

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1285

6
7 S.P. 478

In Senate, April 10, 1985

8 Referred to the Committee on Human Resources. Sent down for
9 concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Kany of Kennebec.

Cosponsored by Representative Bost of Orono, Representative Cashman
11 of Old Town and Senator Bustin of Kennebec.

12 STATE OF MAINE
13

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

17 AN ACT Concerning Children in Need of Social
18 Services.
19

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

22 19 MRSA c. 5, sub-c. IV is enacted to read:

23 SUBCHAPTER IV

24 CHILDREN IN NEED OF SERVICES

25 §291. Definitions

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

29 1. Child in need of services. "Child in need of
30 services" means a child below the age of 18 years who
31 persistently runs away from the home of his parents
32 or legal guardian, or persistently refuses to obey

1 the lawful and reasonable commands of his parents or
2 legal guardian, thereby resulting in the parent's in-
3 ability or guardian's inability to adequately care
4 for and protect the child, or a child 7 years of age
5 or older and under 17 years who persistently fails to
6 attend school or persistently violates the lawful and
7 reasonable regulations of his school.

8 2. Intake worker. "Intake worker" has the mean-
9 ing set out in Title 15, section 3003, subsection 12.

10 §292. Procedures

11 1. Jurisdiction. The District Court shall have
12 jurisdiction over any petition seeking a determina-
13 tion that a child is in need of services.

14 2. Venue. The venue of a petition seeking a de-
15 termination that a child is in need of services shall
16 be governed by Title 22, section 4031, subsection 2.

17 3. Conduct of proceedings. All court proceed-
18 ings concerning a petition seeking a determination
19 that a child is in need of services shall be con-
20 ducted according to the Maine Rules of Civil Proce-
21 cedure and the Maine Rules of Evidence, except as oth-
22 erwise provided in this subchapter. At the request
23 of a party, the proceedings shall be recorded. All
24 proceedings and records shall be closed to the pub-
25 lic, unless the court orders otherwise.

26 4. Out-of-court statements. The court may admit
27 and consider oral or written evidence of out-of-court
28 statements made by a child alleged to be in need of
29 services and may rely on that evidence to the extent
30 of its probative value.

31 §293. Petition and hearing

32 1. Petitioners. A parent, legal guardian of a
33 child having custody of the child or a law enforce-
34 ment officer may petition the court alleging that the
35 child persistently runs away from the home of the
36 parent or guardian or persistently refuses to obey
37 the lawful and reasonable commands of the parent or
38 guardian resulting in the parent's inability or
39 guardian's inability to adequately care for and pro-

1 tect the child. A principal of the school in which
2 the child is enrolled may petition the court alleging
3 that the child persistently fails to attend school or
4 persistently violates the lawful and reasonable regu-
5 lations of the school.

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

8 A. The name, age and municipal residence of the
9 child alleged to be in need of services;

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

12 C. The name and municipal residence, if known,
13 of each parent and legal guardian of the child;

14 D. A summary statement of the facts which the
15 petitioner believes constitute the basis for the
16 petition;

17 E. An allegation which is sufficient for court
18 action;

19 F. A request for specific court action;

20 G. A statement that the child is entitled to le-
21 gal counsel in the proceedings and that, if the
22 child is not able to retain counsel, the court
23 shall appoint counsel for the child, and that the
24 child or the child's parent or legal guardian
25 should contact the court as soon as possible to
26 request appointed counsel;

27 H. A statement that failure by the child to ap-
28 pear in court and to participate in good faith in
29 any services to which the child is referred by
30 the court will be noted by the court in the
31 records of the Department of Corrections and will
32 be considered in any subsequent preliminary in-
33 vestigation by an intake worker or dispositional
34 hearing concerning the child under Title 15,
35 chapter 507; and

36 I. A statement that failure by the child's par-
37 ents or legal guardian to appear in court or to

1 participate in good faith in any services to
2 which the parent or guardian is referred by the
3 court will be noted by the court in the records
4 of the Department of Human Services and will be
5 considered in any subsequent child protection in-
6 vestigation or proceedings concerning the child
7 under Title 22, chapter 1071.

8 3. Notice. The petition and notice of hearing
9 shall be served on the child alleged to be in need of
10 services and, if either of the child's parents or the
11 child's legal guardian is not the petitioner, on that
12 parent or legal guardian, at least 10 days prior to
13 the hearing date. Service shall be made in accord-
14 ance with the District Court Civil Rules.

15 The clerk of court shall notify the petitioner of the
16 hearing at least 10 days prior to the hearing date.

17 4. Right to counsel. When a child alleged to be
18 in need of services appears before the court, the
19 court shall inform the child of his right to counsel
20 and, if the child is not able to retain counsel and
21 does not have appointed counsel, shall appoint coun-
22 sel for the child. The court may assess against the
23 parent or legal guardian of the child the cost, or
24 any part of the cost, of counsel appointed to repre-
25 sent the child.

26 5. Hearing. The court shall hold a hearing pri-
27 or to referring the child to an intake worker for ar-
28 rangement of services. After hearing evidence in the
29 adjudicatory phase of the hearing, the court shall
30 make a finding, by a preponderance of the evidence,
31 whether the child is in need of services.

32 If the court determines that the child is in need of
33 services, the court shall hear any relevant evidence
34 regarding proposed services, including written or
35 oral reports, recommendations or plans. Prior to the
36 referral phase of the hearing, the court may request
37 an intake worker to make a preliminary inquiry and
38 report in writing to the court any recommendations or
39 plans for services for the child or the child and his
40 parents or legal guardian. Written materials to be
41 offered as evidence in the referral phase of the
42 hearing shall be made available to each party's coun-
43 sel reasonably in advance of the referral phase.

1 If possible, the referral phase of the hearing shall
2 be conducted immediately after the adjudicatory
3 phase. The court may refer the child or the child's
4 parent or legal guardian to any of the services in
5 section 294.

6 §294. Services

7 1. Referral. After hearing under section 293,
8 the court may refer the child or the child and the
9 child's parents or legal guardian to any of the fol-
10 lowing services:

11 A. Medical services;

12 B. Drug or alcohol programs or services;

13 C. Psychological, psychiatric or counseling ser-
14 vices;

15 D. Educational programs or services;

16 E. Occupational programs or services; or

17 F. Other social services.

18 The court may assess against the parent or legal
19 guardian of the child the cost, or any part of the
20 cost, of services provided under this section.

21 2. Arrangements. The court shall request an in-
22 take worker to provide assistance in arranging ser-
23 vices designated under subsection 1. The intake
24 worker shall report to the court if the child or the
25 child's parents or legal guardian fail to participate
26 in good faith in any services arranged by the intake
27 worker pursuant to the referral by the court under
28 subsection 1.

29 3. Duration. Services provided for under this
30 section may not extend for longer than a 6-month pe-
31 riod. The court shall set the duration of the ser-
32 vices in its referral.

33 The child and the child's parents or legal guardian
34 may agree in writing to an extension of the services
35 beyond the time period set by the court. If an ex-

1 tension is not agreed to and if, upon completion of
2 the initial period of services set by the court, the
3 court, after hearing, determines that the services
4 should be extended for an additional period, not to
5 exceed 6 months, because the court finds that the
6 purposes of the services have not been accomplished
7 and that an extension would be reasonably likely to
8 further those purposes, the court may refer the child
9 or the child and the child's parents or legal guardi-
10 an to continuing services.

11 §295. Failure to appear or participate; appeal

12 1. Appearance and participation. Neither the
13 child nor his parents or legal guardian may be re-
14 quired to appear at the hearing under section 293 or
15 to participate in services arranged under section
16 294.

17 If a child alleged to be in need of services fails to
18 appear at the hearing under section 293, or if a
19 child found to be in need of services fails to par-
20 ticipate in good faith in services arranged under
21 section 294, the court shall cause this fact to be
22 noted in the records of the Department of Corrections
23 for consideration in any subsequent preliminary in-
24 vestigation by an intake worker or dispositional
25 hearings concerning the child under Title 15, chapter
26 507. This notation shall not be a public record, but
27 shall be governed by the provisions of Title 15,
28 chapter 507, concerning inspection of records if the
29 notation becomes part of the records of a juvenile
30 proceeding.

31 If the parents or legal guardian of the child fail to
32 appear at the hearing under section 293, or fail to
33 participate in good faith in services arranged under
34 section 294, the court shall cause this fact to be
35 noted in the records of the Department of Human Ser-
36 vices for consideration in any subsequent child pro-
37 tection investigation or proceedings under Title 22,
38 chapter 107. This notation shall not be a public
39 record, but shall be governed by the provisions of
40 Title 22, chapter 107, concerning confidentiality of
41 records if the notation becomes part of the records
42 of child protective activities.

1 Under section 294, if the court finds at the
2 hearing that a child is in need of services, the
3 court may refer the child or the child and his par-
4 ents or guardian to specific services arranged by an
5 intake worker. The services may last for no more
6 than 6 months, unless the child and his parents or
7 guardian agree to an extension, or unless the court,
8 after another hearing, finds that an extension is
9 needed.

10 Section 295 provides that the child and the
11 child's parents or guardian may not be required to
12 attend a hearing or services resulting from a peti-
13 tion seeking a determination that a child is in need
14 of services. Failure to attend will be noted in ap-
15 propriate records for future consideration in juve-
16 nile proceedings or child protective proceedings con-
17 cerning the child.

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