

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Clarify Child Protection Proceedings

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

Sec. 1. 22 MRSA §4021, sub-§1, as amended by PL 2007, c. 586, §§14 and 15, is further amended to read:

1. Subpoenas and obtaining criminal history. The commissioner, ~~his delegate~~the commissioner's designee or the legal counsel for the department may:

A. Issue ~~subpoenas~~a subpoena requiring ~~persons~~a person to disclose or provide to the department information or records in ~~their~~the person's possession that are necessary and relevant to an investigation of a report of suspected abuse or neglect or suspicious child death, to a subsequent child protection proceeding or to a panel appointed by the department to review child deaths and serious injuries.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is immune from civil or criminal liability that might otherwise result from the act of turning over or providing information or records to the department; ~~and.~~

A subpoena requesting a telephone record, utility bill or other personal document of a person under this paragraph must allow the person at least 7 days to disclose or provide the information requested in the subpoena. A person who receives a subpoena under this paragraph requesting a telephone record, utility bill or other personal document of the person may petition the court to quash all or part of the subpoena; and

B. Obtain nonconviction data and other criminal history record information under Title 16, chapter 3, subchapter 8 that the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to an abuse or neglect case or the investigation of a suspicious child death.

Sec. 2. 22 MRSA §4032, sub-§4 is enacted to read:

4. Duty of department. If the department is the petitioner under subsection 1, paragraph A, at least 10 days prior to any hearing on a matter brought under this section the department shall prepare and provide to the court and all parties to the matter a report detailing the purpose of, service provided for and amount of any expenditure made or authorized by the department to prevent the removal of the child from the child's home or to reunify the child with the child's parents or custodian and to prosecute the matter.

Sec. 3. 22 MRSA §4033, sub-§2, as enacted by PL 1979, c. 733, §18, is repealed.

Sec. 4. 22 MRSA §4033, sub-§2-A is enacted to read:

2-A. Notice of preliminary protection order. A petitioner shall attempt to notify each parent or custodian of a child of the intent to file a request for a preliminary protection order for that child and of the time and place at which the request will be made. The petitioner shall state in sworn testimony or affidavit the specific steps taken to notify each parent or custodian of the child who is the subject of the preliminary protection order or the facts that are the basis for not giving the notice under paragraph A or B. The court shall make specific factual findings of the attempt to notify by the petitioner or of the exception from notification under paragraph A or B in its order concerning the request. If a parent or custodian of the child or counsel for a parent or custodian is present at the time of the request for the preliminary protection order, the parent, custodian or counsel must have the opportunity to review, contest and respond to each fact supporting the attempt for or exception from the notice required by this subsection. If a court approves a preliminary protection order under this section and a parent or custodian of the child or counsel for a parent or custodian is not present at the time of the request for the preliminary protection order, the parent, custodian or counsel must have the opportunity to review, contest and respond to any statement by the petitioner regarding notice required by this subsection at the next hearing held upon the same matter. If a court finds by a preponderance of the evidence that a fact or statement made by the petitioner under this subsection is untruthful or intentionally incomplete or misleading, the individual swearing to the fact or statement may not testify or be called as a witness in the matter and may be found in contempt and sanctioned by the court. Notice under this subsection is not required if:

- A. The child would suffer serious harm during the time needed to notify the parents or custodian; or
- B. Prior notice to the parents or custodian would increase the risk of serious harm to the child or petitioner.

Sec. 5. 22 MRSA §4033, sub-§6 is enacted to read:

6. Report. The District Court shall maintain a record of the number of:

- A. Preliminary protection proceedings requested;
- B. Preliminary protection proceeding requests granted;
- C. Parents or custodians of the child or counsel to a parent or custodian who were present at a preliminary protection proceeding; and
- D. Preliminary protection requests in which notice was not made pursuant to an exception under subsection 2-A, paragraph A or B.

The District Court shall make the information required by this subsection available to the public by request and on a publicly accessible portion of the District Court's website.

Sec. 6. 22 MRSA §4036, sub-§1, as amended by PL 2005, c. 526, §1, is further amended to read:

1. Disposition. In a protection order, the court may order one or more of the following:

A. No change in custody;

B. Departmental supervision of the child and family in the child's home;

C. That the child, the custodians, the parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy;

D. Necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent;

E. Emancipation of the child, if the requirements of Title 15, section 3506-A are met;

F. Removal of the child from ~~his~~the child's custodian and granting custody to a noncustodial parent, other person or the department;

F-1. Removal of the perpetrator from the child's home, prohibiting direct or indirect contact with the child by the perpetrator and prohibiting other specific acts by the perpetrator which the court finds may threaten the child;

F-2. Visitation between the child and a sibling pursuant to section 4068;

G. Payment by the parents of a reasonable amount of support for the child as determined or modified according to Title 19-A, chapter 63;

G-2. If the court's jeopardy order 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; or

H. Other specific conditions governing custody; ~~or.~~

I. ~~The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014.~~

The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014.

Once a disposition has been ordered under this subsection, unless a party moves the court or the disposition order directly provides otherwise, a dispute concerning the disposition between the department and a party subject to the disposition must be adjudicated by the department pursuant to Title 5, chapter 375, subchapter 4.

Sec. 7. 22 MRSA §4036-B, sub-§4, as enacted by PL 2003, c. 408, §1, is amended to read:

4. Reasonable efforts to reunify. The department shall make reasonable efforts to rehabilitate and reunify the family as provided in section 4041, subsection 1-A unless the court has ordered that the department need not commence or may cease reunification pursuant to section 4041, subsection 2. Reasonable efforts include offering and providing appropriate services to the family and do not include caseworker actions or duties. The department shall document the reasonable efforts offered or provided to a family under this subsection on a form produced by the department and approved by the court. In the jeopardy order pursuant to section 4035 and in each judicial review order pursuant to section 4038, the court shall make a finding whether or not the department has made reasonable efforts to rehabilitate and reunify the family.

Sec. 8. 22 MRSA §4037, as amended by PL 1995, c. 694, Pt. D, §44 and affected by Pt. E, §2, is further amended to read:

§ 4037. Authority of custodian

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 18-A, section 9-302. Custody does not exclude a parent or custodian of a child in custody from receiving records or information concerning the health, education or other personal activities of the child directly from the provider or, if the information or record is in the department's possession, upon request to the department.

Sec. 9. 22 MRSA §4062, sub-§4, as enacted by PL 1999, c. 382, §1, is amended to read:

4. Kinship preference. In the residential placement of a child, the department shall ~~consider giving~~ give preference to an adult relative over a nonrelated caregiver when determining placement for a child, ~~as long as the related caregiver meets all relevant state child protection standards to prevent or minimize trauma from the separation of the child from family, friends and educational, religious and social activities. If the court places a child with a caregiver other than an adult relative, the court must make a finding that there is no suitable adult relative with whom to place the child. The court may not terminate the parental rights of a parent if the parent's child is placed with a relative under this subsection, except if the court finds an aggravating factor as defined by section 4002, subsection 1-B.~~

SUMMARY

This bill amends the child custody laws. It:

1. Giving a person 7 days to petition the court to quash a subpoena requesting telephone or utility bills or personal information;
2. Requires the Department of Health and Human Services to provide a report prior to a child protective proceeding detailing the expenses incurred prosecuting the proceeding and in attempting to unify a child with or prevent removal of the child from the child's family;
3. Requires the department to provide sworn testimony or affidavit as to efforts to notify the parents or custodian of a child or facts justifying exception to notice in a preliminary protection proceeding;

4. Requires District Courts to keep publicly accessible records relating to preliminary protection hearings including notice given, exceptions to notice taken and other information;
5. Requires parties under most circumstances to resolve disputes within the adjudicatory structure of the department after disposition in a protection proceeding has been ordered;
6. Clarifies what constitutes reasonable efforts in the department's requirement to rehabilitate or reunify a family;
7. Clarifies the rights of a parent when a child is in the custody of an adult relative; and
8. Strengthens the provisions requiring placement of a child with an adult relative.