

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 2166

6  
7 H.P. 1637

House of Representatives, March 7, 1984

8 Submitted by the Department of Human Services pursuant to Joint Rule  
9 24.

10 Referred to the Committee on Judiciary. Sent up for concurrence and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Thompson of So. Portland.

11 Cosponsors: Representative Foster of Ellsworth and Representative  
Nelson of Portland.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FOUR  
16

17 AN ACT to Promote Family Permanency.  
18

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

21 Sec. 1. 22 MRSA §4006, as enacted by PL 1979, c.  
22 733, §18, is amended to read:

23 §4006. Appeals

24 A party aggrieved by an order of a court under  
25 this chapter, except an order entered pursuant to sub-  
26 chapter VI, may appeal to the Superior Court in ac-  
27 cordance with the District Court Civil Rules.

28 Any appeal from an order of the court under sub-  
29 chapter VI shall lie directly to the Supreme Judicial  
30 Court sitting as the Law Court. Appeals from an or-  
31 der under subchapter VI shall be governed by the  
32 Maine Rules of Civil Procedure, chapter 9.

1       Appeals from any order under this chapter shall  
2 be expedited. Any attorney appointed to represent a  
3 party in a District Court proceeding under this chap-  
4 ter shall continue to represent that client in any  
5 appeal unless otherwise ordered by the court.

6       Sec. 2. 22 MRSA §4007, sub-§4 is enacted to  
7 read:

8       4. Interstate Compact on Placement of Children.  
9 The provisions of the Interstate Compact on Placement  
10 of Children, sections 4191 to 4247, shall apply to  
11 proceedings under this chapter. Any report submitted  
12 pursuant to the compact shall be admissible in evi-  
13 dence for purposes of indicating compliance with the  
14 compact and the court may rely on evidence to the ex-  
15 tent of its probative value.

16       Sec. 3. 22 MRSA §4041, sub-§1, as enacted by PL  
17 1979, c. 733, §18, is repealed and the following en-  
18 acted in its place:

19       1. Rehabilitation and reunification. When a  
20 child has been ordered into the custody of the de-  
21 partment under this chapter or under Title 19, sec-  
22 tion 214 or section 752, the responsibility for  
23 reunification and rehabilitation of the family shall  
24 be shared as follows.

25       A. The department shall:

26               (1) Develop a rehabilitation and  
27 reunification plan which shall include the  
28 following:

29                       (a) The reasons for the child's remov-  
30                       al;

31                       (b) Any changes which must occur for  
32                       the child to return home;

33                       (c) Rehabilitation services which must  
34 be completed satisfactorily prior to  
35 the return home;

36                       (d) Services available to assist the  
37 parents in rehabilitating and

1                   reunifying with the child, including  
2                   reasonable transportation within the  
3                   area in which the child is located for  
4                   visits if the parents are unable to af-  
5                   ford that transportation;

6                   (e) A schedule of visits between the  
7                   child and the parents when visits are  
8                   not detrimental to the child's best in-  
9                   terests, including any special condi-  
10                  tions under which the visits shall take  
11                  place;

12                  (f) A reasonable time schedule for  
13                  proposed reunification which is reason-  
14                  ably calculated to meet the child's  
15                  needs; and

16                  (g) A delineation of the financial re-  
17                  sponsibilities of the parents and the  
18                  department during the reunification  
19                  process;

20                  (2) Provide the parents with prompt written  
21                  notice of the following, unless that notice  
22                  would be detrimental to the best interests  
23                  of the child:

24                   (a) The child's residence and, when  
25                   practicable, at least 7 days' advance  
26                   written notice of a planned change of  
27                   residence; and

28                   (b) Any serious injuries, major medi-  
29                   cal care received or hospitalization of  
30                   the child;

31                  (3) Make good faith efforts to cooperate  
32                  with the parents in the development and pur-  
33                  suit of the plan;

34                  (4) Periodically review with the parents  
35                  the progress of the reunification plan and  
36                  make any appropriate changes in that plan;

37                  (5) Petition for judicial review and return  
38                  of custody of the child to his parents at  
39                  the earliest appropriate time; and

1           (6) Petition for termination of parental  
2           rights at the earliest possible time that it  
3           is determined that family reunification ef-  
4           forts will be discontinued pursuant to sub-  
5           section 2 and that termination is in the  
6           best interests of the child;

7           B. Parents are responsible for rectifying and  
8           resolving problems which prevent the return of  
9           the child to the home and shall take part in a  
10           reasonable rehabilitation and reunification plan  
11           and shall:

12           (1) Maintain meaningful contact with the  
13           child pursuant to the reunification plan.  
14           When a parent has left the area where the  
15           child has been placed, this shall include  
16           making arrangements to visit the child at or  
17           near his placement;

18           (2) Seek and utilize appropriate services  
19           to assist in rehabilitating and reunifying  
20           with the child;

21           (3) Pay reasonable sums toward the support  
22           of the child within the limits of their  
23           ability to pay;

24           (4) Maintain contact with the department,  
25           including prompt written notification to the  
26           department of any change of address; and

27           (5) Make good faith efforts to cooperate  
28           with the department in developing and pursu-  
29           ing the plan; and

30           C. Where the parties cannot agree as to contents  
31           of a reasonable rehabilitation and reunification  
32           plan, any party may file a motion for judicial  
33           review pursuant to section 4038. At the review,  
34           the court shall review the proposed plans of ei-  
35           ther party and shall order reasonable  
36           reunification plans as it deems necessary.

37           Sec. 4. 22 MRSA §4041, sub-§2, as enacted by PL  
38           1979, c. 733, §18, is repealed and the following en-  
39           acted in its place:

1           2. Discontinuation of rehabilitation and  
2 reunification efforts. The following provisions  
3 shall govern discontinuation of rehabilitation and  
4 reunification efforts.

5           A. The department may discontinue efforts with  
6 either parent when:

7               (1) The parent is willing to consent to  
8 termination of his parental rights;

9               (2) The parent cannot be located; or

10              (3) The parent is unwilling or unable to  
11 rehabilitate and reunify with the child.

12           Sec. 5. 22 MRSA c. 1059, sub-c. VI, §4050 is en-  
13 acted to read:

14           §4050. Purpose

15           Recognizing that instability and impermanency are  
16 contrary to the welfare of children, it is the intent  
17 of the Legislature that this subchapter:

18           1. Termination of parental rights. Allow for  
19 the termination of parental rights at the earliest  
20 possible time after rehabilitation and reunification  
21 efforts have been discontinued and termination is in  
22 the best interest of the child;

23           2. Return to family. Eliminate the need for  
24 children to wait unreasonable periods of time for  
25 their parents to correct the conditions which prevent  
26 their return to the family;

27           3. Adoption. Promote the adoption of children  
28 into stable families rather than allowing children to  
29 remain in the impermanency of foster care; and

30           4. Protect interests of child. Be liberally  
31 construed to serve and protect the best interests of  
32 the child.

33           Sec. 6. 22 MRSA §4055, sub-§1, ¶B, as amended by  
34 PL 1981, c. 369, §16, is further amended to read:

1           B.   Either:

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

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

9                   (a)   The parent is unwilling or unable  
10                  to protect the child from jeopardy or  
11                  has willfully abandoned the child or  
12                  has refused to take responsibility for  
13                  the child; Termination is in the best  
14                  interest of the child; and

15                  (b)   The circumstances are unlikely to  
16                  change in a reasonable time; and Ei-  
17                  ther:

18                           (i)   The parent is unwilling or  
19                           unable to protect the child from  
20                           jeopardy and these circumstances  
21                           are unlikely to change within a  
22                           time which is reasonably calcu-  
23                           lated to meet the child's needs;

24                           (ii) The parent has been unwill-  
25                           ing or unable to take responsibil-  
26                           ity for the child within a time  
27                           which is reasonably calculated to  
28                           meet the child's needs;

29                           (iii) The child has been aban-  
30                           doned; or

31                           (iv) The parent has failed to  
32                           make a good faith effort to reha-  
33                           ilitate and reunify with the  
34                           child pursuant to section 4041.

35                   ~~(e)   termination is in the best inter-~~  
36                   ~~ests of the child-~~

37           Sec. 7. 22 MRSA §4055, sub-§2, as enacted by PL  
38           1979, c. 733, §18, is amended to read:

2. Considerations. In deciding to terminate, the court shall consider the needs of the child, including the child's age, the child's 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 and the child's physical and emotional needs.

## STATEMENT OF FACT

The purpose of this bill is to assure that children whose lives have been disrupted are provided safe permanent homes as soon as possible.

Section 1 amends the section on appeals to provide that any order of termination of parental rights shall be appealed directly to the Supreme Judicial Court rather than being appealed first to the Superior Court. The purpose of this section is to expedite the appellate process for children who have been freed for adoption through termination proceedings. In some cases it has taken longer than 2 years to complete an appeal of an order of termination of parental rights. During the period that the appeal is pending, the child remains in the same impermanent and unacceptable situation which led to the petition for termination of parental rights in the first place. This bill does not detract from a parents' right to appellate review of a termination order, but will provide for a much quicker resolution to the appeal since most cases are appealed to the Law Court.

The section also provides that all appeals from any order under The Child and Family Services and Child Protection Act shall be expedited and that attorneys appointed to represent parties in the District Court proceeding shall continue to represent that party in the appellate process unless otherwise ordered by the court. This prevents the confusion and delays which have sometimes followed entries of orders of termination where it was not clear who represented a parent for purposes of appeal.

Section 2 simply provides that the Interstate Compact on Placement of Children applies to any proceeding under the Act, and that reports produced as a



1 result of an interstate compact request will be ad-  
2 missible in evidence without testimony from the out-  
3 of-state compact administrator for the limited pur-  
4 poses of indicating compliance with the compact.

5 Sections 3 and 4 comprise a significant revision  
6 of the statute regarding reunification responsibili-  
7 ties. The intent of these sections is to firmly es-  
8 tablish that the parents of any child placed in the  
9 custody of the Department of Human Services have a  
10 responsibility for making good faith efforts to reha-  
11 bilitate themselves and reunify their family. The  
12 section also clarifies the department's responsibili-  
13 ties in working with the parents to assist them in  
14 rehabilitation and reunification, as well as the con-  
15 ditions under which the department may discontinue  
16 its efforts to rehabilitate and reunify the parents.

17 Section 5 establishes for the first time a pur-  
18 poses section to the Revised Statutes, chapter 1071,  
19 subchapter VI, dealing with termination of parental  
20 rights. The purpose of this section is to stress the  
21 movement toward freeing children for adoption as soon  
22 as it is clear that the children will not be able to  
23 return to their parents. The section further indi-  
24 cates that the subchapter on termination of parental  
25 rights should be liberally construed to serve and  
26 protect the best interests of the children involved.

27 Section 6 repeals and replaces the current stat-  
28 ute setting out the standards under which the court  
29 may terminate parental rights over the objection or  
30 nonconsent of a parent. The replacement incorporates  
31 the 3 standards currently contained in the termina-  
32 tion statute with some changes in terminology and  
33 adds 2 more standards. Section 6 make the following  
34 changes:

35 The Revised Statutes, Title 22, section 4055,  
36 subsection 1, paragraph B, subparagraph (2), di-  
37 vision (b), subdivision (i), deals with the stan-  
38 dard of the parent being unwilling or unable to  
39 protect the child from jeopardy, and further adds  
40 a requirement that the court find that the cir-  
41 cumstances are unlikely to change within a time  
42 which is reasonably calculated to meet the  
43 child's needs. Current law requires that the

1 court must find that circumstances are unlikely  
2 to change "in a reasonable time." It is the in-  
3 tent of this change to clarify that the time  
4 frame which the court is gauging must be seen  
5 from the child's perspective.

6 Subdivision (ii) is a revision of the current  
7 standard where the parent has not taken responsi-  
8 bility for the child. Current law uses the  
9 phrase "has refused to take responsibility for  
10 the child." The recent Law Court decision of In  
11 Re: Merton, R. held that the term "refusal" indi-  
12 cated a willful action on the part of the parent  
13 and that the court could not terminate parental  
14 rights unless it found such willful refusal.  
15 Therefore, this section is intended to allow the  
16 court to terminate a parent's rights if it finds,  
17 among other things, that the parent is unable or  
18 unwilling to accept responsibility for the child.  
19 This subsection further incorporates the require-  
20 ment that the court find that the parent will be  
21 unwilling or unable to take responsibility for  
22 the child within a time which is reasonably cal-  
23 culated to meet the child's needs.

24 Subdivision (iii) sets forth the standard of  
25 abandonment as already contained in the current  
26 statute, however, detaches that standard from any  
27 need for a finding that the situation will change  
28 within a reasonable time.

29 Subdivision (iv) indicates that where the parent  
30 has failed to make the good faith efforts to re-  
31 habilitate and reunify with the child the court  
32 may terminate parental rights.

33 Section 7 adds further considerations to the cur-  
34 rent section on information which the court must con-  
35 sider in determining the needs of a child in an ac-  
36 tion for termination of parental rights.

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