

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-SIX

—  
S.P. 628 - L.D. 1544

**An Act to Support Families by Improving the Court Process for Child  
Protection Cases**

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

**Sec. 1. 22 MRSA §4002, sub-§1-B, ¶C**, as enacted by PL 1997, c. 715, Pt. B, §1, is repealed.

**Sec. 2. 22 MRSA §4034, sub-§1**, as amended by PL 2015, c. 501, §9, is repealed and the following enacted in its place:

**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 be sworn and must include at least the following:

A. A summary of facts to support the request;

B. A detailed summary of how the department weighed the trauma to the child of removal from the child's home against the alleged immediate risk of serious harm to the child and the specific factors the department considered; and

C. The specific services offered and provided under section 4036-B, subsection 3 to prevent the removal of the child from the child's home.

**Sec. 3. 22 MRSA §4034, sub-§2**, as amended by PL 2001, c. 696, §25, is further amended to read:

**2. Order.** If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. In considering whether to grant a preliminary protection order, the court shall consider the trauma to the child of removal from the child's home and whether the department has exhausted the options to mitigate the immediate risk of serious harm to the child and avoid the removal of the child from the child's home. A preliminary protection order automatically expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.

**Sec. 4. 22 MRSA §4034, sub-§4**, as amended by PL 2015, c. 501, §10, is further amended to read:

**4. Summary preliminary hearing.** 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 shall consider the trauma to the child of removal from the child's home in determining whether to continue the preliminary protection order and whether the department has exhausted the options to mitigate the immediate risk of serious harm to the child and avoid the removal of the child from the child's home. 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 ~~inadmissable~~ 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 make findings explaining why the risk of harm to the child is outweighed by the trauma of the child's removal from the child's home and that the department has exhausted the options to mitigate the immediate risk of serious harm and avoid the removal of the child from the child's home and 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.