

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 775**

H. P. 602

House of Representatives, February 23, 1979

On Motion of Mr. Hobbins of Saco, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Miss Aloupis of Bangor.

Cosponsors: Mr. Tarbell of Bangor, Mrs. Payne of Portland and Mr. P. Jacques of Waterville.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT Concerning Child Abuse and Neglect.**

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

**Sec. 1. 22 MRSA c. 1051**, as repealed and replaced by PL 1977, c. 577, § 1, is repealed.

**Sec. 2. 22 MRSA c. 1051-A**, as enacted by PL 1977, c. 42, § 1, and as amended by PL 1977, c. 696, § 190, is repealed.

**Sec. 3. 22 MRSA c. 1055**, as amended is repealed.

**Sec. 4. 22 MRSA c. 1056**, as amended is repealed.

**Sec. 5. 22 MRSA c. 1059**, as enacted by PL 1977, c. 577, § 4, and as amended by PL 1977, c. 644, §§ 2 and 3, is repealed.

**Sec. 6. 22 MRSA c. 1061**, as enacted by PL 1977, c. 454, § 2, and amended by PL 1977, c. 694, § 369, is repealed.

**Sec. 7. 22 MRSA cc. 1063 to 1075**, are enacted to read:

**CHAPTER 1063**  
**CHILDREN AND FAMILY SERVICES**  
**GENERAL PROVISIONS**

**§ 3911. Definitions**

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

1. **Child or minor.** "Child" or "minor" means any person who is less than 18 years of age.
2. **Child at risk.** "Child at risk" means a child living in circumstances which present a substantial risk that the child will be abused or neglected.
3. **Court.** "Court" means the District Court.
4. **Department.** "Department" means the Department of Human Services.
5. **Parent.** "Parent" means legal parent or other person with the primary legal responsibility for the child.

**§ 3912. Purposes**

Recognizing that children have fundamental needs for care and nurture, that the family is primarily responsible for providing this care and nurture, and that the family by itself may not always be able to adequately meet the needs of its children, the Legislature finds it necessary and proper for the Department of Human Services to take steps to assist children and families in certain circumstances so that these needs may be met.

In taking these steps the department shall work to promote the welfare of children, promote family life that is conducive to the wholesome development of children and prevent the development of family circumstances detrimental to children so that each child may have the level of care and nurture that will meet his needs.

**§ 3913. Authorizations**

1. **General.** The department is authorized to take any appropriate action, consistent with available funding, which will help achieve the goals expressed in section 3912, including:

- A. Developing and providing services which support and reinforce parental care of children, supplement that care, or, when necessary, substitute for parental care of children; and
- B. Cooperating and coordinating with other agencies, facilities or persons that provide related services to families and children.

2. **Regarding Federal Government.** In connection with any action taken under subsection 1 the department is authorized to enter into agreements with the

Federal Government to apply for any appropriate federal aid or assistance, including under the Federal Social Security Act, Title IV, Part B, and in general to cooperate with the Federal Government to the extent necessary in any mutual endeavors to improve the welfare of children and families.

The Treasurer of State shall be the appropriate fiscal officer of the State to receive any federal grants under the Federal Social Security Act, Title IV, Part B, as amended, and the State Controller shall authorize expenditures therefrom as approved by the Department of Human Services.

**CHAPTER 1065**  
**REPORTING OF**  
**CHILD ABUSE AND NEGLECT**

**§ 3921. Purposes**

The purpose of this chapter is to provide for the protection of children whose health and welfare are adversely affected or threatened by the conduct of those responsible for their care and protection in order to prevent further abuse and neglect, to enhance the welfare of these children and preserve family life whenever possible. The mandatory reporting of cases of suspected abuse or neglect by physicians, institutions and other persons to the department will enable the protective services of the State to be implemented.

**§ 3922. Definitions**

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

1. Child abuse and neglect. "Child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby. A parent legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone, shall not be considered a negligent parent; such an exception shall not preclude a court from ordering that medical services, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well recognized church or religious organization, be provided to the child when his health requires it.

**§ 3923. Persons mandated to report suspected child abuse or neglect**

When any medical physician, resident, intern, medical examiner, dentist, osteopathic physician, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, school official, social worker, homemaker, home health aide, medical or social service worker for families and children, psychologist, child care personnel, mental health professional or law enforcement official knows or has reasonable cause to suspect that a child has

been subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse or neglect, when that individual is acting in his professional capacity, he shall immediately report or cause a report to be made to the department.

Whenever that person is required to report under this section, in his capacity as a member of the staff of a medical or public or private institution, school, facility or other agency, he shall immediately notify the person or his designated agent, in charge of that institution, school, facility or other agency, who shall then be responsible for making a report or causing a report to be made. A staff member may also make a report directly to the department.

Any person may make a report if that person knows or has reasonable cause to suspect that a child has been abused or neglected.

This section does not require any person to report when the factual basis for knowing or suspecting child abuse or neglect came from treatment of the individual for suspected child abuse or neglect, the treatment was sought by the individual for a problem relating to a child abuse or neglect and, in the opinion of the person otherwise required to report, the child's life or health is not immediately threatened.

#### § 3924. Reporting procedures

1. **Immediate report.** Reports of child abuse or neglect made pursuant to this chapter shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if so requested by the department.

2. **Information required.** Reports shall include the following information if within the knowledge of the person reporting:

- A. The names and addresses of the child and his parents or other persons responsible for his care and custody if known;
- B. The child's age and sex;
- C. The nature and extent of the child's physical injuries, if any;
- D. A description of any sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings;
- E. Family composition;
- F. The source of the report, the person making the report, his occupation and where he can be contacted;
- G. The actions taken by the reporting source, including a description of any photographs or x-rays taken; and
- H. Any other information that the person making the report believes may be helpful in the furtherance of the purposes of this chapter.

**§ 3925. Mandatory reporting to a medical examiner and a postmortem investigation**

Any person or official required to report cases of suspected child abuse or neglect under section 3923, who knows or has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the department and, if the institution making the report is a hospital, to the hospital.

**§ 3926. Immunity from liability**

Any person, official or institution who, in good faith, participates in the making of a report under this chapter or in a judicial proceeding resulting therefrom shall be immune from any liability, civil or criminal, that otherwise might result by reason of those actions. For the purpose of any proceedings, civil or criminal, there shall be a rebuttable presumption that any person acting pursuant to this chapter did so in good faith.

**§ 3927. Privileged communications**

Notwithstanding any other provision of law, the privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is hereby abrogated with respect to the following aspects of known or suspected child abuse or neglect: Reporting as required or permitted by law; cooperating with the department in its child protective activities pursuant to law and with the child's guardian ad litem; or giving or accepting evidence in any judicial proceeding relating to the child abuse or neglect.

**§ 3928. Liability for failure to report**

Any person who knowingly fails to report as required in section 3923 shall be guilty of a civil violation for which a forfeiture of not more than \$500 may be adjudged.

Notwithstanding any provision of law to the contrary, a conviction pursuant to this section shall not be used as a basis for termination of employment or for suspension, revocation or nonrenewal of a professional license.

**§ 3929. Confidentiality of records; disclosure of records**

1. Confidentiality of records. All records concerning reports of child abuse and neglect, investigations thereof, and related treatment services are confidential and subject to release only under the conditions set forth in subsection 2.

Any person who permits or encourages the unauthorized disclosure or dissemination of their contents shall be deemed guilty of a Class E crime,

provided that notwithstanding Title 17-A, section 4-A, subsection 4, no imprisonment shall be imposed.

2. Disclosure of records. The department will disclose information in records which is relevant to the interests of the following agencies or persons in the circumstances described:

- A. An agency investigating a report of known or suspected child abuse or neglect pursuant to a legal mandate or an agreement with the department;
- B. A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect;
- C. A physician who has before him a child whom he reasonably suspects may be abused or neglected;
- D. An agency or institution having the legal responsibility or authorization to educate, care for, treat or supervise a child who is the subject of a record, or a parent, guardian or other person responsible for the child's welfare; this includes a member of a treatment team or group convened for purposes of planning for or treating a child or family which is the subject of a record;
- E. Any person named in a record who is alleged to be abused or neglected; if the person named in the record is a minor or is otherwise incompetent, his guardian ad litem;
- F. A parent, guardian or other person responsible for the welfare of a child named in a record, with protection for the identity of reporters and other appropriate persons;
- G. A court, upon its finding that access to those records may be necessary for determination of any issue before the court, but that access shall be limited to a camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it;
- H. A grand jury upon its determination that access to those records is necessary in the conduct of its official business;
- I. Any appropriate state or local official responsible for the child protective service or legislation carrying out his official functions; and
- J. Any person engaged in a bona fide research purpose, provided that no information identifying the subjects of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the commissioner gives prior approval; if the researcher desires to contact a subject of a record, the subject's consent to the contact shall be obtained by a departmental staff member who has worked with that subject or, if none, another appropriate staff person.

**DEPARTMENT ACTION  
REGARDING ABUSE AND NEGLECT**

**§ 3931. Department's responsibilities**

**The department shall:**

- 1. Receive reports of known or suspected child abuse and neglect;**
- 2. Investigate promptly all cases of child abuse and neglect coming to its attention;**
- 3. Determine the degree of harm or threatened harm to each child in a case; and**
- 4. Take whatever action, if any, is appropriate under the circumstances to further the purposes set forth in this Part.**

**§ 3932. Investigations**

**To enable the department to perform complete investigations and to prepare for and participate in any court proceedings regarding a child, the commissioner, his delegate or the legal counsel for the department is authorized to:**

**1. Subpoenas authorized. Issue subpoenas requiring persons to disclose or provide to the department any information or records in their possession which are necessary and relevant to an investigation of a report of child abuse or neglect or to any subsequent court proceedings regarding a child's care and custody under this Part.**

**A. The department may apply to the District Court to enforce a subpoena;**

**B. Any person who complies with such a subpoena shall be immune from civil or criminal liability that otherwise might result from that compliance. Compliance here means the act of turning over information or records to the department pursuant to a subpoena.**

**2. Criminal history record. Obtain criminal history record information which he deems relevant to a child abuse or neglect case. Relevant criminal history record information may include information regarding a crime for which a person has been:**

**A. Convicted;**

**B. Arrested or charged by complaint, indictment or information, but without disposition within one year and where no active prosecution for the crime is pending; or**

**C. Charged by complaint, indictment or information which subsequently has been dismissed under circumstances precluding the State from reinitiating the criminal charge. Information or records obtained by subpoena under subsection 1 shall be treated in accordance with section 3929. Criminal history information**



obtained under subsection 2 shall be used only for the purposes for which it was given and shall not be further disseminated except in accordance with Title 16.

**§ 3933. Voluntary care of dependent child**

The department may make provision for the care of a dependent child pursuant to an agreement with the child's parent.

**§ 3934. Short-term emergency services**

**1. Definitions.**

A. "Agency" means any person or facility licensed or approved by the department for the purpose of providing short-term emergency services.

B. "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 of 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.

**2. Authorization.** The department 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 in agreements with agencies.

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. No recovery shall be allowed against any physician or any health care provider upon the grounds that the emergency medical treatment was rendered without the informed consent of the child or the child's parents when the department gave its consent for the child to receive that emergency medical treatment.

**3. Contacting parents; consent of parent, child.**

A. 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 to the provision of the services. 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.

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

4. **Time limits.** 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.

5. **Parent's obligations.** 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.

#### CHAPTER 1069

#### LEGAL PROCESS FOR

#### CHANGING CARE AND CUSTODY OF ABUSED OR NEGLECTED CHILDREN

##### § 3941. Purpose

This chapter governs legal proceedings by which changes may be made in the care or custody status of children whose health or welfare is seriously harmed or seriously threatened with harm. The policy of this State is to protect children from abuse and neglect and preserve and rehabilitate family life whenever possible. To achieve these goals, preventive and supportive services and, if necessary, substitute parental care and services, shall be provided as authorized by law.

##### § 3942. Definitions

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

1. **Court.** "Court" means the District Court.
2. **Department.** "Department" means the Department of Human Services.
3. **Parent.** "Parent" means a natural parent of a child and, if a natural parent does not have the primary legal rights and responsibilities for the custody and care of the child, it also means the surrogate parent who does have those rights and responsibilities, such as an adoptive parent or legal guardian or custodian. If a natural parent's rights have been terminated by adoption or otherwise, it does not include that parent.

##### § 3943. Jurisdiction; venue

1. **Jurisdiction.** The District Court shall have original jurisdiction of child protection petitions

The court shall consider and act on child protection petitions regardless of whether other valid decrees regarding a child's care and custody exist. If a child's care and custody are in issue in another pending proceeding such as a divorce proceeding, the proceedings may be consolidated with respect to the care and custody issue if this would serve the interests of justice, but in any event the child protection petition and the issues involved therein shall be resolved and the resolution shall supersede any inconsistent existing orders.

**§ 3944. Child protection petition; basis, content, filing and service of petition, petitioners**

**1. Basis.** A child protection petition may be brought when a petitioner believes that a child's physical or mental health or welfare is seriously harmed or seriously threatened with harm by the acts or omissions of the child's parents. Harm to the child's health or welfare can occur from, among other things;

**A. Physical or mental injury;**

**B. Sexual abuse or exploitation;**

**C. Abandonment;**

**D. Failure to provide the child with adequate food, clothing, shelter, education or health care, although the parents have the means to do so, either on their own or by other reasonable means available to them. A parent legitimately practicing his religious beliefs, who thereby does not provide specified medical treatment for his child shall not be considered neglectful for that reason alone. The court is not precluded from ordering necessary medical treatment for the child; or**

**E. Failure to provide the child with adequate care or supervision.**

**2. Contents of petition.** Each petition shall include at least the following:

**A. Names and residence by municipality, if known, of each parent;**

**B. Name, date and place of birth and residence by municipality, if known, of each child;**

**C. A summary statement of the facts which the petitioner believes constitute the factual basis for the petition;**

**D. A citation reference to and brief statement of the statutory basis for the petition;**

**E. A request for specific court action;**

**F. A statement that the parents are entitled to legal counsel in the proceedings on the petition, and that if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel; and**

**G. A statement that petition proceedings could lead to the termination of the parent-child legal relationship, but only in accordance chapter 1073.**

The court may waive paragraphs A, B, F and G, as necessary, with respect to an emergency petition brought under section 3945.

**3. Filing, hearing date, service.** Upon the filing of a petition the court shall set a time and date for a hearing on the petition which is no more than 60 days from the date of the filing.

Unless the court orders otherwise, the petition and the notice of hearing shall be served on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date unless this minimum is waived in writing.

Service shall be in accordance with the District Court Civil Rules unless the court orders otherwise.

If the department is not the petitioner, the petitioner shall mail a copy of the petition and notice of hearing to the department at least 15 days prior to the hearing date.

4. Who may petition. Petitions may be brought by:
  - A. The department through an authorized agent;
  - B. A police officer or sheriff; or
  - C. Three or more residents of the State.

§ 3945. Emergencies; immediate protective custody

1. Request. In emergency situations a petitioner may request an order for immediate protective custody of a child to be granted to the department or other suitable custodian pending a full hearing on a petition. Any District Court Judge from any district or division may hear such a request and make such an order if no judge is available in the district and division in which the petition is being filed.

2. Order without parental consent.

A. The court may make an order for immediate protective custody without prior notice to the parents:

- (1) If the parents cannot be located in time;
- (2) If it is believed that prior notice would increase the risk of harm to the child or others; or
- (3) For other good reasons;

otherwise the petitioner shall, by any reasonable means, notify the parents of his intent to request an order and of the time and place at which he will request the order from the court.

B. The court may make an order for immediate protective custody pending hearing if it determines, by a preponderance of the evidence available to it, that there is a serious and imminent threat to the child's safety or life.

3. Emergency hold authority. If an authorized agent of the department believes that a serious and imminent threat exists to the child's safety or life and is unable to contact a judge to request an order in time to adequately protect the child, the agent may hold the child in the department's custody until he is able to contact a judge to present the request for immediate protective custody and have the judge act on the request.

A physician who has examined a child and believes that such a threat exists may hold the child in his custody until he or the person in charge is able to contact the department and a request for immediate custody is made and acted upon by a judge.

Under these circumstances a request for immediate protective custody must be presented to a judge and acted on by the judge as soon as possible. In any event, no

child may be held more than 24 hours under this authority.

4. **Order with parental consent.** The court may make an order for immediate protective custody if the parents consent in writing. If the child is in the physical care and custody of only one parent and that parent is a legal custodian of the child, that parent's consent is sufficient.

5. **Service of Orders.** If the court makes an order for immediate protective custody, a copy of the order shall be served forthwith on the parents, including any noncustodial parent, by:

- A. In-hand delivery by the court clerk to any parents who are present at court when the order is made;
- B. Service in accordance with the District Court Civil Rules; if publication becomes necessary, service of the order may be combined with service of the petition;
- C. In-hand delivery by an authorized agent of the department; or
- D. Other means if ordered by the court.

6. **Notice in order.** An order for immediate protective custody pending hearing shall include a notice to the parents which has a statement describing their right under subsection 7 and a statement regarding their right to legal counsel as is required in the petition under section 3944, subsection 2, paragraph F.

7. **Parent's right to contest order.** If the parents have not had an opportunity to contest the petitioner's request and the court's order for immediate protective custody due to lack of notice, inability to appear on short notice or other good reason, they may, by motion prior to the full hearing, request the court to dissolve or modify the order.

When such a motion is made, the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require but in any event within 7 days of the motion unless the parents agree to a continuance. Other parties shall receive at least 3 days' notice of the hearing on the motion, unless the court orders shorter notice.

The petitioner shall first present his position and supporting evidence, unless this is completely contained in an affidavit or other record already on file with the court. The parents and the guardian shall then present their positions and supporting evidence. The hearing may be conducted as informally as circumstances warrant.

If appropriate, the court may order that the full hearing on the petition be advanced and consolidated with a hearing on a motion to dissolve or modify an order for immediate protective custody. In any event, evidence received at a hearing on such a motion which would be admissible at the hearing on the petition becomes a part of the record on the proceedings and need not be repeated at the hearing on the petition.

**§ 3946. Parties' rights to representation; legal counsel**

For purposes of this section, "child protection proceeding" includes, in addition to the proceedings on the petition, a subsequent motion to review and modify under section 3950 and an appeal under section 3952.

1. **Child; guardian ad litem.** The court, in every child protection proceeding, shall appoint and pay the reasonable cost of a guardian ad litem for the child. The appointment shall be made as soon as possible after the proceeding is initiated.

The guardian ad litem shall be given access to all reports and records relevant to the case. The guardian ad litem shall, in general, be charge with the representation of the child. To that end, he shall make further investigation as he deems necessary to ascertain the facts, including reviewing records of psychiatric, psychological or physical examinations of the child, parents or other persons having custody, interviewing the child with or without the parents present, interviewing and subpoenaing witnesses, examining and cross-examining witnesses, making recommendations to the court and participating further in the proceedings to the degree appropriate to adequately represent the child.

2. **Parents.** Parents are entitled to legal counsel in child protection proceedings. Parents may request the court to appoint legal counsel for them and the court, if it finds the parents indigent, shall appoint and pay the reasonable cost of legal counsel for them.

3. **Attorney General to represent.** The department shall be represented by the Department of Attorney General except when the district attorney is requested to represent the department.

**§ 3947. Motion for examination**

At any time during the proceedings on a petition the court may, on its own motion or the motion of any party, order that a child, parent or other relevant person be examined by a physician, psychologist or psychiatrist, if the court finds such an examination necessary. No statement made by the examinee to the examiner during a court-ordered examination shall be admissible in evidence in a criminal proceeding if such a statement would tend to incriminate the examinee in the commission of a criminal act.

**§ 3948. Hearing on petition**

1. **Adjudication.** The court shall hear evidence and determine by a preponderance of the evidence whether or not the child has been or is seriously harmed or seriously threatened with harm under section 3944, subsection 1.

The court may conduct the hearing in any manner it deems appropriate to discover the truth, minimize trauma to the child and others, achieve the goals of this chapter and otherwise meet the ends of justice.

The court may exclude any nonessential persons from the hearing or any part thereof. It may interview a child witness in chambers, with or without guardian

**ad litem and counsel present and with no others present, provided the statements made therein are made a matter of record.**

**If a child is unable or unwilling to adequately testify himself, or would suffer unnecessarily by so testifying, the court may admit into evidence oral or written evidence of out-of-court statements made by the child concerning the alleged abuse or neglect in a case, and the court may rely on that evidence to the extent of its probative value, even though it may not otherwise be admissible.**

## **2. Disposition.**

**A. If under subsection 1, the court determines that the child is not so harmed or threatened with harm, the petition shall be denied.**

**B. If under subsection 1, the court determines that the child is so harmed or threatened with harm, the court shall then, to the extent necessary, hear any further relevant evidence regarding proposed dispositions including any written or oral reports, recommendations or case plans, and that evidence may be relied upon to the extent of its probative value, even if inadmissible in the adjudicatory stage except as noted at the end of this section. These written materials shall be made available to each party's counsel and the guardian ad litem, if not counsel, reasonably in advance of the hearing.**

**Then based on a preponderance of all the evidence concerning the petition, the court may order:**

- (1) Custody of the child to one or both parents with or without conditions;**
- (2) Emancipation of the child under the procedures of Title 15 section 3506;**
- (3) Supervision of the child by the department in the child's home for a specified period with a review at the end of that period;**
- (4) Treatment or services for the child, his parents or other appropriate family members;**
- (5) Temporary custody of the child to the department or other suitable custodian, with any appropriate support order, for a specified period with a review at the end of that period;**
- (6) Custody of the child to the department or other suitable custodian, with any appropriate support order, for an indeterminate period; or**
- (7) Any other order of a similar nature regarding the child's care, custody and support as justice may require.**

**If custody of the child is or may be ordered removed from the parents for an indeterminate period, the court may then consider a petition, if one has been filed, for termination of the parent-child legal relationship in accordance with chapter 1073.**

**In this case the court, in hearing dispositional evidence under this section, may**

not hear otherwise inadmissible evidence.

**§ 3949. Copies of court order**

In addition to providing to parties the normal notice regarding entry of orders, the clerk of court shall deliver or send by ordinary mail a copy of the court order under section 3948 to the parent's counsel or the parents, if no counsel, promptly after it is entered.

The copy of the order shall have a notice to the parents informing them of their rights under section 3950.

**§ 3950. Review of case and disposition**

The court may review a case and the disposition therein pursuant to its own order or motion, or upon a motion to review and modify the disposition brought by any party to the initial proceeding or by the child's current custodian or guardian.

The motion may be brought at any time after an alleged change in circumstances has occurred or other sufficient reason exists to modify the disposition. The motion must be brought before an order, if any, has been made terminating the parent-child relationship under chapter 1073.

Notice of the motion shall be given in accordance with the District Court Civil Rules to the parties, and to the child's current custodian or guardian, if not a party. The court shall then hear the motion and may make any further dispositional order consistent with section 3948, subsection 2, paragraph B.

**§ 3951. Enforcement of custody orders**

When the court has ordered a change in the legal custody of a child under section 3948, subsection 2, paragraph B, and any person not entitled to custody of the child refuses to relinquish physical custody of that child to the department or person legally 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 without a warrant if the officer has probable cause to believe that the child is present on the premises.

**§ 3952. Appeals**

Any party aggrieved by an order of court made under this chapter may appeal to the Superior Court in accordance with the District Court Rules.

**CHAPTER 1071**

**FAMILY REHABILITATION:**

**RETURNING CHILD TO PARENTS**

**§ 3961. Departmental action**

When a child has been committed to the custody of the department under



section 3948, the department shall, as funds permit, take appropriate steps to facilitate the rehabilitation of the family and return of the child to his family, unless contrary to the best interests of the child. Those steps shall include, if not contrary to the child's interests:

1. Contact of parents. Maintaining contact with the parents and keeping them informed about the child, including giving them prompt written notice of:

- A. The child's residence and, when practicable, at least 7 days' written notice of any change in residence planned for the child;
- B. Any hospitalization of the child; and
- C. Any serious injuries to the child or major medical care received by the child; and

2. Assuring opportunities for parental visits. Assuring that parents have ample opportunity to visit with and be visited by the child.

Whenever the department decides that, in the best interests of a child, return of the child to his family is no longer a viable objective, the department shall give written notice of this decision to the parents. 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 a statement of the parents' rights under section 3950.

**CHAPTER 1073**

**LEGAL PROCESS FOR**

**INVOLUNTARY TERMINATION OF**

**PARENT-CHILD LEGAL RELATIONSHIP**

**§ 3971. Purpose**

It is the policy of this State to encourage stable, constructive, long-term parent-child relationships for all children. A child who has been removed from the custody of his parents under section 3948, subsection 2, paragraph B, may not be able to have such a relationship with his parents. In seeking to provide the child with permanent relationships with persons other than his parents, it may in the child's interest to involuntarily terminate the legal relationship between the child and parent.

**§ 3972. Petitions for involuntary termination of the parent-child legal relationship**

1. Jurisdiction. The District Court shall have jurisdiction over petitions for involuntary termination.

2. Venue. A petition shall be brought in the same court district and division as the related child protection petition. If that is inconvenient for the parties, the court may transfer the petition to a more convenient district and division.

**3. Petitioners. A petition may be brought by:**

**A. The petitioner who brought the related child protection petition;**

**B. The child's current guardian, legal custodian or other person with primary legal responsibility for the child; or**

**C. Either parent seeking termination with respect to the other parent.**

**4. When brought. A petition may be brought at the same time as a child protection petition or at any later date.**

**§ 3973. Grounds for termination of parent-child legal relationship**

**1. Basis. The court may consider termination of the parent-child legal relationship when the child has been found to be seriously harmed or seriously threatened with harm under section 3948, and for that reason the child's custody has been or, in connection with the termination petition, may be ordered removed from his parents for an indeterminate period. Termination must be based on the following facts:**

**A. Returning the child to the parents would place the child in harmful or threatening circumstances as defined by section 3944, subsection 1;**

**B. There is little likelihood that these circumstances will be remedied at an early date so that the child can return to the parents in the near future; and**

**C. The lack of termination significantly diminishes the child's prospects for early integration into a more stable and permanent home, whether through adoption, long-term foster care or other placement.**

**2. Factors to consider. In determining whether or not a basis for termination exists, the court shall consider, among other factors, the following:**

**A. The overall needs of the child, bearing in mind the child's age, attachments to relevant persons and time periods of attachments and separations, particularly as they relate to the child's ability to integrate into a substitute placement or back into his own home, as the case may be;**

**B. The past, current and anticipated conduct and condition of the parents in relation to their ability to adequately care for and meet the needs of their child;**

**C. What services have been provided or offered to the parents to improve their ability to adequately care for their child;**

**D. The conduct of the parents in relation to these services and in relation to the case plan for the child and family; and**

**E. Whether additional services would effect a lasting parental adjustment enabling return of the child to the parents within an ascertainable period of time.**

**3. Circumstances barring termination. The court shall not order termination if:**

**A. Because of the closeness of the parent-child relationship, termination at this time would be seriously detrimental to the child; or**

**B. The child is 14 or more years of age and objects to the severance of the relationship.**

**§ 3974. Contents of petition**

**A petition for termination of the parent-child legal relationship shall include at least the following:**

**1. Information concerning child. The name, date and place of birth and residence of child;**

**2. Information concerning petitioner. The name and address of the petitioner and the nature of his relationship to the child;**

**3. Information concerning parents. The names, dates of birth and addresses of the child's parents;**

**4. Information concerning parents if minors. If the child's parents are minors, the names and addresses of the minors' parents;**

**5. Information concerning legal guardian. The names and addresses of any:**

**A. Legal guardian of the child;**

**B. Legal custodian of the child; and**

**C. Guardian ad litem of the child in the related child protection proceeding;**

**5. Statement. A statement containing the following:**

**A. The factual basis on which the petitioner is seeking termination;**

**B. The legal basis for termination and a statutory citation thereto;**

**C. The effects of a termination order under this chapter; and**

**D. A statement that the parents are entitled to legal counsel in the termination proceedings, and that if they want counsel and are unable to afford a lawyer they should contact the court as soon as possible to request the court to appoint counsel for them.**

**§ 3975. Parties' rights to representation**

**Parties' rights to representation in a termination proceeding shall be the same as for the child protection proceeding under section 3946.**

**§ 3976. Filing, hearing date, service of petition and notice of hearing**

**The provisions of section 3944, subsection 3 shall also apply to the initiation of a termination petition.**

**§ 3977. Motion for examination; additional information**

A motion for an examination may be made in accordance with section 3947.

**§ 3978. Hearing**

1. **Adjudication.** The court shall hear evidence and determine whether or not a basis exists for terminating the parent-child legal relationship. The determination shall be based on clear and convincing evidence.

2. **Disposition.**

A. If the court determines that a sufficient basis for termination does not exist, the court shall deny the request for termination. The court may make or continue any appropriate order authorized under section 3948, subsection 2, paragraph B.

B. If the court determines that a sufficient basis for termination does exist, the court shall order termination of the parent-child legal relationship.

The court may, to the extent necessary, hear any further relevant evidence regarding plans for the child, including any written or oral reports, recommendations or case plans, and that evidence may be relied on to the extent of its probative value even if inadmissible in the adjudicatory stage.

The court shall then order that custody of the child either continue with the current custodian as initially ordered under section 3948, subsection 2, paragraph B, or that custody be transferred to another suitable custodian, whichever can best provide for the overall needs of the child and fulfill the purposes of this chapter.

**§ 3979. Effects of termination order**

1. **Divesting of certain rights and immunities.** An order terminating the parent-child legal relationship divests the parent and the child of all legal rights, powers, privileges, immunities, duties and obligations with respect to each other, except the right of the child to inherit from the parent. This right of inheritance may be terminated by a final adoption order if the adoption law so provides.

2. **Termination of relationship with one child.** The parent-child relationship may be terminated with respect to one parent without affecting the relationship between the child and the other parent.

3. **Rights of terminated parent with respect to adoption.** A parent whose relationship with the child has been terminated is not thereafter entitled to notice of proceedings for the adoption for the child by another, nor has he any right to object to the adoption or otherwise to participate in the proceedings.

4. **Rights of child to certain benefits.** No order or decree entered pursuant to this chapter shall disentitle a child to any benefit due him from any 3rd person, agency, state or the United States; nor shall any action under this chapter be deemed to affect any rights and benefits that a native American child derives

from his descent from a member of a federally recognized Indian tribe.

**§ 3980. Appeals**

Any party aggrieved by a court order under this chapter may appeal to the Superior Court for review in accordance with the District Court Civil Rules.

**§ 3981. Termination orders of other states**

If the parent-child legal relationship has been terminated by judicial order in another state, the order, unless against the public policy of this State, shall be accorded full faith and credit.

**CHAPTER 1075**

**CARE OF CHILDREN IN**

**CUSTODY OF DEPARTMENT**

**§ 3991. Expenses, reimbursement; payment schedule**

1. **Department.** The department shall provide for the maintenance and care of any children committed to its custody under section 3948 or other provision of law. Maintenance and care shall be rendered in licensed or approved family homes or other appropriate child-care facilities.

The department may obtain reimbursement for child-care expenses from the child's parents according to the terms of any support order under section 3948.

2. **Other suitable custodian.** When a child is committed to the custody of a suitable custodian other than the department, that custodian shall provide for the maintenance and care of the child subject to the terms of any support order under section 3948.

**§ 3992. Payments for care of children with department**

1. **Requirements.** Payments made by the department pursuant to section 3991 or pursuant to other provisions of the law, for the care of children committed to the custody of the State shall be in accordance with this section. Within the limits of available funds, the department shall take action to provide state payments for care of a child, as follows:

A. The foster home board care, when combined with any other resources as may be available to share the costs of the care payment, shall be at a rate which is at least equal to, but not less than, the rate in the following schedule:

For Care of a Child Who is:	Rate Per Month
Normal	\$132
Mildly Handicapped	154
Moderately Handicapped	176
Severely Handicapped	209

B. For residential child care facilities in an amount equal to, but not

exceeding, 80% of audited unit cost and based on actual expenditures in the most recent fiscal year. The total amount paid from all sources shall not exceed 100% of actual cost;

C. For boarding care in so-called private schools in an amount equal to 80% of audited unit cost based on actual expenditures in the most recent fiscal year. The total amount paid from all sources shall not exceed 100% of audited unit cost. Notwithstanding this paragraph, when placements in so-called private schools have been exhausted or are otherwise unavailable for any child, the commissioner is authorized to negotiate with other appropriate facilities, including private schools, for placement of the child on the basis of a flat-rate method of payment; and

D. For a clothing allowance, when combined with any other resources as may be available, payment shall be at a rate which is at least equal to, but not less than, the rate in the following schedule:

For a Child Age	Rate Per Month
0-4 years	\$11
4 years, 1 day to 11 years	19
11 years, 1 day or older	27

In lieu of a monthly clothing allowance, the department may provide for clothing for children by direct purchase.

2. Unit cost method. The department may utilize a unit cost method. Audited costs shall be based on actual expenditures through a 12-month period, or in the case of a newly established facility or school the department may utilize another similar basis of cost to establish a payment rate.

3. Appropriations. Appropriations available for payments provided in subsection 1 shall be budgeted and authorized for expenditure by the department in a priority sequence. First, the available appropriation shall be budgeted and expended to provide payments specified in subsection 1, paragraphs A and D; and 2nd, any balance of the appropriation remaining after budgeting, shall be budgeted and expended to provide payments specified in subsection 1, paragraphs B and C.

4. Unexpended balances. Any unexpended balance of this account shall not be transferred to another account and shall not lapse, but shall be carried forward in the same account from year to year to be expended for the same purpose.

§ 3993. Religious faith of placements; parents' request

Any child committed to the custody of the department under section 3948 or other provision of law, when placed in a family or facility for foster care or adoption, shall be placed in a family of the same religious faith as that requested in writing by the parents of the child, on a form furnished by the department when a suitable family of that faith can be found willing to take that child. If such a

family cannot be found or if no request is made by the parents, then the child shall be placed in a family or facility which is determined by the department or agency involved to be in the best interests of the child.

**§ 3994. Long-term foster care**

1. **Purpose.** In order to promote an increase measure of permanence and security for certain children and to provide for a setting as nearly as possible equivalent to that which would be offered by natural or adopted parents, the relationship of long-term foster care is established as one alternative for the placement of children who are within the custody of the State.

A child shall be considered for placement in long-term foster care only if, in the judgment of the department, neither a return to the natural parents nor adoption can be considered as an alternative.

A placement in long-term foster care is intended to continue until the child becomes 18 years of age, subject to actions by the court or the department to alter or terminate the placement when in the best interests of the child.

2. **Defined.** "Long-term foster care" shall mean a placement setting for children within the custody of the State in which the State retains custody of the child while delegating to the foster parents, under conditions described in this section, the duty and authority to make certain important decisions in matters having a significant affect upon the life and development of the child.

3. **Authority for placement.** The department is authorized to place any child within the custody of the State in long-term foster care subject to the following conditions.

A. The child has been placed in foster care for one year prior to consideration for long-term foster care.

B. In the judgment of the department, the child cannot be safely returned to the natural parents.

C. In the judgment of the department, the child is not likely to be adoptable.

D. The prospective foster parents and the child have expressed a strong interest in long-term foster care and have met standards established by the department for such a placement.

E. A written agreement between the foster parents and the department, intended to provide for the period during which the child remains in long-term foster care, has been completed, which identifies the duty and authority delegated by the department to the foster parents, specifies the rights retained by the department and the natural parents and includes an individual plan for the care of the child. Any foster child 14 years of age or older may participate in the development of the written agreement. The department shall, after consultation with the foster parents, review and, if necessary, revise this plan at least once every 6 months.

4. **Duty and authority delegated by the department.** The foster parents of any child in long-term foster care shall have the authority to make the following decisions, subject to the conditions as prescribed in this section and any rules and regulations established pursuant thereto.

A. The foster parents shall have the authority to consent to emergency medical treatment if payment for this treatment is available under the Federal Social Security Act, Title 19. Within 24 hours following any emergency treatment, the foster parents shall notify the department of the nature of the emergency situation, the emergency treatment which has been given and the need, if any, for further treatment.

B. The foster parents shall have the authority to consent to the application for a driver's license if insurance, as required by the department, has been provided for the child and if, in the judgement of the foster parent, the child has been taught to drive and has the maturity to operate a motor vehicle. The foster parents shall notify the department of any consent to apply for a driver's license within 7 days of the application, along with evidence of any insurance coverage for the child. The foster parents shall notify the department of the successful completion of the driver's examination within 7 days of the examination.

C. The foster parents shall have the authority to permit travel by the child outside of the State. Prior to the date of departure, the foster parents shall notify the department of any absence from the State which may exceed one month.

5. **Rights of the department.** Except as specifically delegated in this section, the department shall retain custody of the child and all rights with respect thereto as provided by court order, statute or administrative rule.

6. **Rules and regulations.** The department shall promulgate rules and regulations for long-term foster care placements in the manner prescribed by Title 5, chapter 375. These rules and regulations shall include, but not be limited to, standards for settings appropriate for long-term foster care and supervision of those settings, procedures for selecting children and foster parents and methods for establishing and reviewing individual plans.

§ 3995. **Department's responsibility after death of committed child**

If any child committed to the custody of the department pursuant to section 3948 or other provision of law, dies while in the custody of the department, the department shall arrange and pay for a decent burial for the child. If administration of the deceased child's estate is not commenced within 60 days after the date of death by an heir or a creditor, then the department may petition the probate court to appoint an administrator and settle the estate of the deceased child pursuant to Title 18.



## STATEMENT OF FACT

This bill revises the statutes concerning abused and neglected children.

Specifically, the bill:

1. Revises the statutes concerning reporting the child abuse and neglect;
2. Outlines the expected action of the Department of Human Services when it receives reports of child abuse or neglect;
3. Provides methods for the department to aid in family rehabilitation, that is, returning the child to its parents;
4. Provides a specific method for involuntary termination of the parent-child legal relationship; and
5. Outlines the procedures for the care of children in the custody of the Department of Human Services.