine whether and when, if applicable, the child will be:

(a) Returned to the parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection ~~1~~ 1-A, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for and protect the child from jeopardy; and that the parent can protect the child from jeopardy;

(b) Placed for adoption, in which case the department shall file a petition for termination of parental rights;

(c) Referred for legal guardianship; or

(d) Placed in another planned permanent living arrangement when the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be placed with a fit and willing relative, or be placed with a legal guardian.

(2) In the case of a child placed in foster care outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) In the case of a child who is 16 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living.

C. The court shall consider, but is not bound by, the wishes of the child in making a determination under this subsection if the child is 12 years of age or older.

Sec. 33. 22 MRSA §4041, sub-§2, ¶A-1, as enacted by PL 1997, c. 715, Pt. B, §11, is repealed.

Sec. 34. 22 MRSA §4041, sub-§2, ¶A-2 is enacted to read:

A-2. The court may order that the department need not commence or may cease reunification efforts only if the court finds at least one of the following:

(1) The existence of an aggravating factor; or

(2) That continuation of reunification efforts is inconsistent with the permanency plan for the child.

(a) When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.

(b) If the permanency plan provides for a relative or other person to have custody of the child and the court has ordered custody of the child to that relative or other person, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.

Sec. 35. 22 MRSA §4055, sub-§1, ¶A, as amended by PL 1995, c. 694, Pt. D, §48 and affected by Pt. E, §2, is further amended to read:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

(a) Section 4035 or 4038;

(b) Title 19-A, section 1502 or 1653; ~~or~~

(c) Section 3792 prior to the effective date of this chapter; or

(d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; and

Sec. 36. 22 MRSA §4087-A, sub-§4-A is enacted to read:

4-A. Information for parents in child protective cases. The program, in consultation with appropriate interested parties, shall provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under this chapter. The providing of the information under this subsection does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

The program shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the provision of information required by this subsection.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

Sec. 37. Representation of parents; pilot project. The Supreme Judicial Court shall establish a pilot project in one or more locations to provide representation to parents in child protective proceedings on a contract basis with one or more attorneys or firms. The Supreme Judicial Court shall evaluate the quality, effectiveness, adequacy and timeliness of the representation and the costs as compared to the traditional provision of court-appointed counsel. The Supreme Judicial Court shall report its conclusions and recommendations concerning the pilot project to the joint standing committee of the Legislature having jurisdiction over judiciary matters by December 15, 2003.

Sec. 38. Department of Human Services; report on kinship care. The Department of Human Services shall report to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters before February 1, 2003 on the following:

1. A summary of the department's activities and policies concerning care by relatives and placement with relatives;

2. Changes in policies and procedures the department is planning to adopt in order to increase care by relatives and placement with relatives; and

3. The appropriate process by which the department will inform families involved in child protective cases and their relatives about kinship visitation and placement options.

Sec. 39. Waiver application. By October 1, 2002, the Department of Human Services shall apply to the United States Department of Health and Human Services, Administration for Children and Families for a waiver under the Social Security Act, 42 United States Code 670, Section 470, Title IV-E program to provide services for children, families and guardians determined to be in need of services under the Maine Revised Statutes, Title 22, chapter 1071 and to accomplish the goals of this section.

1. Contracts for services and room and board. The application for the waiver program must include the department and a person responsible for a child to enter into an agreement for services and room and board. A parent or guardian may sign a contract for services to the child and child's family and members of the household in which the child is living. A parent may sign a contract for room and board reimbursement for the household in which the child is living except that reimbursement for room and board may not be paid to the parent. A guardian may sign a contract for room and board reimbursement for the household in which the child is living including, if applicable, the household of the guardian.

2. Reimbursement for services. The waiver program must allow the department to provide reimbursement for necessary services provided to a child, the child's family and the household in which the child is living. The waiver program must provide reimbursement for services on the same terms that providers are reimbursed for children in the care or custody of the department under Title 22, chapter 1071. Services provided under this subsection must be coordinated with services provided with other departments, including, without limitation, the Department of Behavioral and Developmental Services, the Department of Education, the Department of Public Safety and the Department of Corrections.

3. Reimbursement for room and board. The waiver program must allow the department to

reimburse a child's guardian or other person providing room and board for the child. The waiver program must provide reimbursement for room and board on the same terms that providers are reimbursed for children in the care or custody of the department under Title 22, chapter 1071.

4. Retention of responsibility. The waiver program must allow the child's parent or guardian to retain responsibility for the child so that decision-making by the parent or guardian is maintained until the earliest of the following 3 events occurs: the parent or guardian enters into an agreement under Title 22, section 4004-A or 4022, in which case the terms of the agreement govern responsibility for the child; the department proceeds with an action under Title 22, chapter 1071 and the court enters an order regarding responsibility for the child; or 2 years elapse from the date of the contract signed under subsection 1. A contract signed under subsection 1 that has terminated under the terms of this subsection may be renewed in the discretion of the department.

See title page for effective date.

CHAPTER 697

H.P. 1670 - L.D. 2173

An Act to Implement the Recommendations of the Joint Standing Committee on Criminal Justice Regarding the Review of the Department of Public Safety under the State Government Evaluation Act

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

PART A

Sec. A-1. 3 MRSA §959, sub-§1, ¶F, as amended by PL 1999, c. 127, Pt. C, §10 and PL 2001, c. 354, §3, is further amended to read:

F. The joint standing committee of the Legislature having jurisdiction over human resource matters shall use the following list as a guideline for scheduling reviews:

(2) Office of Substance Abuse in 1997;

(3) Maine Advisory Committee on Mental Retardation in 1999;

~~(5) Maine Emergency Medical Services in 2001;~~

(6) Department of Human Services in 2001;

(7) Board of the Maine Children's Trust Incorporated in 2003;

(8) Governor's Committee on Employment of People with Disabilities in 2003;

(9) Maine Developmental Disabilities Council in 2003; and

(10) Department of Behavioral and Developmental Services in 2005.

PART B

Sec. B-1. 25 MRSA §2801-B, sub-§1, as amended by PL 2001, c. 472, §§1 and 2, is further amended to read:

1. Exemption. The training standards and requirements of this chapter do not apply to ~~the persons~~ a person defined by this chapter as a law enforcement ~~officers~~ officer who ~~are~~ is:

A. ~~Employees~~ An employee of the Department of Corrections with a duty to perform probation functions or to perform intensive supervision functions;

B. ~~Agents~~ An agent or ~~representatives~~ a representative of the Department of Conservation, Bureau of Parks and Lands~~,~~ whose law enforcement powers are limited to those specified in Title 12, section 1821;

C. ~~Agents~~ An agent or ~~representatives~~ a representative of the Department of Conservation, Bureau of Forestry~~,~~ whose law enforcement powers are limited to those specified by Title 12, section 8901, subsection 3;

E. ~~Harbor masters~~ A harbor master;

F. ~~Municipal~~ A municipal shellfish conservation ~~wardens~~ warden; ~~or~~

G. ~~Security officer~~ A security officer appointed by the Commissioner of Public Safety ~~and~~ whose duties and powers have been expanded pursuant to section 2908. This paragraph is repealed December 31, 2002~~.~~;

H. The State Fire Marshal; or

I. The Chief of the Bureau of Liquor Enforcement within the Department of Public Safety.

PART C

Sec. C-1. 32 MRSA §85, sub-§6, as amended by PL 2001, c. 45, §1, is further amended to read: