

MAINE STATE LEGISLATURE

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STATE OF MAINE
127TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

JOINT STANDING COMMITTEE ON JUDICIARY

May 2016

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STATE OF MAINE

127TH LEGISLATURE

SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 127th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... *carried over to a subsequent session of the Legislature*
CON RES XXX..... *chapter # of constitutional resolution passed by both houses*
CONF CMTE UNABLE TO AGREE..... *Committee of Conference unable to agree; legislation died*
DIED BETWEEN HOUSES..... *House & Senate disagreed; legislation died*
DIED IN CONCURRENCE..... *defeated in each house, but on different motions; legislation died*
DIED ON ADJOURNMENT..... *action incomplete when session ended; legislation died*
EMERGENCY..... *enacted law takes effect sooner than 90 days after session adjournment*
FAILED, EMERGENCY ENACTMENT or PASSAGE..... *emergency failed to receive required 2/3 vote*
FAILED, ENACTMENT or FINAL PASSAGE..... *failed to receive final majority vote*
FAILED, MANDATE ENACTMENT..... *legislation proposing local mandate failed required 2/3 vote*
HELD BY GOVERNOR..... *Governor has not signed; final disposition to be determined at subsequent session*
LEAVE TO WITHDRAW..... *sponsor's request to withdraw legislation granted*
NOT PROPERLY BEFORE THE BODY..... *ruled out of order by the presiding officer; legislation died*
INDEF PP..... *indefinitely postponed; legislation died*
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... *ought-not-to-pass report accepted; legislation died*
P&S XXX..... *chapter # of enacted private & special law*
PUBLIC XXX..... *chapter # of enacted public law*
RESOLVE XXX..... *chapter # of finally passed resolve*
VETO SUSTAINED..... *Legislature failed to override Governor's veto*

The effective date for non-emergency legislation enacted in the First Regular Session of the 127th Legislature is July 29, 2016. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

Joint Standing Committee on Judiciary

Judiciary pursuant to Resolve 2013, chapter 27 as amended by Resolve 2013, chapter 81.

The Probate and Trust Law Advisory Commission submitted a new report with revised recommendations to the Judiciary Committee in November 2015.

LD 1181 *An Act To Limit Liability for Certain Successor Corporations under Specific Circumstances* **Died In Concurrence**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MARTIN J HASKELL A	ONTP OTP-AM	

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill limits the liability of successor corporations that, before the dangers of asbestos were known publicly in 1972, acquired or merged with a predecessor corporation that engaged in asbestos-related activities. Liability is capped at the value of the predecessor corporation at the time of merger adjusted for inflation, but only for successor corporations that did not continue in the business of mining, selling, distributing, manufacturing, removing or installing asbestos-containing products.

LD 1214 *An Act To Implement the Recommendations of the Mental Health Working Group* **ONTP**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
	ONTP	

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill contains the recommendations of the mental health working group pursuant to Resolve 2013, chapter 106, which were also covered by LD 1145 enacted during the First Regular Session, Public Law 2015, chapter 309. This bill was carried over to continue work on Part B which expands the duties of the State Forensic Service within the Department of Health and Human Services to include performing the duties of an independent examiner at the direction of the District Court in response to applications for involuntary commitment and involuntary treatment.

LD 1224 *An Act To Amend the Child Protective Services Laws* **PUBLIC 501**

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
MALABY R DIAMOND G	OTP-AM	H-629

This bill amends the Child and Family Services and Child Protection Act in the following ways.

1. It makes clear that the prohibitions on the use of Department of Health and Human Services records and information do not apply to a child or parent, legal guardian or custodian of a child who is the subject of the records or information.
2. It allows upon request a child or parent, legal guardian or custodian of a child to receive Department of

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Health and Human Services records and information concerning the child unless the department can prove by clear and convincing evidence that the records or information should not be released.

3. It removes the criminal penalty for a person who disseminates information that may be in Department of Health and Human Services records if the person obtained that information from an independent source.
4. It clarifies that unsubstantiated records or information that are expunged or should have been expunged may not be used for any purpose including as evidence in any administrative or judicial proceeding.
5. It modifies the notice, conduct and appeal rights concerning proceedings involving preliminary protection orders.
6. It clarifies that the petitioner must present and the court must find that reasonable efforts to prevent the removal of a child have been made prior to the issuance of a preliminary protection order.

Committee Amendment "A" (H-629)

This amendment deletes from the bill sections which change the confidentiality provisions of the child protective statutes and instead adds a new administrative hearing process to give parents, custodians and legal guardians an opportunity to seek a review of the discretionary denial of access to information in child protection records. The hearing must be conducted by the Department of Health and Human Services under the Maine Administrative Procedure Act. The parents, custodians and legal guardians can appeal the decision of the hearing officer as a final agency action.

This amendment strikes out section eight of the bill, which addresses notice about a request for a preliminary protection order, and replaces it with language that clarifies that, when the department gives notice that it will be seeking a preliminary protection order, the notice does not include the time and place when the petition will be presented to a judge, but must include the court in which the counsel for the parents, legal guardian or custodians may file motions, including motions to modify or vacate any preliminary protection order that is issued. This amendment also requires that the information provided to the court explaining why notice is not required must include a sworn statement detailing a sufficient factual basis either that the child would suffer serious harm during the time needed to notify the parents, legal guardian or custodians or that prior notice would increase the risk of serious harm to the child or the petitioner. This amendment clarifies that failure to provide the required notice, after a good faith attempt to do so, does not constitute grounds for denial of a preliminary protection order.

This amendment deletes section 12, which provides for a new expedited process for dissolving or modifying a preliminary protection order, and instead amends the law to allow the summary preliminary hearing to be expedited upon request by the parent's counsel. Upon counsel's request, the court may conduct the summary preliminary hearing, the first hearing opportunity available after the preliminary protection order is issued, as expeditiously as the court determines the interests of justice require.

This amendment retains the language in current law that provides that, if the department has not been able to serve a parent, custodian or legal guardian before the scheduled summary preliminary hearing, the parent, custodian or legal guardian may request a subsequent summary preliminary hearing within 10 days after the parent, custodian or legal guardian receives the petition.

This amendment clarifies that when notice is required to be given to a legal guardian of a child, the department is required to provide notice to all of the child's legal guardians that are known to the department.

Senate Amendment "A" To Committee Amendment "A" (S-462)

This amendment amends the best interests standard when determining the placement of a child in custody such that there is a rebuttable presumption that placement with an adult relative is in the best interests of the child, as long as

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such placement does not substantially interfere with reunification effort.

This amendment was not adopted.

Enacted Law Summary

Public Law 2015, chapter 501 amends the Child and Family Services and Child Protection Act in the following ways.

It creates a new administrative hearing process to give parents, custodians and legal guardians an opportunity to seek a review of the discretionary denial of access to information in child protection records. The hearing must be conducted by the Department of Health and Human Services under the Maine Administrative Procedure Act. The parents, custodians and legal guardians can appeal the decision of the hearing officer as a final agency action.

It clarifies that unsubstantiated records or information that are expunged or should have been expunged may not be used for any purpose including as evidence in any administrative or judicial proceeding.

It clarifies that, when the department gives notice that it will be seeking a preliminary protection order, the notice does not include the time and place when the petition will be presented to a judge, but must include the court in which the counsel for the parents, legal guardian or custodians may file motions, including motions to modify or vacate any preliminary protection order that is issued. It also requires that the information provided to the court explaining why notice is not required must include a sworn statement detailing a sufficient factual basis either that the child would suffer serious harm during the time needed to notify the parents, legal guardian or custodians or that prior notice would increase the risk of serious harm to the child or the petitioner. It clarifies that failure to provide the required notice, after a good faith attempt to do so, does not constitute grounds for denial of a preliminary protection order.

It allows the summary preliminary hearing to be expedited upon request by the parent's counsel. Upon counsel's request, the court may conduct the summary preliminary hearing, the first hearing opportunity available after the preliminary protection order is issued, as expeditiously as the court determines the interests of justice require.

Public Law 2015, chapter 501 clarifies that when notice is required to be given to a legal guardian of a child, the department is required to provide notice to all of the child's legal guardians that are known to the department.

LD 1241 An Act To Increase Government Efficiency

PUBLIC 449

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
KATZ R HARLOW D	OTP	S-479 KATZ R

This bill was carried over from the First Regular Session of the 127th Legislature.

This bill authorizes the Maine Governmental Facilities Authority, the Maine Health and Higher Educational Facilities Authority, the Maine State Housing Authority and the Maine Municipal Bond Bank to conduct public proceedings with one or more members of the board or commission participating via remote access technology in certain circumstances.

Committee Amendment "A" (S-276)

This amendment is the majority report of the Joint Standing Committee on Judiciary and amends the bill to bar remote participation in executive sessions of the board and authorities subject to the bill and lists specific and limited situations when a member may participate remotely in the public proceedings.