

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1239

H. P. 954

House of Representatives, March 13, 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 Mrs. Kany of Waterville.

Cosponsors: Mrs. Nelson of Portland, Mrs. Sewall of Newcastle.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

**AN ACT Regarding Abuse and Neglect, Custody Proceedings and Termination of
Parental Rights.**

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

Sec. 1. 22 MRSA § 3792, as repealed and replaced by PL 1977, c. 652, § 1, is repealed and the following enacted in its place:

§ 3792. **Protective custody; petition, hearings and custody**

1. **Family rights.** Recognizing that the family is the most natural, effective and efficient provider of care and nurture for children and that the right to family is one of the basic human rights and the right of family integrity is constitutionally protected and recognizing that parents may consistently violate their parental responsibilities, the Legislature finds it necessary and proper for the Department of Human Services to take steps to assist abused and neglected children and their parents so that children receive the care and nurture to which they are entitled.

2. **Environment.** 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 be fixed for a time not 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 parent shall be represented by counsel, unless counsel is refused. The decision to proceed without counsel must be made voluntarily and with full knowledge of the nature of the proceedings and their consequences. Consideration shall be given to the complexity of the case and the parents' ability or guardians' ability to speak for themselves. 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 assistant attorney general 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, in which case 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.

3. Statutory grounds for intervention. In cases where it is alleged that a child is endangered, courts are authorized to assume court jurisdiction in order to condition parental custody upon the parents' accepting supervision or to remove a child from his home, only if the court finds that the child comes within one or more of the following provisions:

A. A child has suffered a physical injury, inflicted upon him nonaccidentally, causing disfigurement, impairment of body functioning or severe bodily harm or there is a substantial likelihood that the child imminently will suffer such an injury;

B. A child has suffered physical injury causing disfigurement, impairment of body functioning or severe bodily harm as a result of conditions uncorrected by his parents or by the failure of his parents to adequately supervise or protect him or there is a substantial risk that the child imminently will suffer harm as a result of conditions uncorrected by his parents or by the failure of his parents to adequately supervise or protect him;

C. A child is suffering serious emotional damage, evidenced by severe anxiety, depression or withdrawal or untoward aggressive behavior toward others and his parents are unwilling to provide, when financially able to do so, or to permit necessary treatment for him;

D. A child has been sexually abused by a member of his household.

E. A child is in need of medical treatment to cure, alleviate or prevent him from suffering serious physical harm that may cause death, disfigurement or substantial impairment of body functioning and his parents are unwilling to provide, when financially able to do so, or consent to the medical treatment; or

F. A child is committing delinquent acts as a result of parental encouragement, guidance or approval.

4. Dispositional reports. In deciding whether, and how, to intervene at any dispositional hearing, the court shall have available and shall consider a social report prepared by the department. The report shall contain at least the following information:

A. A statement of the specific harms to the child, defined by statute, that intervention is designed to alleviate;

B. A description of the specific programs, for both the parents and the child, that are needed in order to prevent further harm to the child, the reasons why

such programs are likely to be useful, the availability of any proposed services and the agency's overall plan for ensuring that the services will be delivered;

C. If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home, the in-home treatment programs, for example, homemakers programs, which have been considered and rejected and the parents' attitude toward placement of the child;

D. A statement of the likely harms the child will suffer as a result of removal. This shall include an exploration of the nature of the parent-child attachment and the meaning of separation and loss to both the parents and the child;

E. A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

F. A statement of the measures, for example, specific changes in parents' behavior that will be used to determine that supervision of the family or placement is no longer necessary.

5. Standards for choosing a disposition.

A. The goal of all dispositions shall be to protect the child from the harm justifying intervention.

B. In ordering a disposition other than removal of the child from his home, the court shall choose a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court shall choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

C. A child shall not be removed from his home and placed in foster care unless the court finds that:

(1) The child has been physically abused as defined in subsection 3, paragraph A, and there is a preponderance of evidence that the child cannot be protected from further physical abuse without being removed from his home; or

(2) The child has been endangered in one of the other ways specified in subsection 3 and there is clear and convincing evidence that the child cannot be protected from further harm of the type justifying intervention unless removed from his home.

Regardless of whether a court finds subparagraphs (1) or (2) applicable, before any child is removed from his home, the court must find that there is a placement available in which the child will not be endangered.

6. **Expenses.** 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.

7. **Custody.** 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 § 3793, as last amended by PL 1975, c. 396, § 1, is repealed and the following enacted in its place:

§ 3793. **Parents' rights divested; support; alteration of decree; guardianship**

1. **Parental rights.** The issue of termination of parental rights may be considered at the time of the dispositional hearing following a finding of endangerment and shall be considered at every review hearing thereafter. The parents shall be notified of the possibility of termination, when it is in issue and the standard for determining termination. The parents shall be afforded the opportunity to present evidence on the relevant issues, whenever a party requests that the court terminate parental rights. These hearings shall be the only forum for considering termination when a child is under court supervision.

2. **Termination at the initial neglect dispositional hearing.**

A. Except as provided by paragraph B, subparagraphs (1) to (3), parental rights may not be terminated at the dispositional hearing.

B. A court may order termination at the dispositional hearing if it finds that removal is necessary and that:

(1) The child has been abandoned, when the child has not been cared for or contacted by his parents for 60 days and the parents do not appear at the hearing, provided that adequate effort has been made to notify the parents. This paragraph shall not apply if the parents are physically unable to attend the hearing;

(2) The child has previously been removed from his parents under section 3803, subsection 1-B, has been returned to his parents and now has to be removed again; or

(3) Court jurisdiction has been assumed under section 3792, subsection 3, paragraph A, this child or another child in the family has been previously found endangered under section 3792, subsection 3, paragraph A, and the parents received therapy after the first instance of abuse. The party requesting termination should be required to prove that therapy was provided or offered to the parents previously.

C. Regardless of the provisions of paragraph B, subparagraphs (1) to (3), termination shall not be ordered if any of the exceptions in subsection 4 are applicable.

3. Termination after a child is in placement.

A. If a child is removed without termination of parental rights, the court shall again consider the need for termination at the 6-month review hearing if the child cannot be returned home at that time.

(1) For children who were under 3 years of age at the time of placement, termination shall be ordered at this point unless the court finds by clear and convincing evidence that an exception specified in subsection 4 applies.

(2) For children over 3 years of age at the time of placement, termination shall not be ordered at this point, unless the court finds that the parents have failed to maintain contact with the child during the previous 6 months and to reasonably plan for resumption of care of the child. The court shall not order termination if one of the exceptions specified in subsection 4 applies.

B. If parental rights are not terminated at the 6-month review proceeding, termination shall be ordered at the end of one year for all children who cannot be returned home at that point unless one of the exceptions specified in subsection 4 applies.

C. Whenever parental rights have not been terminated under paragraphs A and B because the child falls within one of the exceptions, the case shall be reviewed every 6 months to determine whether the exceptions continue to be applicable; if not, termination shall be ordered.

4. Situations in which termination shall not be ordered. When a child would otherwise come within the provisions of subsections 2 or 3, a court shall not order termination if it finds by clear and convincing evidence that any of the following are applicable:

A. Because of the closeness of the parent-child relationship, it would be seriously detrimental to the child to terminate parental rights at this time;

B. Because of the nature of the child's problems, the child is placed in a residential treatment facility and continuation of parental rights will not

prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed;

C. The child is placed with a relative who does not want to adopt the child; or

D. The child cannot or should not be placed permanently in a family environment. If the child cannot presently be placed in a permanent family environment, the court must also find that failure to terminate will not impair the child's opportunity for a permanent placement in a family setting.

5. Orders and decrees. Orders and decrees provided for in section 3792 shall have the same effect to divest the parent or parents of all legal rights in respect to the child as specified in Title 19, section 535, but shall not relieve the parent or parents of liability for the support of the child or from the penalties for failure to support which are provided in Title 19, sections 481, 483 and 486. The original orders shall not extend beyond the time when the child shall reach the age of 18 years. The children's institution or organization or suitable person or department to which the child is committed shall have full custody and control over the child thereafter for that time and, if no other guardian is appointed, the department shall have all the powers as to the person, property, earnings and education of every child committed to its custody during the term of commitment which a guardian has as to a ward, and shall have authority to give the consent required in Title 19, section 532. An appeal may be taken to the Superior Court from the order or decree of any probate court or the District Court, determining the custody of the child under this chapter. The proceedings under the appeal shall follow the form prescribed for appeal from probate courts or from the District Court, as the case may be, but pending action upon any such appeal, the court may order the custody of the child to be retained by a suitable person, children's institution, child welfare organization or the department.

Sec. 3. 22 MRSA § 3803, sub-§§ 1-A, 1-B and 1-C are enacted to read:

1-A. Periodic court reviews. The status of all children under court supervision shall be reviewed by the court at least every 6 months at a hearing in which it shall be determined whether court supervision should continue.

1-B. Initial plans. Whenever a child is ordered removed from his home, the agency charged with his care shall provide the court with a specific plan as to where the child will be placed, what steps will be taken to return the child home and what actions the agency will take to maintain parent-child ties.

A. The agency plan shall specify what services the parents will receive in order to enable them to resume custody and what actions the parents shall take in order to resume custody.

B. The agency shall be required to facilitate the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while he is in placement.

C. A child shall be placed as close to his home as possible, preferably in his own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's well-being.

D. The agency charged with supervising a minor in placement shall be responsible for assuming that all services are provided. It shall report to the court if it is unable to provide these services, for whatever reason. The agency may perform services other than those ordered, as necessitated by the case situation.

1-C. Standard for return.

A. A child shall be returned home at the review hearing unless the court finds by a preponderance of the evidence that the child will be endangered in the manner specified in section 3792, subsection 3, paragraphs A to F, if returned home. When a child is returned, casework supervision shall continue for a period of 6 months, at which point there shall be a hearing on the need for continued intervening.

B. If the minor is not returned home, the court shall establish on the record:

- (1) What services have been provided to or offered to the parents to facilitate reunion;**
- (2) Whether the parents are satisfied with the services offered;**
- (3) The extent to which the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;**
- (4) Whether the agency is satisfied with the cooperation given to it by the parents;**
- (5) Whether additional services are needed to facilitate the return of the minor to his parents; if so, the court should order such services; and**
- (6) When return of the child can be expected.**

C. If a minor is not returned to his parents at the review hearing and parental rights are not terminated in accordance with the standards in section 3793, the court shall advise the parents that termination of parental rights may occur at the next review hearing.

STATEMENT OF FACT

The intent of this bill is to clarify the judicial standards for determination of abuse and neglect, for return to family and for termination of parental rights and to safeguard the constitutionally protected right of family integrity.