

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2160

H. P. 2143

House of Representatives, February 27, 1978

Reported by Mr. Talbot From the Committee on Human Resources and Printed
under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**AN ACT Providing for Notice to Parents under the Child Abuse and Neglect
Statutes.**

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

Sec. 1. 22 MRSA § 3792, as last amended by PL 1977, c. 511, § 2, is repealed and
the following enacted in its place:

§ 3792. Protective custody; petition, hearings and custody

Whenever a duly authorized agent of the department, sheriff or police officer, or
3 or more citizens of any municipality believe that a minor child under the age of
18 years is living in circumstances which are seriously jeopardizing the health,
welfare or morals of that child, he or they may petition the probate court or the
District Court in the county where the minor child resides, alleging that the child
is living in circumstances which are seriously jeopardizing the health, welfare or
morals of that child and that that child is in need of protective custody, and
praying that suitable and proper provision be made for the care, custody, support
and education of the child named in the petition. The court shall fix a time for
hearing of the petition and shall order that notice be given to the parents or
guardian of that child in such manner and such length of time as the court deems

proper, provided that unless notice is waived in writing by the parents or guardian, hearing shall not be fixed for a time less than 10 days after service is made. The notice shall include a statement that the guardian or parents have a right to counsel and that, if they want counsel and are unable to afford an attorney, one will be appointed for them. The notice shall state that a request for appointment of counsel may be made at any time prior to or at the time fixed for hearing. The court shall order notice in writing be given by mail to the department at least 10 days before the date set for the hearing, unless the petitioner is the duly authorized agent of the department. The department may waive the notice in writing. If requested, the county attorney shall represent the department at the hearing.

The petitioner may request that the court make an order of care pending hearing and the court may make such an order if the parents or guardian consents in writing, or, if the child is living in circumstances deemed by the court to present serious, immediate and urgent danger to the child's safety or life, the order of care pending hearing may be made without prior notice to the parents or guardian.

In any case, a copy of the order of care pending hearing shall be served on the parents or guardian forthwith. Service shall be made in accordance with the Maine Rules of Civil Procedure Rule 4, or by in-hand service by an authorized agent of the department. The copy of the order shall also notify the guardian or parents that they have a right to counsel and that, if they want counsel and are unable to afford an attorney, one will be appointed for them. An order made without prior notice to the parents or guardian shall also include a preliminary hearing date and notice to the guardian or parents that they may request appointment of counsel prior to or at the preliminary hearing and that at the preliminary hearing they may present such evidence as may justify the return of the child to them pending hearing. The preliminary hearing shall be held within 21 days after the date of the order of care pending hearing, unless all parties request a continuance.

The probate court or District Court shall have jurisdiction to hear such a petition in all cases involving the alleged need for protective custody of a minor child, without regard to the existence of a valid decree of custody in any other court. If, after hearing, it appears that the minor child named in the petition is living in circumstances which are seriously jeopardizing the health, welfare or morals of that child and is in need of protective custody, the court may order that child committed into the custody of the department or into the custody of any suitable person, provided that that person consents to accept custody of that child. The court shall cause a copy of the order of commitment and any subsequent modifications thereof to be sent forthwith to the department.

The expense of any care provided for any child committed under this section shall be paid by the department or person to whom the child is committed. When any child has been committed into the custody of the department or into the custody of any suitable person under this section, the court may order the parents of that child to contribute to the support of their minor child such sums payable weekly, monthly or quarterly as deemed reasonable and just and may enforce obedience by appropriate decrees. An order for child support under this section may include an order for the payment of part or all of the medical expenses, hospital expenses and other health care expenses of the child or an order to provide a policy or contract for coverage of those expenses. Execution may issue for those sums, when payable, and for costs.

When the court has made an order concerning the legal custody of a child under this section, and any person not entitled to custody of the child refuses to relinquish physical custody of that child to the department or person entitled to custody under the order, then, at the request of the department or person entitled to custody, a law enforcement officer may take any necessary and reasonable steps to obtain physical custody of the child for the rightful custodian, including entering public or private property when the officer has probable cause to believe that the child is present there.

Sec. 2. 22 MRSA § 3803, sub-§ 2, ¶ B, as enacted by PL 1977, c. 577, § 3, is repealed and the following enacted in its place:

B. Whenever a child has been committed to the custody of the department under section 3792, the department shall give prompt written notice to the parents of the following, provided that the notice is in the best interest of the child:

- (1) The residence of the child;
- (2) Any hospitalization of the child; and
- (3) Any serious injuries to and major medical care received by the child.

Whenever a child has been committed to the custody of the department under section 3792, the department shall give written notice to the parents at least 7 days prior to any change of residence of the child, provided that the prior notice is practicable and in the best interest of the child.

STATEMENT OF FACT

The child abuse and neglect statutes fail to provide 2 important protections to parents faced with losing custody of their children. The growing number of state custody actions makes it imperative that these protections be assured.

Section 1 of the bill will guarantee that the guardian or parents receive a copy of a court's order establishing state custody and will assure that they are informed of their right to be represented in all child custody proceedings. This section also provides that the person to whom a child is committed is only liable for the expenses for care provided for that child if that person wishes to assume the expenses and that the State rather than the county shall be liable for expenses of a parent committed to jail.

A number of cases have arisen in recent months where more than 8 weeks had passed between the time custody was initially removed from the parents and they were notified of their right to legal counsel and to defend their custodial rights.

In view of the many indigent persons faced with loss of custody, this guarantee of right to immediate, and, if necessary, appointed counsel is most important.

Section 2 of this bill provides that parents be notified in writing at least 7 days prior to any change in residence of a child in the custody of the Department of Human Services, if that notice is practicable and in the best interests of the child.

Under present provisions, a child in the custody of the department can be removed from the local area or even the State without prior notice to the child's parents. This can adversely affect the statutorily established visitation rights of parents.