

MAINE STATE LEGISLATURE

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(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2065

H. P. 1990

House of Representatives, January 13, 1978

Governor's Bill. Referred to the Committee on Health and Institutional Services. Sent up for concurrence.

Presented by Mrs. Trafton of Auburn.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

AN ACT to Amend the Child Welfare Laws

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, a law authorizing short-term emergency services for children became effective October 24, 1977; and

Whereas, this law requires promulgation of rules to implement the law by January 24, 1978; and

Whereas, this law needs certain revisions to clarify certain provisions before it can be effectively implemented; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety, now, therefore,

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

Sec. 1. 22 MRSA § 3803, sub-§ 2, ¶ C, last sentence, as enacted by PL 1977, c. 577, § 3, is amended to read:

This notice shall include the specific reasons for the department's decision, the specific efforts the department has made to maintain contact with the parents and to return the child to his home, and the parents' right to petition to have custody restored under section ~~3798~~ 3793.

Sec. 2. 22 MRSA §§ 3891 - 3898, as enacted by PL 1977, c. 577, §4, are repealed.

Sec. 3. 22 MRSA §§ 3891-A- 3891-F are enacted to read:

§ 3891-A. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Agency. "Agency" means any person or facility approved by the department for the purpose of providing short-term emergency care services.
2. Child. "Child" means any person under 18 years of age.
3. Department. "Department" means the Department of Human Services.
4. Parent. "Parent" means legal parent, guardian or legal custodian.
5. Short-term emergency services. "Short-term emergency services" means protective services, emergency shelter care and other services which are essential to the care, maintenance and protection of a child. These services include emergency caretaker or homemaker services in the child's home when no parent or other responsible adult is available and willing to care for the child in his home.

§ 3891-B. Authorization

1. Authorized to provide short-term emergency services. The Department of Human Services is authorized to provide short-term emergency services to any child who is, or appears to be:
 - A. Abused, neglected or otherwise seriously endangered; or
 - B. A runaway from the care and custody of his parents.
The services may be provided directly or through contracts or agreements with agencies.
2. Authorized to give legal consent to receive emergency medical treatment. The department is also authorized to give legal consent for the child to receive any emergency medical treatment the child needs while receiving short-term emergency services, if the parents are unavailable to give consent for that treatment.

§ 3891-C. Contacting parents; consent of parent; child

Short-term emergency services may be provided to the child prior to the consent of the child's parent. If, after the parent has been contacted, he refuses to consent to the provision of short-term emergency services to his child, the services shall be terminated.

1. Parent. Upon initiation of short-term emergency services for a child, the department shall take reasonable steps to notify a parent of the child that the child is receiving the services and to seek the parent's consent for the services.

2. Child. Short-term emergency services shall not be provided to any child who expresses a clear desire not to receive the services.

§ 3891-D. Length of services

The provision of short-term emergency services shall be limited to no more than 72 hours per incident. This limitation does not affect the provision of services under other authorizations.

§ 3891-E. Liability of parents

The provision of short-term emergency services by the department or any agency to a child shall not affect a parent's obligation for the support of the child.

The department may, by agreement or court order, obtain payments from a parent to reimburse the department for the support of the child who received short-term emergency services.

§ 3891-F. Rules

The commissioner shall adopt rules for the effective implementation of this chapter. Any rules adopted and in effect pursuant to section 3898, enacted by PL 1977, chapter 577, section 4, shall satisfy this requirement and continue in effect until modified pursuant to this section.

The commissioner shall hold at least one public hearing prior to adopting or modifying rules under this chapter.

The adoption and modification of any of these rules after July 1, 1978, shall be in accordance with the Administrative Procedure Act, Title 5, and appropriate departmental procedures. Prior to that date, the adoption and modification of the rules shall be in accordance with the procedure for rulemaking for the Department of Human Services, effective November 1, 1975.

The rules shall address in further detail the circumstances under which services will be provided, types of services to be provided, means of providing services, notification of parents and other appropriate matters.

Sec. 4. PL 1977, c. 107, last ¶, is amended to read:

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved. Title 22, section 3802, subsection 1 paragraph C, the last sentence, shall be effective until March 1, 1978.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

Section 1 of the bill changes a cite from "3798" in section 3803 to "3793." This will give notice to the parents of the more appropriate section under which they may seek restoration of custody. Section 3793 provides for review by the court which committed custody of the child to the department and which, therefore, has the case record and is familiar with the case.

Section 2 repeals sections 3891 to 3898 as they no longer apply without a number of changes.

Section 3 enacts sections 3891-A to 3891-G. The new sections are consistent with many of the provisions found in repealed sections 3891 to 3898. The following changes are included in the new sections.

1. An authorization would be added to enable the provision of in-home emergency caretaker or homemaker services under certain circumstances.

2. The language defining who is to be served would be amended to correlate with existing emergency language.

3. The department would be authorized to consent to emergency medical treatment needed by a child while receiving short-term emergency services.

4. The current consent provisions have a blanket child-consent requirement which is difficult to apply because of a minor's general incapacity, legal and often actual, to knowingly consent. This requirement raises questions on when, if at all, one may determine that a child impliedly consents. The proposed change would allow any child to refuse the services by expressing a clear desire for this, but otherwise there would be no blanket child consent requirement.

5. The length of services provision would be clarified by specifying the duration of services in hours and by stating that the limit has no effect on other service authorizations.

6. The portion of PL 1977, c. 107, providing for the commissioner to negotiate for appropriate facilities, including private schools, for placement of a child on the basis of a flat rate method of payment, is indefinitely extended.