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Date: (Filing No. H-)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 354, L.D. 480, “An Act To Establish a Presumption of Entitlement to Counsel for a Person Who Is the Subject of an Adult Guardianship, Conservatorship or Other Protective Arrangement Proceeding”

Amend the bill in section 1 in subsection 1 in the 5th line (page 1, line 8 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill in section 2 in subsection 1 in the 5th line (page 1, line 18 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill in section 3 in subsection 1 in the 5th line (page 1, line 28 in L.D.) by striking out the following: "clear and convincing" and inserting the following: 'a preponderance of the'

Amend the bill by inserting after section 3 the following:

'Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

**ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF
County Probate Counsel Reimbursement Program N959**

Initiative: Provides funding to reimburse counties for the costs of mandated counsel appointed in Probate Court cases.

GENERAL FUND	2021-22	2022-23
All Other	\$0	\$715,500
GENERAL FUND TOTAL	\$0	\$715,500

**ADMINISTRATIVE AND FINANCIAL
SERVICES, DEPARTMENT OF**

COMMITTEE AMENDMENT

1	DEPARTMENT TOTALS	2021-22	2022-23
2			
3	GENERAL FUND	\$0	\$715,500
4			
5	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$715,500
6	HEALTH AND HUMAN SERVICES, DEPARTMENT OF		
7	Office of Aging and Disability Services Adult Protective Services Z040		
8	Initiative: Provides funding for increased legal costs to the Department of Health and		
9	Human Services due to an expected increase in litigation.		
10	GENERAL FUND	2021-22	2022-23
11	All Other	\$0	\$103,104
12			
13	GENERAL FUND TOTAL	\$0	\$103,104
14			
15	HEALTH AND HUMAN SERVICES,		
16	DEPARTMENT OF		
17	DEPARTMENT TOTALS	2021-22	2022-23
18			
19	GENERAL FUND	\$0	\$103,104
20			
21	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$103,104
22			
23	SECTION TOTALS	2021-22	2022-23
24			
25	GENERAL FUND	\$0	\$818,604
26			
27	SECTION TOTAL - ALL FUNDS	\$0	\$818,604

28 '
 29 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
 30 number to read consecutively.

31 **SUMMARY**

32 This amendment, which is the majority report of the committee, lowers the threshold
 33 of evidence required to rebut the presumption that an attorney must be appointed for an
 34 unrepresented adult respondent in a guardianship, conservatorship or other protective
 35 arrangement proceeding from the standard of clear and convincing evidence in the bill to a
 36 preponderance of the evidence.

37 The amendment also incorporates a fiscal note, which indicates that the requirement
 38 that county probate courts appoint an attorney for every adult in a guardianship,
 39 conservatorship or other protective arrangement proceeding unless the court finds that the
 40 adult knowingly and voluntarily refuses such representation may constitute a state mandate
 41 pursuant to Article IX, Section 21 of the Constitution of Maine. Under current law,
 42 counties are already required to appoint attorneys to represent indigent adult respondents

COMMITTEE AMENDMENT

1 in guardianship, conservatorship or other protective arrangement proceedings if the criteria
2 in the Maine Revised Statutes, Title 18-C, section 5-305, subsection 1, section 5-406,
3 subsection 1 or section 5-507, subsection 1 are met. The majority of the committee agrees
4 that, to the extent that the presumption included in this legislation expands the number of
5 cases in which attorneys will be appointed to represent indigent adult respondents at county
6 expense, it constitutes a state mandate. Accordingly, the amendment includes an
7 appropriation to fund 90% of the costs associated with the expanded number of cases in
8 which attorneys will be appointed to represent indigent adult respondents at county expense
9 as a result of the new presumption.

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FISCAL NOTE REQUIRED
(See attached)