

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
H.P. 842 - L.D. 1224

**An Act To Amend the Child Protective Services Laws**

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

**Sec. 1. 22 MRSA §4008, sub-§5**, as amended by PL 1989, c. 857, §58, is further amended to read:

**5. Retention of unsubstantiated child protection services records.** Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period. An expunged record or unsubstantiated record that should have been expunged under this subsection may not be used for any purpose, including admission into evidence in any administrative or judicial proceeding. Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the federal Social Security Act, Title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of state and federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes pursuant to this subsection must be stored separately from other child protective services records and may not be used for any other purpose.

**Sec. 2. 22 MRSA §4008, sub-§7** is enacted to read:

**7. Appeal of denial of disclosure of records.** A parent, legal guardian, custodian or caretaker of a child who requests disclosure of information in records under subsection 2 and whose request is denied may request an administrative hearing to contest the denial of disclosure. The request for hearing must be made in writing to the department. The department shall conduct hearings under this subsection in accordance with the requirements of Title 5, chapter 375, subchapter 4. The issues that may be determined at hearing are limited to whether the nondisclosure of some or all of the information requested is necessary to protect the child or any other person. The department shall render after hearing without undue delay a decision as to whether some or all of the information requested should be disclosed. The decision must be based on the hearing

record and rules adopted by the commissioner. The decision must inform the requester that the requester may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send a copy of the decision to the requester by regular mail to the requester's most recent address of record.

**Sec. 3. 22 MRSA §4033, sub-§1, ¶A**, as enacted by PL 1979, c. 733, §18, is amended to read:

A. The petition and a notice of hearing ~~shall~~ must be served on the parents, legal guardian and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service ~~shall~~ must be made in accordance with the ~~District Court Civil~~ Maine Rules of Civil Procedure.

**Sec. 4. 22 MRSA §4033, sub-§2**, as enacted by PL 1979, c. 733, §18, is amended to read:

**2. Notice of preliminary protection order.** If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, ~~attempt to~~ notify the parents, legal guardian and custodians of ~~his the~~ the intent to request that order and of the ~~time and place at which he will make the request~~ court in which counsel for the parents, legal guardian or custodians may file motions, including motions to modify or vacate any preliminary protection order issued. This notice is not required if the petitioner includes in the petition a sworn statement ~~of his belief~~ detailing a sufficient factual basis that:

A. The child would suffer serious harm during the time needed to notify the parents, legal guardian or custodians; or

B. Prior notice to the parents, legal guardian or custodians would increase the risk of serious harm to the child or petitioner.

Failure to provide the notice required by this section, after a good faith attempt to do so, does not constitute grounds for denial of a preliminary protection order.

**Sec. 5. 22 MRSA §4033, sub-§3**, as amended by PL 1989, c. 819, §5, is further amended to read:

**3. Service of preliminary protection order.** If the court makes a preliminary protection order, a copy of the order ~~shall~~ must be served on the parents, legal guardian and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, legal guardian, custodian or their counsel who is present when the order is made;

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or

C. Another manner ordered by the court.

**Sec. 6. 22 MRSA §4033, sub-§3-A**, as enacted by PL 1987, c. 395, Pt. A, §90, is amended to read:

**3-A. Information provided to parents.** When the court makes a preliminary protection order on a child who is physically removed from ~~his~~ the child's parents, legal guardian or custodians, the following information ~~shall~~ must be provided to the parents, legal guardian or custodians in written form by the petitioner at the time of removal of the child:

- A. The assigned caseworker's name and work telephone number;
- B. The placement with a relative or other location where the child will be taken; and
- C. A copy of the complete preliminary protection order.

This information is not required if the petitioner includes in the petition a sworn statement of ~~his~~ the petitioner's belief that providing the information would cause the threat of serious harm to the child, the substitute care giver, the petitioner or any other person.

**Sec. 7. 22 MRSA §4033, sub-§4**, as enacted by PL 1979, c. 733, §18, is amended to read:

**4. Service of final protection order.** The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's, legal guardian's or custodian's counsel or, if no counsel, to the parents, legal guardian or custodians. The copy of the order ~~shall~~ must include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

**Sec. 8. 22 MRSA §4033, sub-§6** is enacted to read:

**6. Notice to legal guardians.** When notice is required to be given to the legal guardian of a child, the department shall provide notice to all of the child's legal guardians that are known to the department.

**Sec. 9. 22 MRSA §4034, sub-§1**, as amended by PL 2001, c. 696, §25, is further amended to read:

**1. Request.** A petitioner may add to a child protection petition a request for a preliminary protection order 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 and identify the specific services offered and provided under section 4036-B, subsection 3 to prevent the removal of the child from the home.

**Sec. 10. 22 MRSA §4034, sub-§4**, as amended by PL 2001, c. 696, §26, 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 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 court shall schedule a summary preliminary hearing on a preliminary protection order within 14 days but not less than 7 days after issuance of the preliminary protection order, except that counsel for a parent may request that the hearing take place sooner. Upon request of counsel, the court may conduct the summary preliminary hearing as expeditiously as the court determines the interests of justice require. If a parent, custodian or legal guardian appears for the summary preliminary hearing and does not consent to the preliminary protection order, the court shall conduct a hearing at which 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, legal guardian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissible 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 protection 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 protection order.

If the petitioner 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 receipt of the petition.