

# MAINE STATE LEGISLATURE

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(Governor's Bill)  
FIRST REGULAR SESSION

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ONE HUNDRED AND NINTH LEGISLATURE

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**Legislative Document**

**No. 1607**

H. P. 1384

House of Representatives, May 10, 1979

The Committee on Health and Institutional Services, suggested and ordered printed.

Presented by Mrs. Nelson of Portland.

Cosponsors: Mrs. Kany of Waterville and Mr. Hobbins of Saco.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

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**AN ACT Establishing the Children and Family Services and Child Protection Act  
of 1979.**

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

**Sec. 1.** 19 MRSA § 532, 2nd ¶, first sentence, as repealed and replaced by PL 1973, c. 791, § 1. and as amended, is repealed and the following enacted in its place:

**If a child's legal relationship with his parents has been terminated and the child has been ordered into the custody of the Department of Human Services or other suitable custodian under Title 12, section 4069, subsection 2, paragraph B, the department or other suitable custodian is the proper party to consent and the parents have no right to notice of the proceedings and no right to participate in them.**

**Sec. 2.** 22 MRSA cc. 1051, 1051-A, 1055, 1056, 1059 and 1061, as amended, are repealed.

**Sec. 3.** 22 MRSA c. 1071 is enacted to read:

**CHAPTER 1071  
CHILDREN AND FAMILY SERVICES  
AND CHILD PROTECTION ACT OF 1979**

**SUBCHAPTER I  
GENERAL PROVISIONS**

**§ 4001. Title**

This chapter shall be known and may be cited as the “Children and Family Services and Child Protection Act of 1979.”

**§ 4002. Definitions**

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

1. **Child.** “Child” means any person who is less than 18 years of age.
2. **Child abuse and neglect.** “Child abuse and neglect” means any 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 health or welfare under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby; provided that a parent legitimately practicing his religious beliefs, who thereby does not provide specified medical treatment for a child, shall not be considered a negligent parent for that reason alone; however, a court is not precluded from ordering necessary medical or health services or treatment for the child.
3. **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.
4. **Department.** “Department” means the Department of Human Services.
5. **Parent.** “Parent” means a child’s legal parent, legal custodian or guardian and natural parent, unless that parent’s legal relationship with the child has been terminated.
6. **Person responsible for the child’s health or welfare.** “Person responsible for the child’s health or welfare” includes a child’s parent or other person with responsibility for a child’s health or welfare, whether in the child’s home or another home or a facility which, as part of its function, provides for care of the child.

**§ 4003. 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 protect and assist abused and neglected children, children at risk and their families so that these needs may be met.

In taking such steps, the department shall work to protect the welfare of children, promote family life conducive to the wholesome development of

children and prevent the development of family circumstances detrimental to children, so that each child may have an adequate level of care and nurture appropriate to his needs.

**§ 4004. 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 4003, including:

A. **Developing and providing services which:**

- (1) Support and reinforce parental care of children;
- (2) Supplement the care; and
- (3) When necessary, substitute for parental care of children;

B. **Encouraging, whenever appropriate, the voluntary use of these and other services by families and children who may need them;**

C. **Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children; and**

D. **Establishing and maintaining a Child Protective Services Contingency Fund to provide temporary, otherwise unavailable assistance to families to help them provide proper care for their children.**

2. **Regarding Federal Government.** The department is authorized to enter into agreements with the Federal Government, to apply for any appropriate grants, aid or assistance, including those under the United States Social Security Act, Title IV, Part B, and to cooperate with the Federal Government and perform any necessary and proper acts in connection therewith 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, aid or assistance, and the State Controller shall authorize expenditures therefrom as requested and approved by the Department of Human Services.

3. **Objection of parent.** Except as specifically authorized by law, no person may take charge of any child over the objection of a parent of the child, or of any person standing in loco parentis with respect to the child.

**SUBCHAPTER II**

**REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT**

**§ 4008. Purpose**

The purpose of this subchapter is to provide for a system for the reporting of child abuse and neglect so that the department may learn of children who may be harmed or threatened with harm and take appropriate action. The mandatory and

permissive reporting of cases of suspected child abuse or neglect to the department will enable the protective services of the State to be implemented.

**§ 4009. Persons mandated to report suspected child abuse or neglect**

1. Reasonable cause to suspect. When, while acting in his professional capacity, 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 or is likely to be abused or neglected, he shall immediately report or cause a report to be made to the department.

Whenever a person is required to report under this section in his capacity as a member of the staff or a medical or public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then be responsible for making a report or causing a report to be made. The 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 or is likely to be abused or neglected.

This subsection does not require a person to report when the factual basis for knowing or suspecting child abuse or neglect comes from treatment of a parent or other person responsible for the child's health or welfare, the treatment was sought by that person for a problem of child abuse or neglect and the child's life, safety or health is not threatened.

2. Photographs of visible trauma. Whenever a person is required to report under this section as a staff member of a law enforcement agency or a hospital, he shall forthwith make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

The taking of photographs under this subsection shall be done in a manner consistent with professional standards, including minimizing trauma, and consistent with the purposes of this Act. The parents' consent to the taking of photographs is not required.

Any photographs taken shall be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services.

The person shall notify the department as soon as possible if he is unable to take, or cause to be taken, such photographs.

In carrying out the child protective function, designated agents of the department may take photographs of any subject matter when necessary and relevant to the investigation and handling of a case of suspected child abuse or neglect.

**§ 4010. Reporting procedures**

1. **Immediate report.** Reports regarding 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 requested by the department.

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

- A. The name and address of the child and his parents or other persons responsible for his care or custody;
- B. The child's age and sex;
- C. The nature and extent of any abuse or neglect, including a description of any injuries and any explanations given thereof;
- D. A description of any sexual abuse or exploitation;
- E. Family composition, and any evidence of prior abuse or neglect of the child or his siblings;
- 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 Act.

**§ 4011. Mandatory reporting to medical examiner for postmortem investigation**

Any person required to report cases of known or suspected child abuse or neglect under section 4009, 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.

**§ 4012. Immunity from liability**

Any person, institution, agency or facility participating in good faith in any act authorized or required by this chapter, or participating in a child protective investigation or judicial proceeding shall be immune from any civil or criminal liability that might otherwise result from such actions. In any proceeding regarding liability, there shall be a rebuttable presumption of good faith.

**§ 4013. Privileged or confidential communications**

Notwithstanding any other provision of law to the contrary, the privileged or confidential 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 and neglect: Reporting as required or permitted by law; cooperating with the department in its investigative and other child protective activities; cooperating with the child's guardian ad litem when appointed; and giving or accepting evidence in any child protective judicial proceeding.

**§ 4014. Liability for failure to report**

Any person, who knowingly fails to report as required in section 4009, commits a civil violation for which a forfeiture of not more than \$500 may be adjudged.

**§ 4015. Records; confidentiality; disclosure**

1. Confidentiality of records. All department records which contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department are confidential and subject to release only under the conditions set forth in subsection 2. Within the department, the records shall be available only to and used by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who permits or encourages the unauthorized disclosure of 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 may disclose information in the records which is relevant to the interests of the following agencies or persons in the circumstances described:

- A. Any 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 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. A person, institution, agency or facility having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a child or parent who is the subject of a record; 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, or legal custodian or guardian;

**F. A parent of a child named in a record, with protection for the identity of reporters and other persons when appropriate;**

**G. A court, upon its finding that access to such records may be necessary for the determination of any issue before the court, but access shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue then pending before it;**

**H. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;**

**I. Any appropriate state official with executive or legislative responsibility for the child protective service, in carrying out his official functions, provided that no personally identifying information shall be made available unless necessary to his functions; and**

**J. Any person engaged in a bona fide research purpose, provided that no personally identifying information shall be made available to the researcher unless it is absolutely essential to the research purpose and the commissioner or his designee 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 an appropriate departmental staff person.**

### **SUBCHAPTER III**

#### **DEPARTMENT ACTION**

#### **REGARDING ABUSE AND NEGLECT**

##### **§ 4021. Department's responsibilities**

The department shall act to protect children whose health or welfare is adversely affected or threatened by the conduct or condition of those responsible for their care and protection, to prevent further abuse and neglect, to enhance the welfare of these children and their families and to preserve family life whenever feasible. Toward these ends, the department shall, among other things:

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

Authorized agents of the department, in the good faith performance of activities pursuant to this Act, shall be immune from any civil or criminal liability that might otherwise result from such actions. In any proceeding regarding liability, there shall be a rebuttable presumption of good faith.



**§ 4022. Investigations**

To enable the department to perform complete investigations, and to prepare for and participate in child-protection proceedings, the commissioner, his delegate and the legal counsel for the department are authorized to:

1. Issue subpoenas. 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 suspected child abuse or neglect or to any subsequent court proceedings regarding a child's care and custody under this Act.

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 might otherwise result from the act of turning over or providing information or records to the department; and

2. Obtain criminal history. Obtain criminal history record information which they deem relevant to a child abuse or neglect case. Such 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 when 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 4015. Criminal history record 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.

**§ 4023. Voluntary care of dependent child**

The department may make provisions for the care of the dependent child at the request of and with the written consent of the child's parents or next of kin, if the child is without a parent or sufficient ability and without another suitable relative willing and able to provide for his care.

**§ 4024. Short-term emergency services**

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

A. "Agency" means any person or facility licensed or approved by the department for the purpose of providing short-term emergency services and which has a contract or written agreement with the department to provide those services.

B. "Short-term emergency services" means protective services, emergency shelter care, counselling and other services which are essential to the care, maintenance and protection of a child, as provided pursuant to this section. These services may include emergency caretaker or homemaker services in the child's home or, if necessary and appropriate, care outside his home, when no parent or other responsible adult is available and willing care for the child in his home.

2. Authorization. The department is authorized to provide short-term emergency services, directly or through contracts or written agreements with agencies, to any child who is or appears to be:

- A. Abused, neglected, or otherwise seriously endangered, or at risk; or
- B. A runaway from the care and custody of his parents.

3. Consent to treatment. The department or agency is 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 or agency gave its consent for the child to receive that emergency medical treatment.

4. Contacting parents; consent of parent; child.

A. Prior to or upon the initiation of short-term emergency services for a child, the department or agency shall take reasonable steps to notify a parent of the child that the child will receive or is receiving the services and to seek the parent's consent to the provision of the 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.

5. Time limit. The provision of short-term emergency services shall be limited to not more than 72 hours per incident.

6. Parent's obligations. The provision of short-term emergency services by the department or an 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 a child who receives short-term emergency services. An agency may likewise obtain payments from a parent subject to its contract or written agreement with the department.

**SUBCHAPTER IV**  
**LEGAL PROCESS FOR CHANGING CARE AND CUSTODY OF**  
**CHILDREN IN NEED OF PROTECTION**

**§ 4031. Purpose**

This subchapter 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 threatened with serious harm. The policy of this State is to protect children from abuse and neglect, to preserve and rehabilitate family life whenever feasible and, if this is not feasible, to provide children with appropriate alternate placements. If any of these goals are incompatible, protection of the child from abuse and neglect is paramount. To achieve these goals, services which prevent abuse and neglect and which support, supplement and, if necessary, substitute for parental care shall be provided as authorized by law.

**§ 4032. Definitions**

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

1. Court. "Court" means the District Court, except that, with respect to requests under section 4036 for protective custody pending hearing, it also includes the Probate Court.

2. Parent. "Parent" means a child's legal parent, legal custodian or guardian and natural parent, unless that parent's legal relationship with the child has been terminated.

**§ 4033. Jurisdiction; venue**

1. Jurisdiction. The District Court shall have jurisdiction over child-protection petitions.

The Probate Court shall have concurrent jurisdiction to hear requests under section 4036 for protective custody pending hearing when a District Court judge is not available for the purpose. If a request for protective custody pending hearing is made to the Probate Court, the court shall make an order granting or denying the request and then transfer the case to the appropriate District Court as soon as practicable. The order shall remain in effect unless modified by the District Court under section 4036. The District Court shall set hearing dates and make appointments of guardians ad litem and counsel for the parents in accordance with this subchapter.

The court shall consider and act on child-protection petitions regardless of the evidence of the existence of other decrees regarding a child's care and custody. If a child's custody is an issue in another pending proceeding in the same court, such as a divorce proceeding, the proceedings may be consolidated with respect to the custody issue if this would serve the interests of justice. In any event, the child-

protection petition and the issues involved therein shall be addressed and the court shall make an order thereon in accordance with this Act. Such an order takes precedence over any other order regarding the child's care and custody.

2. Venue. Petitions shall be brought in the district where the child legally resides or where the child is present. The court, for the convenience of the parties or in the interests of justice, may transfer the petition to another district or division if the court there will accept it.

Any District Court judge from any district or division and any Probate Court judge from any county may hear a request for and make an order for protective custody pending hearing pursuant to section 4036, if no judge is available in the district and division in which the petition with the request is being filed.

§ 4034. Child-protection petition; basis; content; filing and service of petition; petitioners

1. Basis. A child-protection petition may be brought when the petitioner believes that a child is living in circumstances in which his physical or mental health or welfare is seriously harmed or threatened with serious harm and the child is in need of some protective action. Serious harm to a child's health or welfare can occur with, among other things:

- A. Serious physical injury of impairment;
- B. Serious mental or emotional injury or impairment evidenced by severe anxiety, depression or withdrawal, untoward aggressive behavior or similiar dysfunctional behavior;
- C. Sexual abuse or exploitation; or
- D. Lack of necessary food, clothing, shelter, education, nurture, supervision or care, including health care. A parent legitimately practicing his religious beliefs, who thereby does not provide specified medical treatment for the child, shall not be considered neglectful for that reason alone; however, the court is not precluded from ordering necessary medical treatment for the child.

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

- A. Name 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 constitutes the basis for the petition. This statement shall not limit the evidence which may be presented at a hearing on the petition;
- D. A summary statement of and citation to 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 with section 4061 et seq.**

For the purposes of hearing a request for protective custody pending hearing under section 4036, the petition need not at that point include the statements required under paragraphs F and G.

**3. Filing; hearing date; service of petition and notice of hearing. Upon the filing of a petition, the court shall set the earliest practicable time and date for a hearing on the petition.**

The petition and a notice of hearing shall be served on the parents, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. Service shall be made forthwith in accordance with the District Court Civil Rules, unless the court orders otherwise.

If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the commissioner by certified or registered mail, return receipt requested, or by service in hand at least 10 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;**

**C. Three or more residents of the State; or**

**D. A physician or chief administrator of a hospital, but only with respect to a petition requesting the court to order, under section 4039, subsection 2, paragraph B, subparagraph (6), necessary emergency medical treatment for the child when the parents are unwilling or unable to consent to it.**

#### **§ 4035. Conducting child-protection proceedings**

The court may conduct child-protection proceedings in any manner it deems appropriate to discover the truth, minimize trauma to the child and others, achieve the goals of this subchapter and Act, and otherwise meet the ends of justice. Unless the court orders otherwise, the proceedings and the court records shall be closed to the public.

The court may interview a child witness in chambers, with or without guardian ad litem and counsel present and with no others present, provided that the statements made therein are made a matter of record. If the court determines that direct testimony by a child would be too traumatic for that child, it may

admit and consider oral or written evidence of out-of-court statements made by that child which relate to the issues in a case, and the court may rely on that evidence to the extent of its probative value.

Because of a child's sense of time and because of the importance of continuity and stability in a child's family relationships, original and substitute, the court, in scheduling and conducting child-protection proceedings, shall consider the way in which a child's interests are affected by the timing of hearings and orders, temporary or otherwise, and shall proceed to resolve issues in child-protection proceedings in a timely fashion consistent with the rights and interests of the child and other parties.

§ 4036. Protective custody of child pending hearing on petition

1. Request. A petition may include a request for an order granting protective custody of a child to the department or other suitable custodian pending a full hearing on a petition. The request may be based on the information and belief of the petitioner.

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

3. Order without parental consent.

A. The court may make an order for protective custody pending hearing without parental consent if it determines, by a preponderance of the evidence available to it, that there is a serious and immediate danger to the child's life, safety or health.

B. The petitioner shall, by any reasonable means, notify or attempt to notify the parents of his intent to request an order and of the time and place at which he will request an order from the court, unless the petitioner believes that:

- (1) The child would suffer undue harm during the time needed to locate and notify the parents; or
- (2) Prior notice to the parents would increase the risk of harm to the child or others.

C. If the court makes an order for protective custody under paragraph A and the parent or parents from whose care the child has been removed have not had an opportunity to contest the petitioner's request and the court's order for protective custody pending hearing, due to lack of notice, inability to appear on short notice or other good reason, he or 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 justice requires, but in any event within 5 working days of the motion, unless the moving party agrees to a continuance. The

petitioner and guardian ad litem for the child shall be given at least 2 working days' notice of the hearing on the motion, unless the court orders shorter notice.

The petitioner shall first present his position and supporting evidence. The parents and the child's guardian ad litem shall then present their positions and supporting evidence. The hearing may be conducted informally or formally, as circumstances warrant. The court may admit and consider evidence from a party based on the information and belief of the party, 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 protective custody pending hearing. 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 petition.

4. Service of orders; notice therein. If the court makes an order for protective custody pending hearing, a copy of the order shall be served forthwith on the parents, including any noncustodial parent, by:

- A. In-hand delivery by the judge or court clerk to any parent or parent's counsel who is present at court when the order is made;
- B. Service in accordance with the District Court Civil Rules. If service by publication becomes necessary for the petition, 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 manner ordered by the court.

The other shall include a notice to the parents which has a statement regarding their legal rights to legal counsel, as is required in the petition under section 4034, subsection 2, paragraph F, and, if the order was made without parental consent, a statement describing their right under subsection 3, paragraph C.

5. Parent without child in his care; motion to modify order for protective custody pending hearing. When 2 parents are not living together and the court makes an order of protective custody pending hearing removing a child from the parent with whom the child has been living, the other parent, if he wants custody of the child, may bring a motion prior to the full hearing requesting the court to modify the order.

When such a motion is made, the court shall proceed to hear and determine the motion as expeditiously as justice requires. The court, based on a preponderance of the evidence, may modify its order for protective custody pending hearing if necessary to satisfy the best interests of the child.

§ 4037. 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 4041 and an appeal under section 4043.

1. **Child; guardian ad litem.** The court, in every child-protection proceeding, shall appoint a guardian ad litem for the child and pay the reasonable cost and expenses of the guardian. 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 charged 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 or seeking care or custody of the child, interviewing the child with or without parents present, interviewing, subpoenaing, 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 and expenses of legal counsel for them.

3. **Representation.** The department shall be represented by the Attorney General's office, except when a District Attorney is requested to represent the department.

#### § 4038. 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 that an examination is 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.

#### § 4039. 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 threatened with serious harm under section 4034, subsection 1.

2. **Disposition.** Whenever feasible and consistent with the interests of justice, the dispositional phase of the hearing shall be conducted immediately after the adjudicatory phase.

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

B. If under subsection 1 the court determines that the child is so harmed or threatened with harm, the court may then, to the extent necessary, hear any



further relevant evidence regarding proposed dispositions, including any written or oral reports, recommendations or case plans. This evidence may be relied upon to the extent of its probative value even if otherwise inadmissible. Any written materials shall be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase of the hearing.

The standards for disposition shall be to protect the child from the serious harm or threat of serious harm, to cure or mitigate any harm the child has already suffered and to assist the parents so that they may become able to adequately protect the child.

Considering these standards and based on a preponderance of all the evidence heard, the court may order one or more of the following:

- (1) Custody of the child to one or both parents, with or without conditions, if the court determines that this will not subject the child to serious harm or a threat of serious harm;
- (2) That the parents accept departmental supervision of the child and family in the child's home;
- (3) That the child, the parents and other appropriate family members avail themselves of treatment or services to ameliorate the circumstances related to the harm or threat of harm;
- (4) Emancipation of the child;
- (5) Removal of the child from his parents, granting custody to the department or other suitable custodian, when no other disposition will adequately protect the child. The order may be for temporary custody for a specified period with a review at the end of that period or it may be for an indeterminate period; and the order may require the parents to pay a reasonable amount for the support of the child; and
- (6) Necessary emergency medical treatment for the child when the parents are unwilling or unable to consent to it.

When custody of the child is ordered to the department or other custodian, the department or other custodian shall have full custody of the child subject to the terms of the order and other applicable law. The custody does not include the right to consent to adoption of the child unless the parent-child legal relationship has been terminated pursuant to section 4061 et seq.

If a petition for termination of the parent-child relationship has been filed prior to the dispositional phase of the hearing on the child-protection petition, the court shall first hold the adjudicatory phase of the hearing on the termination petition and then have one dispositional phase in accordance with subsection 2, paragraph B, and section 4068, subsection 2, paragraph B, as applicable.

**§ 4040. Copies of court order**

The court shall deliver in-hand at the court, or sent by ordinary mail, a copy of the court order under section 4039 to the parent's counsel or, if no counsel, to the parents promptly after it is entered.

The copy of the order shall have a notice to the parents informing them of their rights under section 4041.

Lack of compliance with this section does not affect the validity of the order.

**§ 4041. 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.

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 in accordance with the standards in subsections 1 and 2. The motion shall be brought before an order, if any, has been made terminating the parent-child legal relationship under section 4061 et seq.

Unless otherwise ordered by court, notice of the motion shall be given in accordance with the District Court Civil Rules. Notice shall be given to the parties of the initial proceeding and to the child's current custodian if not such a party.

After hearing the motion, the court may make, based on a preponderance of the evidence, any further order regarding the child's care, custody and support in accordance with the following:

1. Consistent with dispositional standards. With respect to all motions, the court's order shall be consistent with the dispositional standards and alternatives of section 4039, subsection 2, paragraph B;

2. Additional. In addition, with respect to a motion requesting return of the child's custody to the parents or one of them, the court shall order the return if it determines:

- A. That the parents can adequately protect and care for the child; and
- B. That the net effect of return is not contrary to the child's interest in light of events since the child was removed from the parent's custody. In determining this, the court shall consider 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 back into his parent's home.

The court may, if appropriate, order that the child be returned gradually, by trial placements, and that the parents avail themselves of any services or treatment necessary to ensure that they adequately protect and care for the child.

**§ 4042. Enforcement of custody orders**

When the court has ordered a change in the custody of a child in a child-protection proceeding 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 there.

**§ 4043. Appeals**

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

**SUBCHAPTER V****FAMILY REHABILITATION; RETURNING CHILD TO PARENTS****§ 4051. Departmental responsibilities**

When a child has been ordered into the custody of the department under section 4039 and the parent-child legal relationship has not been terminated, the department shall take appropriate steps to facilitate the rehabilitation of the family and the return of the child to his family when this is feasible and not detrimental to the interests and needs of the child. These steps, when feasible and not detrimental, include:

1. **Contacts with 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' advance written notice of any change in residence planned for the child; and
  - B. Any serious injuries to the child, major medical care received by the child or hospitalization of the child;
2. **Visitation assured.** Assuring that parents have ample opportunity to visit with and be visited by the child;
3. **Rehabilitative services.** Providing, arranging or coordinating appropriate rehabilitative services for the family and child; and
4. **Trial placements.** Arranging and monitoring trial placements of the child back with his parents.

Whenever the department decides that return of the child back with his parents is no longer a feasible objective, the department shall give written notice of this decision to the parents at their last known address. This notice shall include the specific reasons for the department's decision, the specific efforts the department has made in working with the parents and child toward the return of the child to his home and a statement of the parent's rights under section 4041.

## SUBCHAPTER VI

**LEGAL PROCESS FOR TERMINATION OF PARENT-CHILD LEGAL  
RELATIONSHIP IN CONNECTION WITH CHILD-PROTECTION  
PROCEEDING****§ 4061. Purpose**

It is the policy of this State to ensure that children have adequate care, continuity and stability in family relationships. A child who has been removed from the custody of his parents in a child-protection proceeding may not be able to have this in his relationship with his parents. In seeking to provide the child with permanent relationships, it may be in the child's interest for the legal relationship between the child and his parents to be terminated.

**§ 4062. Petitions for termination of the parent-child legal relationship**

1. **Jurisdiction.** The District Court shall have jurisdiction over petitions for termination of the parent-child legal relationship.

2. **Venue.** A petition shall be brought in the same court as the related child-protection petition. The court, for the convenience of the parties or other good cause, may transfer the petition to another district and division if the court there will accept it.

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

- A. The petitioner who brought the related child-protection petition;
- B. The child's current legal custodian; or
- C. The department.

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

**§ 4063. Grounds for termination of parent-child legal relationship**

The court may consider termination of the parent-child legal relationship when the child has been found to be seriously harmed or threatened with serious harm under section 4039, and for that reason the child's custody has been ordered removed from his parents for an indeterminate period, or may be so ordered in connection with a termination petition filed prior to a deposition under section 4039, subsection 2, paragraph B or under section 4041.

The court may also consider termination with respect to a child who has been ordered into the custody of the department in a child-protection proceeding under section 3792 prior to its repeal, but has not yet been placed in an adoptive home. For such a child to be eligible for adoption, the court shall first order termination in accordance with this chapter. Children already placed in adoptive homes at the effective date of this Act are not affected by this subchapter.

**1. Grounds; parents not consenting.** If the parent or parents are not consenting to termination, the termination order shall be based on the following:

- A.** The conduct or condition of the parents is such as to render them unable to adequately protect and care for the child;
- B.** There is little likelihood that these circumstances will change so that the child can be returned to the parents within a reasonable time;
- C.** The lack of termination significantly diminishes the child's prospects for early integration into a permanent home, whether through adoption, long-term foster care of other placement; and
- D.** The net effect of termination is in the child's interest.

In making these determinations, the court shall consider the overall needs of the child, bearing in mind the child's age, attachments to relevant persons, and time periods of attachments and separation, particularly as they relate to the child's ability to integrate into a substitute placement or back into his parent's home, as the case may be.

**2. Grounds; parents consenting.** If the parent or parents are consenting to termination, the termination order shall be based on the written consent of the parent or parents wishing to terminate, provided that the consent is voluntarily and knowingly executed in court before a judge who has explained the effects of a termination order to the parent or parents.

In any event, the court shall not order termination if the child is 14 or more years of age and objects to the severance of the relationship.

#### § 4064. Contents of petition

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

- 1. Name; address of child.** The name, date and place of birth and residence, if known, of the child;
- 2. Name; address of petitioner.** The name and address of the petitioner, and the nature of his relationship to the child;
- 3. Name; residence of parents.** The name and residence, if known, of each of the child's parents;
- 4. Others.** The names and addresses of any:
  - A.** Legal custodian or guardian of the child; and
  - B.** Guardian ad litem of the child in the related child-protection proceeding;
- 5. Statement of factual basis.** A summary statement of the factual basis on which the petitioner is seeking termination;

6. **Statement of citation.** A summary statement of and citation to the statutory basis for termination;

7. **Statement of effects.** A statement of the effects of a termination order under this chapter; and

8. **Statement regarding legal counsel.** 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.

**§ 4065. Parties' rights to representation**

Parties' rights to representation in a termination proceeding shall be the same as for the child-protection proceeding under section 4037.

**§ 4066. Filing; hearing date; service of petition and notice of hearing**

Upon the filing of a petition, the court shall set a time and date for a hearing on the petition.

The petition and the notice of hearing shall be served on the parents, the guardian ad litem for the child and the child's legal custodian or guardian if not the petitioner, at least 10 days prior to the hearing date. Service shall be made in accordance with the District Court Civil Rules, unless the court orders otherwise.

**§ 4067. Motion for examination**

A motion for an examination may be made in accordance with section 4038.

**§ 4068. Hearing**

1. **Adjudication.** The court shall hear evidence and determine under section 4063 whether or not sufficient grounds exist 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 sufficient grounds for termination do not exist, the court shall deny the request for termination. The court may make or continue any appropriate order authorized under section 4039, subsection 2, paragraph B.

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

The court may then, 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 this evidence may be relied on to the extent of its probative value even if otherwise inadmissible.

The court shall then make an order placing custody of the child with the department so that the child may be placed in accordance with his needs and the

purposes of this subchapter and Act or make an order placing custody of the child with another suitable custodian who has an adequate long-term plan to meet the needs of the child.

**§ 4069. Effects of termination order**

1. **Parent and child divested of rights.** An order terminating the parent-child legal relationship divests the parent and 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.

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

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

4. **Child not disentitled to benefit.** No order or decree entered pursuant to this subchapter 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 subchapter be deemed to affect any rights and benefits that a native American derives from his descent from a member of a federally recognized Indian tribe.

**§ 4070. Appeals**

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

**§ 4071. 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.

**SUBCHAPTER VII  
CARE OF CHILD IN CARE OR  
CUSTODY OF DEPARTMENT**

**§ 4081. Expenses; reimbursement**

1. **Department.** The department shall provide for the maintenance and care of any children ordered into its custody under section 4039 or other provision of law. Maintenance and care shall be rendered in licensed or approved family homes or other appropriate facilities for children.

The department may obtain reimbursement for child care expenses from the child's parents according to the terms of a support order or a voluntary agreement with the parents.

2. **Other suitable custodian.** When a child is ordered into 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 a support order or a voluntary agreement with the parents.

§ 4082. **Payments**

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

A. **Foster home board care:** An amount, when combined with any other resources as may be available to share the costs of the care, which is at least equal to the following: For care of a child who is normal, \$132 per month; for care of a child who is mildly handicapped, \$154 per month; for care of a child who is moderately handicapped, \$176 per month; and for care of a child who is severely handicapped, \$209 per month;

B. **Residential child care facilities:** An amount equal to 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 the actual cost;

C. **Boarding care in private schools:** An amount equal to 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 audited unit cost. Notwithstanding the other provisions of this paragraph, when placements in private schools have been exhausted or are otherwise unavailable for any child, the commissioner is authorized to negotiate with other appropriate facilities for placement of the child on the basis of a flat-rate method of payment; and

D. **Clothing allowance:** An amount, when combined with any other resources as may be available, which is at least equal to the following: For a child age 0 to 3 years, \$11 per month; for a child 4 to 10 years, \$19 per month; and for a child 11 years or older, \$27 per month.

In lieu of a monthly clothing allowance, the department may provide for clothing 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 the budgeting shall be budgeted and expended to provide payments specified in subsection 1, paragraphs B and C.



4. **Unexpended balance.** 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.

§ 4083. **Religious faith of placements; parents' request**

Any child in the care or custody of the department under section 4039 or other provision of law, when placed in a family for foster care or adoption, shall be placed in a family of the same general 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 such faith can be found willing to take the 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 interest of the child.

§ 4084. **Long-term foster care**

1. **Purpose.** In order to promote an increased 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 adoptive parents, the relationship of long-term foster care is established as one alternative for the placement of children who are in the custody of the department.

A child shall be considered for placement in long-term foster care only if, in the judgment of the department, neither return to the natural parents nor adoption are currently feasible alternatives.

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

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

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

A. The child has been in foster care for one year or the parent-child legal relationship has been terminated;

B. The department has decided that return of the child to the parents is no longer a feasible objective, and has so notified the parents, in accordance with section 4051;

C. In the judgment of the department, it is not likely that the child can be placed in an adoptive home;

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; and

E. A written agreement between the foster parents and the department 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 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 the plan at least once every 6 months.

4. Duty and authority delegated by the department. The foster parents shall have the authority to make the following decisions in accordance with this section and any rules established pursuant to subsection 6:

A. Consent to emergency medical treatment if payment for this treatment is available under the Under States 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. 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 judgment 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 receiving the results of the examination; and

C. 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. The department shall promulgate rules for long-term foster care placements in accordance with the Maine Administrative Procedure Act. These rules shall include, among other things, 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.

**§ 4085. Department's responsibility after death of committed child**

If any child ordered into the custody of the department pursuant to sections 4039, 4068 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.

**§ 4086. Records regarding child in department's care or custody**

Department records, which contain personally identifying information and are created or obtained in connection with the department's activities regarding a child who is or has been placed in its care or custody by whatever means, are confidential.

In connection with the department's child-protective activities, the records may be used and disclosed pursuant to section 4015. Unauthorized disclosure or dissemination shall be treated in accordance with section 4015.

In connection with departmental activities regarding the child's care or custody, the records may be used and disclosed in accordance with rules adopted by the department which are consistent with applicable law and which give due regard to the interests of persons named in the records.

**STATEMENT OF FACT**

The purpose of this bill is to establish a Children and Family Services and Child Protection Act of 1979.