

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 2150

7 S.P. 849

In Senate, March 5, 1986

8 Approved for introduction by a majority of the Legislative Council  
9 pursuant to Joint Rule 26.

10 Referred to the Committee on Audit and Program Review. Sent down  
for concurrence and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Gauvreau of Androscoggin.

11 Cosponsored by Senator Chalmers of Knox, Representative Taylor of  
Camden and Representative Hayden of Brunswick.

12 STATE OF MAINE  
13

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

17 AN ACT to Require the Department of Human  
18 Services to Pursue Family  
19 Reunification Prior to Termination of  
20 Parental Rights.  
21

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

24 Sec. 1. 22 MRSA §4041, sub-§2, as amended by PL  
25 1983, c. 862, §71, is repealed and the following en-  
26 acted in its place:

27 2. Discontinuation of rehabilitation and  
28 reunification efforts. The following provisions  
29 shall govern discontinuation of rehabilitation and  
30 reunification efforts.

31 A. The department may petition the court pursu-  
32 ant to section 4038 for authorization to discon-  
33 tinue rehabilitation and reunification efforts  
34 with either parent when:

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

3           (2) The parent cannot be located;

4           (3) The parent has abandoned the child;

5           (4) The parent is unwilling or unable to  
6           rehabilitate and reunify with the child; or

7           (5) The parent is unable to appropriately  
8           address the basic needs of the child in the  
9           foreseeable future.

10          B. The court shall authorize the department to  
11          discontinue rehabilitation and reunification ef-  
12          forts with either parent if it can be shown by  
13          clear and convincing evidence that:

14           (1) The parent is willing to consent to  
15           termination of his parental rights;

16           (2) The parent cannot be located;

17           (3) The parent has abandoned the child;

18           (4) The parent is unwilling or unable to  
19           rehabilitate and reunify with the child; or

20           (5) The parent is unable to appropriately  
21           address the basic needs of the child in the  
22           forseeable future.

23          C. If the department discontinues efforts to re-  
24          turn the child to a parent, but does not seek  
25          termination of parental rights, then subsection  
26          1, paragraph A, subparagraph (1), division (e)  
27          and subsection 1, paragraph A, subparagraph (2),  
28          shall still apply, unless otherwise ordered by  
29          the court.

30          Sec. 2. 22 MRSA §4055, sub-§1, as amended by PL  
31          1983, c. 772, §8, is further amended to read:

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

1           A. One of the following conditions has been met:

2           (1) Custody has been removed from the parent under:

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4           (a) Section 4035 or 4038;

5           (b) Title 19, section 213, 214 or 752;

6           or

7           (c) Section 3792 prior to the effective date of this chapter; or

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9           (2) The petition has been filed as part of an adoption proceeding in Title 19, chapter 9; and

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12          B. Either:

13          (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

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

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20          (a) Termination is in the best interest of the child; and

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22          (b) Either:

23               (i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;

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29               (ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;

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34               (iii) The child has been abandoned; or

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(iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041-; and

C. For a child who is in the custody of the department, a petition to discontinue rehabilitation and reunification has been authorized by the court pursuant to section 4041, subsection 2.

#### STATEMENT OF FACT

Although the state law requires the Department of Human Services to develop a plan for family reunification involving children in its custody, the Supreme Judicial Court has recently ruled that failure of the department to fulfill its statutory obligation to facilitate family reunification will not bar the department from seeking termination of parental rights and placing a child up for adoption. In re Crystal S, 483 A 2d 1210 (Me. 1984). There are unusual cases in which it is apparent that family unification would be impossible or impractical and that the child's best interests would be served by an adoption. Current law allows the department to discontinue reunification efforts upon a showing that the parent is willing to consent to termination of parental rights, cannot be located or is unwilling or unable to reunite with the child.

There exists a substantial question as to whether the department must make a prima facie effort towards family reunification, even in cases where the parent will obviously be unable to address the basic needs of the child for the foreseeable future.

This bill requires the department to pursue family reunification efforts in all but the most unusual cases involving children in its custody. When it is apparent that reunification is impossible and contrary to the best interests of the child, the department would be authorized to dispense with its obligation at seeking family reunification. The department would not need to devote its limited resources to

1 cases in which reunification is not realistic. Fur-  
2 thermore, foster children would be quickly placed in  
3 adoptive homes in these cases.

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