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Date: (Filing No. S-)

JUDICIARY

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**STATE OF MAINE
SENATE
131ST LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 248, L.D. 580, “An Act to Improve Family Court Procedure”

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

Sec. 1. 19-A MRSA §1653, sub-§3, ¶O, as amended by PL 2021, c. 647, Pt. B, §46 and affected by §65, is further amended to read:

O. A parent's prior willful misuse of the emergency parental rights and responsibilities order process in section 1653-B or the protection from abuse process in former chapter 101 or chapter 103 in order to gain tactical advantage in a proceeding involving the determination of parental rights and responsibilities of a minor child. Such willful misuse may be considered only if established by clear and convincing evidence and if it is further found by clear and convincing evidence that, in the particular circumstances of the parents and child, that willful misuse tends to show that the acting parent will in the future have a lessened ability and willingness to cooperate and work with the other parent in their shared responsibilities for the child. The court shall articulate findings of fact whenever relying upon this factor as part of its determination of a child's best interest. The voluntary dismissal of a motion for an emergency parental rights and responsibilities order or a protection from abuse petition may not, taken alone, be treated as evidence of the willful misuse of the emergency parental rights and responsibilities order process or the protection from abuse process;

Sec. 2. 19-A MRSA §1653-B is enacted to read:

§1653-B. Emergency parental rights and responsibilities order

1. Motion. A party to an action under this Title concerning parental rights, including actions for divorce, legal separation, parentage or parental rights and responsibilities and post-judgment proceedings arising out of these actions, may file a motion requesting that the court issue an emergency parental rights and responsibilities order with respect to a child on an ex parte basis upon a showing of immediate and present risk of substantial harm

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1 to the physical or emotional health or safety of the child. A motion may not be filed under
2 this section as part of a protection from abuse proceeding under chapter 103.

3 **2. Affidavit required.** A motion for an emergency parental rights and responsibilities
4 order must be accompanied by an affidavit made under oath alleging:

5 A. The conditions establishing an immediate and present risk of substantial harm to
6 the physical or emotional health or safety of the child; and

7 B. The actions taken by the party filing the request to inform the other party or parties
8 to the proceeding of the motion or the reasons why the court should consider the request
9 without requiring notice to the other party.

10 **3. Temporary relief.** The court may, in an ex parte proceeding, enter an emergency
11 parental rights and responsibilities order containing any relief that the court considers
12 necessary to address the immediate and present risk of substantial harm to the physical or
13 emotional health or safety of the child. An order issued under this subsection may include:

14 A. An allocation of parental rights and responsibilities between the parties;

15 B. Conditions governing parent-child contact, including but not limited to prohibiting
16 parent-child contact;

17 C. Directives regarding the residence of the child, including but not limited to
18 authorizing or prohibiting relocation of the child; and

19 D. Any other relief determined appropriate in the discretion of the court.

20 **4. Denial of motion.** Before denying a motion for an emergency parental rights and
21 responsibilities order, the court shall:

22 A. Allow the moving party to be heard, accompanied by a person of the party's choice;
23 and

24 B. Advise the moving party of the reasons for the denial.

25 **5. Service.** A party who files a motion for an emergency parental rights and
26 responsibilities order under this section shall:

27 A. If the court issues an order under subsection 3, arrange for the motion, affidavit and
28 order to be personally served on the other party in a manner allowed by the applicable
29 rule of civil procedure along with the original complaint or post-judgment motion that
30 accompanied the motion, if any; or

31 B. If the court denies the motion under subsection 4, arrange for the motion, affidavit
32 and order denying the motion to be served on the other party in a manner allowed by
33 the applicable rule of civil procedure along with the original complaint or post-
34 judgment motion that accompanied the motion, if any.

35 **6. Hearing.** If the court enters an order under subsection 3, the court shall hold a
36 hearing within 21 days of the issuance of the order. The scope of the hearing is limited to
37 the necessity of continuing the temporary relief granted in the emergency parental rights
38 and responsibilities order. Nothing in this section limits the court's discretion to continue
39 the hearing upon the court's own motion or upon the motion of either party. If the court
40 denies the motion under subsection 4, the parties are not entitled to a hearing under this
41 subsection and the court may enter a scheduling order or any other order that the interests
42 of justice require.

1	All Other	\$10,000	\$0
2			
3	GENERAL FUND TOTAL	<u>\$10,000</u>	<u>\$0</u>
4	Courts - Supreme, Superior and District 0063		
5	Initiative: Establishes one Judge position, one Deputy Marshal position and one Assistant Clerk position effective January 1, 2024 and provides funding for related All Other costs.		
6			
7	GENERAL FUND	2023-24	2024-25
8	POSITIONS - LEGISLATIVE COUNT	3.000	3.000
9	Personal Services	\$182,885	\$380,951
10	All Other	\$31,530	\$15,930
11			
12	GENERAL FUND TOTAL	<u>\$214,415</u>	<u>\$396,881</u>
13			
14	JUDICIAL DEPARTMENT		
15	DEPARTMENT TOTALS	2023-24	2024-25
16			
17	GENERAL FUND	\$224,415	\$396,881
18			
19	DEPARTMENT TOTAL - ALL FUNDS	<u>\$224,415</u>	<u>\$396,881</u>

20 **Sec. 5. Effective date.** This Act takes effect January 1, 2024.'

21 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 22 number to read consecutively.

23 **SUMMARY**

24 This amendment, which is the majority report of the committee, replaces the bill, which
 25 is a concept draft. Beginning January 1, 2024, the amendment authorizes a party to a
 26 divorce, legal separation, parentage or parental rights and responsibilities proceeding or a
 27 post-judgment motion arising out of one of these actions to file a motion requesting that
 28 the court issue an ex parte emergency parental rights and responsibilities order on the basis
 29 that there is an immediate and present risk of substantial harm to the physical or emotional
 30 health or safety of a child. The order may be issued by a District Court Judge or a family
 31 law magistrate and may include a temporary allocation of parental rights and
 32 responsibilities between the parties in the underlying action, conditions of parent-child
 33 contact and directives regarding the residence of the child. If a judge or magistrate issues
 34 an emergency parental rights and responsibilities order ex parte, the court shall hold a
 35 hearing within 21 days to determine the need for continuation of the temporary relief
 36 granted in the order. In the meantime, a party affected by the emergency parental rights
 37 and responsibilities order, other than the party that requested the order, may file a motion
 38 to modify or to dissolve the order, which the court must hear as expeditiously as the
 39 interests of justice require.

40 The amendment also directs the Maine Commission on Domestic and Sexual Abuse to
 41 convene a working group of stakeholders, similar to the working group established by
 42 Resolve 2021, chapter 99, to review data from the judicial branch gathered for at least 2
 43 years following implementation of the emergency parental rights and responsibilities order

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1 process established in this legislation to evaluate the efficacy of the process. The
2 amendment directs the commission to submit a report regarding the working group's
3 findings to the joint standing committee of the Legislature having jurisdiction over
4 judiciary matters by November 4, 2026. The committee may report out legislation to the
5 133rd Legislature in 2027 in response to the report.

6 **FISCAL NOTE REQUIRED**

7 **(See attached)**