

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1906

H. P. 1787

House of Representatives, February 4, 1980

Reported by Mr. Stetson from the Joint Standing Committee on Judiciary and printed under Joint Rule 17, pursuant to H. P. 1462.

EDWIN H. PERT, Clerk of the House

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT Establishing the Child and Family Services and Child Protection Act.

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

Sec. 1. 15 MRSA § 3502, sub-§ 2, as enacted by PL 1977, c. 520, § 1, is repealed and the following enacted in its place:

2. Placement procedures. Emergency placements shall be arranged by intake workers and Department of Human Services personnel according to procedures and standards jointly adopted by the Department of Mental Health and Corrections and the Department of Human Services. Placement may include voluntary care or short-term emergency services under Title 22, section 4021, et seq.

Sec. 2. 15 MRSA § 3504 and 3505, as enacted by PL 1977, c. 520, § 1, are repealed.

Sec. 3. 15 MRSA § 3506, sub-§ 1, first sentence, as enacted by PL 1977, c. 520, § 1, is amended to read:

~~Notwithstanding the provisions of section 3505, if the~~ If a juvenile is 16 years of age or older, and ~~the juvenile he~~ he refuses to return home and ~~the his~~ his parents, guardian or custodian refuse to permit ~~the juvenile him~~ him to remain away from home, counsel shall be appointed for the juvenile and ~~the juvenile he~~ he may file with the District Court a petition for emancipation.

Sec. 4. 15 MRSA § 3506, sub-§ 2, last sentence, as enacted by PL 1977, c. 520, § 1, is amended to read:

The plan must identify the community resources and agencies necessary to assist in the juvenile's emancipated life and must demonstrate that these agencies have agreed to ~~provide such support~~ **assist the juvenile to accomplish his plan.**

Sec. 5. 15 MRSA § 3508, as enacted by PL 1977, c. 520, § 1, is repealed.

Sec. 6. 19 MRSA § 302, first sentence, is amended to read:

Whenever a child under the age of 17 years is committed by the District Court, or the District Court acting as a juvenile court, to custody other than that of its parent, such commitment shall be subject to Title 22, sections ~~3793, 3794 and 3795~~ **4038, 4061 and 4063.**

Sec. 7. 19 MRSA § 531, 3rd sentence, as repealed and replaced by PL 1969, c. 539, is amended to read:

Jurisdiction to grant such adoption and change of name shall be in the county where the person to be adopted lives or the county where the petitioner resides or the petitioners reside or in the county in which the placing agency ~~to which the person to be adopted was duly surrendered and released~~ **having custody of the child** is located.

Sec. 8. 19 MRSA § 531, last sentence, as amended by PL 1971, c. 598, § 31, is repealed.

Sec. 9. 19 MRSA § 532, as repealed and replaced by PL 1979, c. 391, is amended to read:

§ 532. Consent for adoptions

1. Consent required. Before any adoption is granted, written consent to the adoption must be given by ~~the child, if he is at least 14 years old, and by each of his living parents, except as provided in subsection 2:~~

- A. The child, if he is at least 14 years old;**
- B. Each of the child's living parents, except as provided in subsection 2;**
- C. The person or agency having legal custody or guardianship of the child or to whom the child has been surrendered and released; and**
- D. A guardian appointed by the court when the child has no living parent, guardian or legal custodian who may consent.**

2. Consent not required. Consent to adoption shall not be required of the following:

A. A parent who has been adjudged, before the effective date of this Act, and after notice and hearing, to:

- (1) Have willfully abandoned the child; or
- (2) Be unwilling or unable to undertake parental responsibility;

A-1. A parent whose parental rights have been terminated under Title 22, section 4051, et seq.;

B. A father who is not required to give consent under section 532-C;

~~C. A parent of a child in the custody of the Department of Human Services under Title 22, section 3792, and placed for adoption after the effective date of this section, when the parent has also been adjudged, after notice and hearing, to be unwilling or unable to undertake parental responsibility;~~

D. The parents who have executed a surrender and release under section 532-A; or

~~E. A parent who has voluntarily terminated or who has had judicially transferred his parental rights and those rights have been whose parental rights have been voluntarily or judicially terminated and transferred to a public agency or a duly licensed public or private agency under the law of another state or country; and~~

F. The parents of a person to be adopted who is at least 18 years old.

~~3. Consent when custody is transferred. When parental consent is not required under subsection 2, paragraph C, D or E, then the written consent of the person or agency having custody or guardianship, or to whom the child has been surrendered, must be given~~

4. Consent given before a probate judge. Except as provided in subsection 5, consent shall be given in front of a judge of probate. Before consent is given, the judge shall fully explain the effect of that consent, and shall make a determination that the consent is freely the knowledgeable given.

5. Consent before a justice of the peace or notary public. Consent may be acknowledged before a justice of the peace or notary public, who is not an attorney nor a partner, associate nor an employee of an attorney for the adopting parents, if consent is given by:

~~A. One of the adopting parents is a blood relative of the child;~~

~~B. The adopting parents have received the child from the Department of Human Services or from by an adopting agency duly licensed in Maine; or~~

~~C. The consent is being given by a putative father required to give consent under this section; or~~

~~D. An agency or person is giving consent as required under subsection 3~~

D. A public agency or duly licensed private agency to whom parental rights have been transferred under the law of another state or country.

Sec. 10. 19 MRSA § 532-B, last sentence, as amended by PL 1973, c. 293, § 4, is further amended to read:

In the event that it becomes impossible, for good and sufficient reason, to find an

adoptive home for any child ~~so~~ surrendered and released by its parent or parents, then the child placing agency, or the Department of Human Services, to whom the custody and control of ~~such that~~ child has been surrendered and released or transferred ~~as herein provided~~ may arrange for placement in foster care in the same manner as for children committed into custody under Title 22, section ~~3792~~ 4035.

Sec. 11. 19 MRSA § 533, as last amended by PL 1977, c. 515, § 2, is further amended by adding after the first paragraph a new paragraph to read:

The court may appoint a guardian ad litem for the child at any time during the proceedings.

Sec. 12. 19 MRSA § 752, 2nd ¶, first sentence, as amended by PL 1975, c. 293, § 5, is further amended to read:

The expense of maintenance and education of children committed to care and custody of the Department of Human Services under this section shall be borne in accordance with Title 22, section ~~3794~~ 4061.

Sec. 13. 22 MRSA c. 1051, as amended, is repealed.

Sec. 14. 22 MRSA c. 1051-A, as enacted by PL 1977, c. 42, § 1 and as amended, is repealed.

Sec. 15. 22 MRSA cc. 1055 and 1056, as amended, are repealed.

Sec. 16. 22 MRSA c. 1059, as enacted by PL 1977, c. 577, § 4 and as amended, is repealed.

Sec. 17. 22 MRSA c. 1061, as enacted by PL 1977, c. 454, § 2 and as amended, is repealed.

Sec. 18. 22 MRSA c. 1071 is enacted to read:

CHAPTER 1071

CHILD AND FAMILY SERVICES

AND CHILD PROTECTION ACT

SUBCHAPTER I

GENERAL PROVISIONS

§ 4001. Title

This chapter may be cited as the "Child and Family Services and Child Protection Act."

§ 4002. Definitions

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

1. Abuse or neglect. "Abuse or neglect" means a threat to a child's health or welfare by physical or mental injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.

2. Child. "Child" means any person who is less than 18 years of age.

3. Child protection proceeding. "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter IV, or a proceeding on a medical treatment petition under subchapter VIII.

4. Custodial parent. "Custodial parent" means a parent with custody.

5. Custodian. "Custodian" means the person who has custody and power over the person of a child.

6. Jeopardy to health or welfare or jeopardy. "Jeopardy to health or welfare" or "jeopardy" means serious abuse or neglect, as evidenced by:

A. Serious harm or threat of serious harm;

B. Deprivation of adequate food, clothing, shelter, supervision or care, including health care when that deprivation causes a threat of serious harm;

C. Absence of any person responsible for the child, which creates a threat of serious harm; or

D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

7. Parent. "Parent" means a natural or adoptive parent, unless parental rights have been terminated.

8. Person. "Person" means an individual, corporation, facility, institution or agency, public or private.

9. Person responsible for the child. "Person responsible for the child" means a 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. It includes the child's custodian.

10. Serious harm. "Serious harm" means:

A. Serious injury;

B. Serious mental injury or impairment, evidenced by severe anxiety, depression or withdrawal, untoward aggressive behavior or similar serious dysfunctional behavior; or

C. Sexual abuse or exploitation.

11. Serious injury. "Serious injury" means serious physical injury or impairment.

§ 4003. Purposes

Recognizing that the right to family integrity is limited by the right of children to be protected from abuse and neglect and recognizing also that uncertainty and instability are possible in extended foster home or institutional living, it is the intent of the Legislature that this chapter:

1. **Authorization.** Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;
2. **Removal from parental custody.** Provide that children will be taken from the custody of their parents only where failure to do so would jeopardize their health or welfare;
3. **Reunification as a priority.** Give family rehabilitation and reunification priority as a means for protecting the welfare of children; and
4. **Permanent plans for care and custody.** Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family.

§ 4004. Authorizations

1. **General.** The department may take appropriate action, consistent with available funding, which will help achieve the goals of section 4003, including:
 - A. **Developing and providing services which:**
 - (1) Support and reinforce parental care of children;
 - (2) Supplement that care; and
 - (3) When necessary, substitute for parental care of children;
 - B. **Encouraging 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 assistance to families to help them provide proper care for their children.**
2. **Duties.** The department shall act to protect abused and neglected children and children in circumstances which present a substantial risk of abuse and neglect, to prevent further abuse and neglect, to enhance the welfare of these children and their families and to preserve family life wherever possible. The department shall:
 - A. **Receive reports of abuse and neglect;**
 - B. **Promptly investigate all abuse and neglect cases coming to its attention;**

C. Determine the degree of harm or threatened harm to each child in each case; and

D. Take appropriate action to further the purposes of this chapter.

3. Objection of parent. Except as specifically authorized by law, no person may take charge of a child over the objection of his parent or custodian.

§ 4005. Parties' rights to representation; legal counsel

1. Child; guardian ad litem.

A. The court, in every child protection proceeding, may appoint a guardian ad litem for the child. If appointed, the court shall pay his reasonable costs and expenses.

B. The guardian ad litem shall be given access to all reports and records relevant to the case. In general, the guardian ad litem shall represent the child. He may investigate 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 other persons present, interviewing, subpoenaing, examining and cross-examining witnesses and making recommendations to the court.

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for medical treatment under section 4071. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

§ 4006. Appeals

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

§ 4007. Conducting proceedings

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. At the request of a party, the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.

3. Motion for examination. At any time during the proceeding, after a clear

and convincing showing of the necessity for information that cannot be obtained by other means, the court may order that a child, parent, person frequenting the household or having custody at the time of the alleged abuse or neglect be examined by a physician, psychologist or psychiatrist.

§ 4008. 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 to custody of the department are confidential and subject to release only under the conditions of subsections 2 and 3. 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.

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency investigating a report of child abuse or neglect when the investigation is authorized by statute or by an agreement with the department;

B. A physician treating a child whom he reasonably suspects may be abused or neglected;

C. A child named in a record who is reported to be abused or neglected, or his parent or custodian, with protection for identity or reporters and other persons when appropriate.

D. A person having the legal responsibility or authorization to educate, care for, evaluate, treat or supervise a child, parent or custodian who is the subject of a record. This shall include a member of a treatment team or group convened to plan for or treat a child or family which is the subject of a record; and

E. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the research and the commissioner or his designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact.

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child named in a record who is reported to be abused or neglected;

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court. 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 pending before it;

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; and

D. An appropriate state executive or legislative official with responsibility for child protection services in carrying out his official functions, provided that no personally identifying information may be made available unless necessary to his functions.

§ 4009. Penalty for violations

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged.

§ 4010. Spiritual treatment

1. Treatment not considered abuse or neglect. Under subchapters I to VII, a child shall not be considered to be abused or neglected, in jeopardy of health or welfare or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

2. Treatment authorized as medical treatment. When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization in lieu of the medical treatment shall also be authorized.

SUBCHAPTER II

REPORTING OF ABUSE OR NEGLECT

§ 4011. Persons mandated to report suspected abuse or neglect

1. Reasonable cause to suspect. When, while acting in his professional capacity, a medical or osteopathic physician, resident, intern, medical examiner, physician's assistant, dentist, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, school official, social worker, homemaker, home health aide, medical or social service worker, 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.

A. Whenever a person is required to report his capacity as a member of the staff of 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 cause a report to be made. The staff may also make a report directly to the department.

B. 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.

C. A person shall not be required to report when the factual basis for knowing or suspecting abuse or neglect comes from treatment of a person responsible for the child, the treatment was sought by that person for a problem of abuse or neglect and there is little threat of serious harm to the child.

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

A. The taking of photographs shall be done in a manner consistent with professional standards, including minimizing trauma. The parent's or custodian's consent to the taking of photographs shall not be required.

B. Photographs 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.

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

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect, or to subsequent child protection proceedings.

§ 4012. Reporting procedures

1. Immediate report. Reports regarding abuse or neglect 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 the persons responsible for his care or custody;

B. The child's age and sex;

C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them;

D. A description of sexual abuse or exploitation;

E. Family composition and 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 photographs or x rays taken; and

H. Any other information that the person making the report believes may be helpful.

§ 4013. Mandatory reporting to medical examiner for postmortem investigation

A person required to report cases of known or suspected abuse or neglect, who

knows or has reasonable cause to suspect that a child has died as a result of 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, the hospital.

§ 4014. Immunity from liability

1. Reporting and proceedings. A person participating in good faith in reporting under this subchapter, or in a related child protection investigation or proceeding, is immune from any civil liability that might otherwise result from these actions.

2. Photographs and xrays. A person participating in good faith in taking photographs or xrays under this subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions.

3. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

§ 4015. Privileged or confidential communications

The husband-wife and physician and psychotherapist-patient privileges under the rules of evidence and the confidential quality of communication under Title 20, sections 805 and 806, Title 24-A, section 4224 and Title 32, section 7005, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding.

SUBCHAPTER III
INVESTIGATIONS AND
EMERGENCY SERVICES

§ 4021. Investigations

1. Subpoenas and obtaining criminal history. The commissioner, his delegate or the legal counsel for the department may:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession which are necessary and relevant to an investigation of a report of suspected abuse or neglect or to a subsequent child protection proceeding.

(1) The department may apply to the District Court to enforce a subpoena.

(2) A person who complies with a subpoena is 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

B. Obtain nonconviction data and other criminal history record information

under Title 16, section 611, et seq., which he deems relevant to an abuse or neglect case.

2. Confidentiality. Information or records obtained by subpoena shall be treated in accordance with section 4008.

§ 4022. Voluntary care

On the written request of a person responsible for the child, the department may care for that child for a specified period by agreement, unless a custodian objects. Voluntary care agreements shall not affect custody. The department may require reimbursement from a parent or custodian for these services.

§ 4023. Short-term emergency services

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

A. "Agency" means a person with a contract or written agreement with the department to provide short-term emergency services.

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

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

A. Threatened with serious harm;

B. A runaway from his parents or custodian; or

C. Without any person responsible for him.

3. Consent to treatment. The department may give consent for the child to receive necessary emergency medical treatment while receiving short-term emergency services. When the department has given its consent, a physician or health care provider shall be immune from civil liability for providing emergency medical treatment without the informed consent of the child or the child's parents or custodian.

4. Contacting parents.

A. Prior to or on initiating short-term emergency services, the department shall take reasonable steps to notify a custodian that the child will receive or is receiving the services.

B. Short-term emergency services, except for medical treatment, shall not be provided to a child who expresses a clear desire not to receive them.

5. **Time limit.** Short-term emergency services shall not exceed 72 hours from the time of the department's assumption of responsibility for the child.

6. **Parent's obligations.** Providing short-term emergency services to a child shall not affect a parent's obligation for the support of the child.

7. **Reimbursement.** The department may, by agreement or court order, obtain reimbursement from a parent for the support of a child who receives short-term emergency services. An agency may also obtain reimbursement from a parent subject to its contract or written agreement with the department.

SUBCHAPTER IV

PROTECTION ORDERS

§ 4031. Jurisdiction; venue

1. Jurisdiction.

A. The District Court shall have jurisdiction over child protection petitions.

B. The Probate Court shall have concurrent jurisdiction to hear petitions under section 4034 when a District Court judge is not available. If a child protection petition with a request for a preliminary protection order is made to the Probate Court, it shall grant or deny the request for the preliminary protection order 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. The District Court shall set hearing dates and make appointments of guardians ad litem and counsel for the parents and custodians.

2. Venue.

A. Petitions shall be brought in the district where the child legally resides or where the child is present. When a child is in voluntary placement with the department or an agency, the petition may be brought only in the district where he legally resides.

B. The court, for the convenience of the parties or in the interests of justice, may transfer the petitions to another district or division.

C. A judge from another district, division or county may hear a petition and make a preliminary or final protection order if no judge is available in the district and division in which the petition is filed.

3. **Scope of authority.** Notwithstanding Title 19, chapter 16, the Uniform Child Custody Jurisdiction Act, the court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. If custody is an issue in another pending proceeding, the proceedings may be consolidated in the District Court, with respect to the custody issue. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any other prior order regarding the child's care and custody.

§ 4032. Child protection petition; petitioners; content; filing**1. 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 persons.**

2. Contents of petition. A petition shall be sworn and shall include at least the following:

- A. Name, date, place of birth and municipal residence, if known, of each child;**
- B. The name and address of the petitioner and the nature of his relationship to the child;**
- C. Name and municipal residence, if known, of each parent and custodian;**
- D. A summary statement of the facts which the petitioner believes constitute the basis for the petition;**
- E. An allegation which is sufficient for court action;**
- F. A request for specific court action;**
- G. A statement that the parents and custodians are entitled to legal counsel in the proceedings 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**
- H. A statement that petition proceedings could lead to the termination of parental rights, under section 4051 et seq.**

3. Hearing date. on the filing of a petition, the court shall set the earliest practicable time and date for a hearing.**§ 4033. Service and notice****1. Petition service. A child protection petition shall be served as follows:**

A. The petition and a notice of hearing shall be served on the parents and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service shall be made in accordance with the District Court Civil Rules.

B. If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the State.

2. Notice of preliminary protection order. If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request that order and

of the time and place at which he will make the request. This notice is not required if the petitioner includes in the petition a sworn statement of his belief that:

- A. The child would suffer serious harm during the time needed to notify the parents or custodians; or
- B. Prior notice to the parents or custodians would increase the risk of serious harm to the child or petitioner.

3. Service of preliminary protection order. If the court makes a preliminary protection order, a copy of the order shall be served on the parents and custodians by:

- A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is made;
- B. Service in accordance with the District Court Civil Rules. Notwithstanding the Civil Rules, service by publication of a preliminary protection order shall be complete 5 days after a single publication; or
- C. Another manner ordered by the court.

4. Service of final protection order. The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's or custodian's counsel or, if no counsel, to the parents or custodians. The copy of the order shall include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

§ 4034. Request for a preliminary protection order

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order, which shall include a sworn summary of facts to support the request.

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order shall automatically expire at the time of the issuing of a final protection order under section 4035.

3. Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, then the hearing on the preliminary protection order may be waived.

4. Preliminary hearing. If there is no consent, or if a noncustodial parent requests a hearing, then the court shall hold a preliminary hearing on that order within 10 days of its issuance or request, unless all parties agree to a later date. The petitioner shall bear the burden of proof. If, after the hearing, the court finds, by a preponderance of the evidence, that returning the child to his custodian would place him in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036.

5. Contents of order. The order shall include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G, and, if the order was made without consent, notice of the date and time of the preliminary hearing.

§ 4035. Hearing on final protection petition

1. Hearing required. The court shall hold a hearing prior to making a final protection order.

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, whether the child is in circumstances of jeopardy to his health or welfare.

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to his health or welfare, the court may hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court may then make an order of any disposition under section 4036. If possible, this dispositional phase shall be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence shall be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

§ 4036. Disposition and principles

1. Disposition. In a protection order, the court may order one or more of the following:

A. No change in custody;

B. Departmental supervision of the child and family in the child's home;

C. That the child, the custodians, the parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy;

D. Necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent;

E. Emancipation of the child, if the requirements of Title 15, section 3506 are met;

F. Removal of the child from his custodian and granting custody to a noncustodial parent or other person, if he can show that he is able to care for and protect the child from jeopardy, or to the department;

G. Payment by the parents of a reasonable amount of support for the child; or

H. Other specific conditions governing custody.

2. Principles. In determining the disposition, the court shall apply the following principles in this priority:

- A. Protect the child from jeopardy to his health or welfare;
- B. Give custody to a parent if appropriate conditions can be applied;
- C. Make disposition in the best interests of the child; and
- D. Terminate department custody at the earliest possible time.

3. Time of order. The order may be for a specified period, with a review at the end of that period, or it may be for an indeterminate period, not beyond age 18.

§ 4037. Authority of custodian

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, he shall have full custody of the child subject to the terms of the order and other applicable law. Custody shall not include the right to place the child for adoption without parental consent, except as provided under Title 19, section 532.

§ 4038. Automatic review; review upon motion

1. Automatic review. If the court has made a final protection order, it shall review the case at least once within 18 months of the original order, unless the child has been adopted or emancipated.

2. Review on motion. The court, the child's parent or custodian, or a party to the initial proceeding, except a parent whose rights have been terminated under sections 4051 et seq., may move for judicial review.

3. Notice of review. Notice of judicial review shall be given in accordance with the District Court Civil Rules. Notice shall be given to all parties to the initial proceeding and to the child's parent or custodian, except that notice shall not be given to a parent whose rights have been terminated under sections 4051 et seq.

4. Disposition. The court may hear evidence and make any further order, based on a preponderance of the evidence, that is authorized under section 4036. The court may consider events occurring since the original order and the effect of a change in custody on the child.

§ 4039. Enforcement of custody orders

When the court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the custodian, then, at the request of the department or custodian, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the child for the rightful custodian. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the child is there.

SUBCHAPTER V

FAMILY REUNIFICATION

§ 4041. Departmental responsibilities

1. **Family reunification.** When a child has been ordered into the custody of the department under section 4035, it shall provide, arrange or coordinate services to facilitate the rehabilitation and reunification of the parents and child. These services shall include:

A. Giving the parents prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(1) The child's residence and, when practicable, at least 7-days' advance written notice of a planned change of his residence; and

(2) Any serious injuries, major medical care received or hospitalization of the child;

B. Assuring that the parents have ample opportunity to visit with the child when this is not detrimental to the best interests of the child;

C. Periodically reviewing with the parents why the child was removed, what must occur for the child to be returned and the services which are available to assist them; and

D. Petitioning for judicial review and return of custody of the child to his parents at the earliest appropriate time.

2. **Discontinuation of services.**

A. The department may discontinue these efforts with either parent, if that parent:

(1) Cannot be located; or

(2) Refuses or is unable to make a good faith effort toward rehabilitation and reunification.

B. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at his 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 parent and child and a statement of the parent's rights under section 4038. This notice requirement may be met by service of a copy of a petition to terminate parental rights under subchapter VI.

C. If the department discontinues efforts to return the child to a parent, but does not seek termination of parental rights, then subsection 1, paragraphs A and B, shall still apply.

SUBCHAPTER VI

TERMINATION OF PARENTAL RIGHTS

§ 4051. Venue

A petition for termination of parental rights shall be brought in the court that

issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division.

§ 4052. Termination petition; petitioners; time filed; contents

1. **Petitioner.** A termination petition may be brought by the custodian of the child.

2. **Time filed.** A termination petition may be brought no earlier than 3 months after disposition under section 4036 or under Title 19, section 752.

3. **Contents of petition.** A termination petition shall be sworn and shall include at least the following:

A. The name, date and place of birth and municipal residence, if known, of the child;

B. The name and address of the petitioner and the nature of his relationship to the child;

C. The name and municipal residence, if known, of each of the child's parents;

D. The names and address of the guardian ad litem of the child in the related child protection proceeding;

E. A summary statement of the facts which the petitioner believes constitute the basis for the request for termination;

F. An allegation which is sufficient for termination;

G. A statement of the effects of a termination order; and

H. A statement that the parents are entitled to legal counsel in the termination proceedings and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel.

4. **Hearing date.** On the filing of a petition, the court shall set a time and date for a hearing.

§ 4053. Service

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. Service shall be made in accordance with the District Court Civil Rules.

§ 4054. Hearing on termination petition

The court shall hold a hearing prior to making a termination order.

§ 4055. Grounds for termination

1. **Grounds.** The court may order termination of parental rights if:

A. Custody has been removed from the parent under:

(1) Section 4035 or 4038;

(2) Title 19, section 752; or

(3) Section 3792 prior to the effective date of this chapter; and

B. Either:

(1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

(a) The parent is unwilling or unable to protect the child from jeopardy;

(b) The circumstances are unlikely to change in a reasonable time; and

(c) termination is in the best interests of the child.

2. **Considerations.** In deciding to terminate, the court shall consider the needs of the child, including the child's age, attachments to relevant persons, periods of attachments and separation and the child's ability to integrate into a substitute placement or back into his parent's home.

3. **Objection by child.** The court shall not order termination if the child is at least 14 years old and objects to the termination.

§ 4056. Effects of termination order

1. **Parent and child divested of rights.** An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and his parent.

2. **Only one parent affected.** The termination of one parent's rights shall not affect the rights of the other parent.

3. **Parent not entitled to participate in adoption proceedings.** A parent whose rights have been terminated shall not be entitled to notice of the child's adoption proceedings, nor shall he have any right to object to the adoption or participate in the proceedings.

4. **Child not disentitled to benefit.** No order terminating parental rights may disentitle a child to benefits due him from any 3rd person, agency, state or the United States; nor may it affect the rights and benefits that a native American derives from his descent from a member of a federally-recognized Indian tribe.

§ 4057. Termination orders of other states

If parental rights have 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
CUSTODY**

§ 4061. Expenses; reimbursement

1. **Department.** The department shall care for a child ordered into its custody in licensed or approved family homes or other appropriate facilities for children.

2. **Reimbursement.** The department may obtain reimbursement for child care expenses from the child's parents according to a support order or agreement.

3. **Other custodian.** When a child is ordered into the custody of a custodian other than the department, that custodian shall support the child, subject to a support order or agreement.

§ 4062. Payments

1. **Payments by department.** The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to distribute these funds.

2. **Unexpended balance.** An unexpended balance of funds for these purposes shall not be transferred to another account and shall not lapse.

§ 4063. Religious faith of placements; parents' request

If the parents of a child in the custody of the department request in writing that the child be placed in a family of the same general religious faith, for foster care or adoption, the department shall do so when a suitable family of that faith can be found.

§ 4064. Long-term foster care

1. **Defined.** "Long-term foster care" means 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 the duty and authority to make certain decisions. The placement is intended to continue until the child becomes 18 years old, unless altered or terminated in the best interests of the child.

2. **Authority for placement.** The department may place in long-term foster care a child in its custody, if:

A. The child has been in foster care for one year or parental rights have been terminated;

B. The department has decided that it is not likely that the child can be returned to his parents and has so notified the parents;

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 have met standards established by the department for a placement; and

E. A written agreement between the foster parents and the department has been completed which specifies the duty and authority delegated by the department to the foster parents and the rights retained by the department and the parents, and includes an individual plan for the care of the child. A foster child at least 14 years old may participate in the development of the agreement. The department shall, after consultation with the foster parents, review and, if necessary, revise the plan at least once every 6 months.

3. Duty and authority delegated by the department. The foster parents may make the following decisions:

A. Consent to emergency medical treatment;

B. Consent to the application for a driver's license; and

C. Permit travel by the child outside of the State.

4. Rights of department. Except as delegated in this section or by agreement, the department shall retain custody of the child and all custody rights as provided by court order, statute or rule.

5. Rules. The department may adopt rules for long-term foster care placements in accordance with the Maine Administrative Procedure Act, Title 5, section 8001, et seq. These rules may include, among other things, standards for settings appropriate for long-term foster care, methods of supervising of those settings, procedures for selecting children and foster parents, methods for establishing and reviewing individual plans, additional rights or powers that may be delegated and requirements or conditions for exercising the delegated authority.

§ 4065. Department's responsibility after death of committed child.

If a child in the custody of the department dies, 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 or 18-A.

SUBCHAPTER VIII

MEDICAL TREATMENT ORDER

§ 4071. Medical treatment order

1. Petitioner. The department, a physician or a chief medical administrator of a hospital may petition for a medical treatment order.

2. **Contents of petition.** A petition shall be sworn and shall include at least the following:

- A. Name, date of birth and municipal residence, if known, of the child;
- B. The name and address of the petitioner and his professional position;
- C. Name and municipal residence, if known, of each parent and custodian;
- D. A summary of the medical diagnosis and treatment alternatives;
- E. A request for the court to order specific treatment; and
- F. A statement that attempts to notify and secure consent from the custodians have been unsuccessful, either because they cannot be located or they have refused consent.

3. **Notice to parents and custodians.** The petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request the order and of the time and place he will make the request, unless the petitioner believes that the child would suffer increased serious injury during the time needed to notify them.

4. **Order.** On the basis of the petition or other evidence, the court may order medical treatment for the child if the custodians are unable or unwilling to consent to it, and the treatment is necessary to treat or prevent an immediate risk of serious injury. The order shall include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G, and notice of the date and time of the hearing.

5. **Service of order.** If a hearing has been held prior to issuing the order, a copy of the order and petition shall be served on the parents and custodians by:

- A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is issued;
- B. Service in accordance with the District Court Civil Rules. Notwithstanding the civil rules, service by publication of an order and petition shall be complete 5 days after a single publication; or
- C. Another manner ordered by the court.

6. **Hearing.** If a hearing has not been held prior to issuing the order, then it shall be held within 10 days of its issuance, unless all parties agree to a later date. If, after the hearing, the court finds, by a preponderance of the evidence, that the medical treatment ordered is necessary to treat or prevent the immediate risk of serious injury to the child, then it may continue the order.

Sec. 19. 32 MRSA § 7005, last ¶, as enacted by PL 1977, c. 673, § 3, is amended to read:

Nothing in this section shall prohibit disclosure by a person registered under this chapter of information concerning a client when that disclosure is required by

law and nothing in this section shall modify or affect the provisions of Title 22, ~~section 3856-A~~ sections 4011 to 4015.

Sec. 20. 34 MRSA § 758, last sentence, as enacted by PL 1975, c. 701, § 17, is amended to read:

Any commitment of a child under this section to the custody of any children's home, or to any relative or other person, or to the Department of Human Services shall be subject to Title 22, sections ~~3793 to 3795~~ 4038, 4061 and 4063.

Sec. 21. 34 MRSA § 815, as enacted by PL 1975, c. 756, § 20, is amended to read:

§ 815. Care of children of inmates and prisoners

If any woman is, at the time of her commitment to the center, pregnant with child which will be born after such commitment, the custody of the child at instance of the department shall be determined in accordance with Title 22, ~~chapter 1055~~ sections 4031, et seq.

STATEMENT OF FACT

This bill is the result of a study by the Joint Standing Committee on Judiciary as ordered by H. P. 1462. The bill is the result of consideration of legislation presented during the First Regular Session of the 109th Legislature and of the opinions of the Department of Human Services and several interested groups. It represents a balance of many diverse interests.

The purpose of the bill is to consolidate and harmonize several present statutes relating to child abuse and neglect and protective services. The bill establishes consistent standards for various legal actions to remedy abuse situations, including reporting of suspecting abuse, changing custody of abused children, providing medical treatment and terminating parental rights. In addition, the procedures will properly balance the rights of parents and the integrity of the family with state's interest in preventing abuse and neglect.