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**STATE OF MAINE
SENATE
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 389, L.D. 1117, Bill, “An Act To Clarify the Policy for Withdrawal of Life Support from Minors”

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

Sec. 1. 22 MRSA §4037, as amended by PL 1995, c. 694, Pt. D, §44 and affected by Pt. E, §2, is repealed and the following enacted in its place:

§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.

1. Adoption. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 18-A, section 9-302.

2. Withhold or withdraw life-sustaining medical treatment. Except as provided in paragraphs A and B, the custodian may not withhold or withdraw life-sustaining medical treatment.

A. The custodian may withhold or withdraw life-sustaining medical treatment if the parental rights of the parents of the child have been terminated pursuant to section 4055 and the custodian determines that withholding or withdrawing life-sustaining medical treatment is in the best interests of the child after considering the factors in paragraph C and the opinions of the child's treating physicians.

B. If the parental rights of one or more parent of the child have not been terminated, the custodian under a preliminary or final child protection order may withhold or withdraw life-sustaining medical treatment:

(1) If the parent or parents whose parental rights have not been terminated consent to the custodian having that authority and the custodian determines that withholding or withdrawing life-sustaining medical treatment is in the best

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1 interests of the child after considering the factors in paragraph C and the opinions
2 of the child's treating physicians; or

3 (2) If any parent whose parental rights have not been terminated does not
4 consent, after notice and hearing, the District Court finds by clear and convincing
5 evidence that:

6 (a) All of the nonconsenting parents are unfit under one or more of the
7 grounds for termination in section 4055, subsection 1, paragraph B,
8 subparagraph (2), division (b); and

9 (b) Withholding or withdrawing life-sustaining medical treatment is in the
10 best interests of the child.

11 C. Withholding or withdrawing life-sustaining medical treatment is in the best
12 interests of the child if the child is in a persistent vegetative state or suffers from
13 another irreversible medical condition that severely impairs mental and physical
14 functioning, with poor long-term medical prognosis, and the child would experience
15 additional pain and suffering if life-sustaining medical treatment were administered.'

16 **SUMMARY**

17 This amendment replaces the bill. It limits the application of the new provisions
18 relating to withholding or withdrawing life-sustaining medical treatment to situations in
19 which a child is in the custody of the Department of Health and Human Services. This
20 amendment provides that a custodian of a child does not have the authority to withhold or
21 withdraw life-sustaining medical treatment from a minor except in two situations. The
22 custodian has the authority when the parental rights to the child have been terminated and
23 it is in the child's best interests. The custodian also has the authority when the parental
24 rights have not been terminated but the parents consent to that authority or, if the parents
25 do not consent, the court determines that the nonconsenting parents are unfit by using the
26 existing criteria in the statutes to determine the termination of parental rights and by
27 determining that withholding or withdrawing life-sustaining medical treatment is in the
28 best interests of the child. This amendment includes a description of when withholding
29 or withdrawing life-sustaining medical treatment is in the best interests of the child.

30 **FISCAL NOTE REQUIRED**

31 **(See attached)**