

MAINE STATE LEGISLATURE

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*State Of Maine
120th Legislature*

Second Regular Session

Bill Summaries

*Joint Standing Committee
on
Judiciary*

May 2002

Members:

Sen. Anne M. Rand, Chair

Sen. Michael J. McAlevey

Sen. Norman K. Ferguson, Jr.

Rep. Charles C. LaVerdiere, Chair

Rep. Thomas D. Bull

Rep. Patricia T. Jacobs

Rep. Charles E. Mitchell

Rep. Christopher T. Muse

Rep. Deborah L. Simpson

Rep. David R. Madore

Rep. G. Paul Waterhouse

Rep. Stavros J. Mendros

Rep. Roger L. Sherman

Rep. Donna M. Loring

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120th Legislature
Second Regular Session

Summary Of Legislation Before The Joint Standing Committees
May 2002

Enclosed please find a summary of all bills, resolves, joint study orders, joint resolutions and Constitutional resolutions that were considered by the joint standing select committees of the Maine Legislature this past session.

The document is organized for convenient reference to information on bills considered by the committees. It is arranged alphabetically by committee name and within committees by bill (LD) number.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

- CON RES XXX..... Chapter # of Constitutional Resolution passed by both Houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; bill died
DIED BETWEEN BODIES..... House & Senate disagree; bill died
DIED IN CONCURRENCE..... One body accepts ONTP report; the other indefinitely postpones the bill
DIED ON ADJOURNMENT..... Action incomplete when session ended; bill died
EMERGENCY..... Enacted law takes effect sooner than 90 days
FAILED EMERGENCY ENACTMENT/FINAL PASSAGE..... Emergency bill failed to get 2/3 vote
FAILED ENACTMENT/FINAL PASSAGE..... Bill failed to get majority vote
FAILED MANDATE ENACTMENT..... Bill imposing local mandate failed to get 2/3 vote
NOT PROPERLY BEFORE THE BODY..... Ruled out of order by the presiding officers; bill died
INDEF PP..... Bill Indefinitely Postponed
ONTP..... Ought Not To Pass report accepted
OTP ND..... Committee report Ought To Pass In New Draft
OTP ND/NT..... Committee report Ought To Pass In New Draft/New Title
P&S XXX..... Chapter # of enacted Private & Special Law
PASSED..... Joint Order passed in both bodies
PUBLIC XXX..... Chapter # of enacted Public Law
RESOLVE XXX..... Chapter # of finally passed Resolve
UNSIGNED..... Bill held by Governor
VETO SUSTAINED..... Legislature failed to override Governor's Veto

Please note the effective date for all non-emergency legislation enacted in the Second Regular Session (unless otherwise specified in a particular law) is July 25, 2002.

Patrick T. Norton, Interim Director
Offices located in Room 215 of the Cross Office Building

Joint Standing Committee on Judiciary

LD 2149

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

PUBLIC 696

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	OTP-AM MAJ	H-1078
	OTP-AM MIN	S-614 GOLDTHWAIT

LD 2149 contains the legislative recommendations of the Committee to Review the Child Protective System, created by Joint Order 2001, H.P. 1385. A full discussion of all the committee's recommendations is contained in the committee's final report, submitted to the Joint Standing Committee on Judiciary in December 2001.

Committee Amendment "A" (H-1078), the majority report, proposed several changes to the bill, including revisions of language governing use of evidence, determinations of jeopardy, and disclosure of confidential information. It also proposed that when the court determines that reunification efforts must cease, the determination must be made by clear and convincing evidence after a full evidentiary hearing. It proposed that the Department of Human Services apply for a waiver to allow for the reimbursement for services and for room and board for children who have not entered into the care and custody of the department. It proposed that the bill take effect October 1, 2002 in order to reduce costs.

Committee Amendment "B" (H-1079), the minority report, was the same as Committee Amendment "A" except that it proposed that the court be permitted to exclude evidence if it was gathered in an interview with a child that was not recorded and that all proceedings and records are open to the public, unless a court orders otherwise. (Not adopted)

Senate Amendment "A" to Committee Amendment "A" (S-569) proposed an expedited appeal of interlocutory orders to the Superior Court, proposed to require the court to issue an order scheduling discovery in child protective cases with vacation of the protective order for noncompliance by the Department of Human Services, and proposed to hold a Department of Human Services employee personally liable for damages as well as attorney's fees and costs if the employee intentionally or knowingly violates a department policy, a rule adopted by the department or any provision of the chapter governing child protective cases. (Not adopted)

Senate Amendment "B" to Committee Amendment "A" (S-614) proposed to retain current language concerning notice and opportunity to be heard as required by federal regulations, as well as remove several provisions of the bill as amended by Committee Amendment "A".

1. The amendment proposed to eliminate the elevation of the standard of proof that is required from "preponderance of the evidence" to "clear and convincing evidence" when there is a determination either not to commence or to cease reunification. It also proposed to delete the requirement that the proceeding within which there is a determination either not to commence reunification efforts or to cease reunification efforts must be a full evidentiary hearing.
2. It proposed to delete the specific authority for court-appointed attorneys to represent parents in certain family matters proceedings.
3. It proposed to delete the appropriations and allocations section and the delayed effective date section.

Joint Standing Committee on Judiciary

Enacted law summary

Public Law 2001, chapter 696, implements most of the legislative recommendations of the Committee to Review the Child Protective System. It makes many changes to current law, including the following.

1. It amends the Maine Juvenile Code to be consistent with federal law and the child protective statutes with regard to juveniles who are ordered by the court to be removed from their homes.
2. It requires the child welfare services ombudsman program to consult with appropriate interested parties and establish a program to provide information about the child protective system to parents.
3. It rewrites the statutes governing access to and participation in child protective proceedings for nonparties to observe or participate by establishing three expanded tiers of possible participation, without opening proceedings to the public in general.
4. It requires the Department of Human Services to produce decision-making policies in writing and make them publicly available. It requires the department to post the most current policies on a publicly accessible site on the Internet. Among other topics, the policies must address kinship care and placement.
5. It requires the Department of Human Services, to the extent possible, to audio record all planned questioning of and interviews with children. The department must adopt rules to establish procedures to audio record interviews; the rules are major substantive rules. The fact that an interview was not recorded does not by itself require the exclusion of the information collected in the interview. It also clarifies that any person who is being questioned or interviewed may record the questioning or interview.
6. It amends the law to prohibit the use of evidence that would otherwise be inadmissible hearsay, admitted in the summary preliminary protection hearing under section 4034, subsection 4, in any other proceeding unless the evidence is admitted pursuant to the applicable laws and rules of evidence. It also provides that a finding that is based on that evidence is inadmissible in any other proceeding.
7. It requires the court to make findings of fact on the record on which the jeopardy determination is based; it provides that the jeopardy determination made at the jeopardy hearing must be a fresh determination, and the judge cannot rely on the findings of fact in the preliminary protection order hearing as precedent to establish jeopardy at the jeopardy hearing. This is consistent with In re Isaiah B., 1999 ME 174, 740 A.2d 988 (Me. 1999).
8. It authorizes the court to order any disposition, including custody to the department, if there is a determination of jeopardy with regard to one parent and the other parent or custodian has not been located and therefore not properly served with the petition and notice of proceedings as required by current law. If and when the parent is located, the court may hold a hearing and make a jeopardy determination with regard to that parent.
9. It adjusts the timing of the preliminary protection hearing after a preliminary protection order is issued. It provides that the hearing cannot be held less than 7 days after the order is issued and must be held before 14 days have passed since the issuance of the order. It also requires the court to order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order. Such visitation is not required if there is a compelling reason not to.

Joint Standing Committee on Judiciary

10. It directs the Supreme Judicial Court to consider establishing a pilot project to provide representation to parents in child protective proceedings on a contract basis with one or more attorneys or firms. A similar pilot project was undertaken to provide representation for criminal defendants.

11. It requires the Department of Human Services to report to the joint standing committees of the Legislature having jurisdiction over judiciary matters and health and human services matters about planned changes to increase care by relatives and placement with relatives, and how the department will inform families about visitation and placement options for relatives.

12. It directs the Department of Human Services to apply for a waiver to allow for the reimbursement for services and for room and board for children who have not entered into the care and custody of the department.

LD 2153 An Act to Amend the Freedom of Access Laws to Protect Security Plans, Security Procedures and Risk Assessments PUBLIC 675

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
NORBERT MICHAUD MH	OTP-AM MAJ ONTP MIN	H-1057

LD 2153 proposed to add an exception to the definition of "public records" in the freedom of access laws that would protect information concerning security plans or procedures of agencies of State Government and local government. Such information is protected under the Maine Revised Statutes, Title 16, section 614 when it is held by a law enforcement agency identified in that statute but not when held by other agencies of state, county or local government.

Committee Amendment "A" (H-1057), the majority report, proposed to limit the types of records that would be exempt from public disclosure.

Enacted law summary

Public Law 2001, chapter 675 exempts from the definition of "public record" security-related information that specifically concerns preventing or preparing for acts of terrorism. The "terrorism" definition closely mirrors the definition in proposed changes to the Maine Criminal Code. Chapter 675 also clarifies that only that information that, if released, could pose a threat to public safety is covered by this exemption. Finally, it adds the term "risk assessments" to the description of security-related information in order to prevent the disclosure of information that could permit exploitation of existing vulnerabilities.

LD 2157 An Act Regarding the Requirements for Documenting Pretest and Post-test Counseling for HIV Tests PUBLIC 647

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MADORE RAND	OTP	