

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 2233

6  
7 H.P. 1588

House of Representatives, March 20, 1986

8 Reported by Representative Rolde from the Committee on Audit and  
9 Program Review pursuant to the Maine Revised Statutes Annotated, Title 3,  
Chapter 23.

10 Reference to the Joint Standing Committee on Audit and Program  
Review suggested and printing ordered under Joint Rule 18.

EDWIN H. PERT, Clerk

11  
12 STATE OF MAINE  
13

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

17 AN ACT to Improve Child Welfare Services in  
18 Maine.  
19

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

22 Sec. 1. 22 MRSA §4002, sub-§1, as enacted by PL  
23 1979, c. 733, §18, is amended to read:

24 1. Abuse or neglect. "Abuse or neglect" means a  
25 threat to a child's health or welfare by physical or  
26 mental or emotional injury or impairment, sexual  
27 abuse or exploitation, deprivation of essential needs  
28 or lack of protection from these, by a person respon-  
29 sible for the child.

30 Sec. 2. 22 MRSA §4002, sub-§7-A is enacted to  
31 read:

32 7-A. Permanent plan. "Permanent plan" means a  
33 plan designed to provide long-term stability for a  
34 child, which includes, but need not be limited to:

1 A. Reunification of the child with his family  
2 unless reunification has been determined to be  
3 inappropriate;

4 B. Termination of parental rights for the pur-  
5 poses of adoption;

6 C. Custody to an appropriate person;

7 D. Long-term foster care as defined in section  
8 4064, subsection 1;

9 E. Continued care as provided for in section  
10 4061, subsection 1; and

11 F. Emancipation of the child, if the require-  
12 ments of Title 15, section 3506, are met.

13 Sec. 3. 22 MRSA §4002, sub-§10, ¶B, as enacted  
14 by PL 1979, c. 733, §18, is amended to read:

15 B. Serious mental or emotional injury or impair-  
16 ment, evidenced by which now or in the future is  
17 likely to be evidenced by serious mental, behav-  
18 ioral or personality disorder, including severe  
19 anxiety, depression or withdrawal, untoward ag-  
20 gressive behavior, seriously delayed development  
21 or similar serious dysfunctional behavior; or

22 Sec. 4. 22 MRSA §4003, sub-§3, as enacted by PL  
23 1979, c. 733, §18, is amended to read:

24 3. Reunification as a priority. Give family re-  
25 habilitation and reunification priority as a means  
26 for protecting the welfare of children, but prevent  
27 needless delay for permanent plans for children when  
28 rehabilitation and reunification is not possible; and

29 Sec. 5. 22 MRSA §4008, sub-§3, ¶B, as amended by  
30 PL 1985, c. 495, §18, is further amended to read:

31 B. A court on its finding that access to those  
32 records may be necessary for the determination of  
33 any issue before the court or a court requesting  
34 a report from the department pursuant to Title  
35 19, section 533 or 751. Access to such a report  
36 or record shall be limited to counsel of record

1 unless otherwise ordered by the court. Access to  
2 actual reports or records shall be limited to in  
3 camera inspection, unless the court determines  
4 that public disclosure of the information is nec-  
5 essary for the resolution of an issue pending be-  
6 fore it;

7 Sec. 6. 22 MRSA §4011, sub-§1, as enacted by PL  
8 1985, c. 495, §19, is amended to read:

9 1. Reasonable cause to suspect. When, while act-  
10 ing in his professional capacity, a medical or  
11 osteopathic physician, resident, intern, emergency  
12 medical technician, medical examiner, physician's as-  
13 sistant, dentist, dental hygienist, dental assistant,  
14 chiropractor, podiatrist, registered or licensed  
15 practical nurse, Christian Science practitioner,  
16 teacher, guidance counselor, school official, social  
17 worker, homemaker, home health aide, medical or so-  
18 cial service worker, psychologist, child care person-  
19 nel, mental health professional ~~or~~, law enforcement  
20 official, state fire inspector, municipal code en-  
21 forcement official or municipal fire inspector knows  
22 or has reasonable cause to suspect that a child has  
23 been or is likely to be abused or neglected, he shall  
24 immediately report or cause a report to be made to  
25 the department.

26 A. Whenever a person is required to report in  
27 his capacity as a member of the staff of a medi-  
28 cal or public or private institution, agency or  
29 facility, he shall immediately notify the person  
30 in charge of the institution, agency or facility,  
31 or his designated agent, who shall then cause a  
32 report to be made. The staff may also make a re-  
33 port directly to the department.

34 B. Any person may make a report if that person  
35 knows or has reasonable cause to suspect that a  
36 child has been or is likely to be abused or ne-  
37 glected.

38 D. When, while acting in his professional capac-  
39 ity, any person required to report under this  
40 section knows or has reasonable cause to suspect  
41 that a child has been abused or neglected by a  
42 person not responsible for the child, he shall

1 immediately report or cause a report to be made  
2 to the appropriate district attorney's office,  
3 except as provided in subsection 1-A.

4 Sec. 7. 22 MRSA §4036, sub-§1, ¶G, as enacted by  
5 PL 1979, c. 733, §18, is amended to read:

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

8 Sec. 8. 22 MRSA §4036, sub-§1, ¶G-1 is enacted  
9 to read:

10 G-1. The department has no further responsibili-  
11 ty under section 4041 and, when the child has  
12 been placed in the custody of the department,  
13 shall move forward in a timely fashion to make  
14 permanent plans for the child; or

15 Sec. 9. 22 MRSA §4036, sub-§4 is enacted to  
16 read:

17 4. Disposition of child in custody of depart-  
18 ment. The court may not order that a child who has  
19 been ordered into the custody of the department be  
20 placed with a parent. Nothing in this subsection pre-  
21 vents the department from placing a child in its cus-  
22 tody in the home of a parent for a trial period.

23 Sec. 10. 22 MRSA §4038, sub-§1, as repealed and  
24 replaced by PL 1983, c. 185, is amended to read:

25 1. Mandated review. If a court has made a final  
26 protection order, it shall review the case at least  
27 once within 18 months of the final protection order  
28 and at least every 2 years thereafter, unless the  
29 child has been emancipated or adopted. If the court  
30 has ordered custody to any person, other than a par-  
31 ent or the department, no subsequent judicial review  
32 is required unless petitioned for by any party or un-  
33 less specifically ordered by the court.

34 Sec. 11. 22 MRSA §4038, sub-§2, as repealed and  
35 replaced by PL 1983, c. 185, is amended to read:

36 2. Review on motion. The court, the child's  
37 parent ~~or~~, custodian, or guardian ad litem or a party

1 to the proceeding, except a parent whose rights have  
2 been terminated under subchapter VI, may move for judi-  
3 cial review. The moving party shall have the burden  
4 of going forward.

5 Sec. 12. 22 MRSA §4038, sub-§4, as repealed and  
6 replaced by PL 1983, c. 185, is repealed.

7 Sec. 13. 22 MRSA §4038, sub-§§5, 6 and 7 are en-  
8 acted to read:

9 5. Hearing. The court shall hear evidence and  
10 shall consider the original reason for the adjudica-  
11 tion and disposition under sections 4035 and 4036,  
12 the events that have occurred since then and the ef-  
13 forts of the parties as set forth under section 4041  
14 and shall consider the effect of a change in custody  
15 on the child.

16 6. Disposition. The court may make any further  
17 order, based on a preponderance of evidence, that is  
18 authorized under section 4036. When custody of the  
19 child has been ordered to the department under a fi-  
20 nal protection order or this section, the court must  
21 make a determination within 18 months either to:

22 A. Return the child to his parent;

23 B. Continue reunification efforts for a specific  
24 limited time not to exceed 6 months and to judi-  
25 cially review the matter within the time speci-  
26 fied; or

27 C. Enter an order under section 4036, subsection  
28 1, paragraph G-1.

29 7. Order to return to parent. When the child has  
30 been placed in the custody of the department, before  
31 the court may enter an order returning the custody of  
32 the child to a parent, the parent shall show that he  
33 has carried out his responsibilities set forth in  
34 section 4041, subsection 1, paragraph B, that he is  
35 rectifying and resolving the problems which caused  
36 the removal of the child and any subsequent problems  
37 which would interfere with his ability to care for  
38 and protect his child and that he can protect the  
39 child from jeopardy.

1           Sec. 14. 22 MRSA §4041, sub-§2, as amended by PL  
2 1983, c. 862, §71, is further amended to read:

3           2. Determination of need to commence or discon-  
4 tinue rehabilitation and reunification efforts. The  
5 following provisions shall govern discontinuation of  
6 determine when rehabilitation and reunification ef-  
7 forts are not necessary or may be discontinued.

8           A. The department may either decide to not com-  
9 mence or to discontinue rehabilitation and  
10 reunification efforts with either parent or the  
11 court may order that rehabilitation and  
12 reunification efforts need not commence or that  
13 the department has no further responsibilities  
14 for rehabilitation and reunification with either  
15 parent when:

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

18           (2) The parent cannot be located; ~~or~~

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

21           (4) The parent has acted toward a child in  
22 a manner which is heinous or abhorrent to  
23 society or has failed to protect a child in  
24 a manner which is heinous or abhorrent to  
25 society, without regard to the intent of the  
26 parent; or

27           (5) If the victim of any of the following  
28 crimes was a child for whom the parent was  
29 responsible or the victim was a child who  
30 was a member of a household lived in or  
31 frequented by the parent and the parent has  
32 been convicted of:

33                   (a) Murder;

34                   (b) Felony murder;

35                   (c) Manslaughter;

36                   (d) Aiding or soliciting suicide;

- 1                   (e) Aggravated assault;  
2                   (f) Rape;  
3                   (g) Gross sexual misconduct;  
4                   (h) Sexual abuse of minors;  
5                   (i) Incest;  
6                   (j) Kidnapping;  
7                   (k) Promotion of prostitution; or  
8                   (l) A comparable crime in another ju-  
9                   risdiction.

10           B. When the department discontinues efforts to  
11           return the child to a parent, it shall give writ-  
12           ten notice of this decision to that parent at his  
13           last known address. This notice shall include the  
14           specific reasons for the department's decision,  
15           the specific efforts the department has made in  
16           working with the parent and child and a statement  
17           of the parent's rights under section 4038. This  
18           notice requirement may be met by service of a  
19           copy of a petition to terminate parental rights  
20           under subchapter VI.

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

27           Sec. 15. 22 MRSA §4055, sub-§1-A is enacted to  
28           read:

29           1-A. Rebuttable presumption. The court may pre-  
30           sume that the parent is unwilling or unable to pro-  
31           tect the child from jeopardy and these circumstances  
32           are unlikely to change within a time which is reason-  
33           ably calculated to meet the child's needs if:

34           A. The parent has acted toward a child in a man-  
35           ner which is heinous or abhorrent to society or



1 has failed to protect a child in a manner which  
2 is heinous or abhorrent to society, without re-  
3 gard to the intent of the parent; or

4 B. The victim of any of the following crimes was  
5 a child for whom the parent was responsible or  
6 the victim was a child who was a member of a  
7 household lived in or frequented by the parent  
8 and the parent has been convicted of:

9 (1) Murder;

10 (2) Felony murder;

11 (3) Manslaughter;

12 (4) Aiding or soliciting suicide;

13 (5) Aggravated assault;

14 (6) Rape;

15 (7) Gross sexual misconduct;

16 (8) Sexual abuse of minors;

17 (9) Incest;

18 (10) Kidnapping;

19 (11) Promotion of prostitution; or

20 (12) A comparable crime in another juris-  
21 isdiction.

22 **Sec. 16. Legislative intent.** It is the intent of  
23 the Legislature that the court shall determine what  
24 circumstance constitutes a heinous or abhorrent pa-  
25 rental act or failure to act. The Legislature intends  
26 the court to use its best judgment in making this de-  
27 termination according to generally accepted standards  
28 and mores of performance, behavior and responsibility  
29 in this culture; particularly in regard to the per-  
30 formance, behavior and responsibility of parents  
31 toward their children. The Legislature does not in-  
32 tent the court to base its judgment in any way on the  
33 intent of the parent. The Legislature finds that a

1 parental action or failure to act can be considered  
2 heinous or abhorrent to society without any  
3 malevolent, evil, wicked or abominable intentions;  
4 parental acts or failure to act can be judged as heinous  
5 or abhorrent without regard to conscious or  
6 unconscious parental intent. Finally, the Legislature  
7 finds that when a parent has acted toward a child or  
8 failed to protect a child in a manner which is so unacceptable  
9 as to be heinous or abhorrent, the court  
10 may determine that the act is sufficient to establish  
11 parental unfitness.

12 STATEMENT OF FACT

13 Section 1 of this bill declares that emotional  
14 injury or impairment is a form of abuse or neglect  
15 that threatens a child's health or welfare.

16 Section 2 defines the options available to the  
17 court and to the department when choosing a permanent  
18 plan for a child to provide long-term stability;  
19 "termination of parental rights for the purposes of  
20 adoption" is only one of 6 possibilities for a permanent  
21 plan.

22 Section 3 indicates that serious harm includes  
23 emotional injury or impairment and provides circumstances  
24 by which emotional injury or impairment is  
25 likely to be evidenced currently or in the future.

26 Section 4 declares the Legislature's intent that  
27 the court should continue to place priority on family  
28 rehabilitation and reunification as one means of protecting  
29 the welfare of children, but clearly states  
30 that in cases when rehabilitation and reunification  
31 are not possible, as determined by the court, any delay  
32 in establishing a permanent plan for the child is  
33 needless and should be prevented.

34 Section 5 clarifies that the current limitations  
35 regarding disclosure and access of relevant departmental  
36 information to the courts applies equally to  
37 both departmental records and reports.

1 Section 6 adds state fire inspector, municipal  
2 code enforcement official and municipal fire inspec-  
3 tor to the list of professions mandated to report  
4 child abuse and neglect or suspected child abuse and  
5 neglect.

6 Sections 7 and 8 provides another dispositional  
7 alternative to the court whereby the court may de-  
8 clare that the department has no further responsibil-  
9 ity to conduct rehabilitation and reunification ef-  
10 forts. For children who have been placed in the cus-  
11 tody of the department, the court may declare that  
12 the department shall move forward to make a permanent  
13 plan for the child in a timely fashion, rather than  
14 wait for the outcome of rehabilitation and  
15 reunification efforts.

16 Section 9 declares that the court may not order a  
17 child into the department's custody yet place the  
18 child with his parents. Such a dispositional alter-  
19 native creates serious difficulties and confusion for  
20 both the custodial department and the sheltering par-  
21 ents in regard to parenting the child. The provision  
22 maintains that the department may continue its prac-  
23 tice of placing a child in its custody in the home of  
24 a parent for trial periods.

25 Section 10 declares that judicial reviews will  
26 not be necessary every 2 years if a child is ordered  
27 into the custody of a person who is neither the par-  
28 ent nor the department unless someone specifically  
29 requests that a review be done. There are 3 benefits  
30 to this change. First, friends or relatives in whose  
31 custody a child could be placed are often capable of  
32 raising the child without periodic intervention by  
33 the department and would resent periodic and unneces-  
34 sary intervention. This change allows these capable  
35 custodial parents to raise children without forced  
36 involvement with the department. Second, the re-  
37 sources required to keep track of the custodial par-  
38 ents, the biological parents, the child and any col-  
39 laterals would be substantial. This change allows  
40 the department to focus its limited resources on cli-  
41 ents who are in real need of their services. Third,  
42 the law now requires that a judge conduct a judicial  
43 review according to the 4 principles in the law gov-  
44 erning disposition. These principles require the

1 judge to give custody to a parent if appropriate  
2 conditions are applied. A child placed in custody  
3 with a capable friend or relative would be constantly  
4 threatened with return to the biological parents if  
5 periodic judicial reviews were required, since the  
6 judge would have no choice but to return the child if  
7 appropriate conditions were met, no matter how long  
8 the child had been with his new custodians or how  
9 well the custodial arrangement was working.

10 A judicial review may be requested at any time by  
11 any party, including the department, the custodial  
12 parents, the biological parents or an interested per-  
13 son.

14 Section 11 authorizes the child's guardian ad li-  
15 tem to move for judicial review and specifies that  
16 the moving party has the burden of going forward with  
17 the evidence which means that that party presents the  
18 evidence first in time.

19 Sections 12 and 13 accomplish a number of objec-  
20 tives at the time of the judicial review. First, the  
21 court is compelled to hear all evidence available re-  
22 garding the adjudication and disposition of a child.  
23 Second, the court is compelled to consider the reason  
24 for the original finding of jeopardy and selection of  
25 a disposition. Third, the court is required to con-  
26 sider, as part of its review, the events that have  
27 occurred since the original adjudication and disposi-  
28 tion and the efforts of all the parties involved, in-  
29 cluding the department, to rehabilitate and reunify.  
30 In summary, these provisions will direct the court to  
31 consider the history of the case, thereby discovering  
32 patterns of behavior. Even though these patterns can  
33 have a significant impact on the future welfare of  
34 the child, they need not now be considered by the  
35 court during the judicial review.

36 Section 13 also requires the court to choose one  
37 of 3 dispositional options within 18 months of order-  
38 ing a child into the custody of the department; ei-  
39 ther the child will be returned to his parents,  
40 reunification efforts will be continued for a specifi-  
41 c limited time not to exceed 6 months or the court  
42 will declare that no further rehabilitation or  
43 reunification efforts will be necessary and a perma-  
44 nent plan will be established for the child.

1           The intent of this change is to prevent the child  
2 from lingering in foster care over a long and inde-  
3 terminate period of time. Ideally, the court should  
4 decide at the 18-month judicial review whether the  
5 child should go home, continue in foster care with  
6 rehabilitation and reunification services provided  
7 for a limited additional time to be followed by an-  
8 other judicial review or end rehabilitation and  
9 reunification services and develop some other perma-  
10 nent plan for the child.

11           Section 13 places the burden of proof on the par-  
12 ents to show, prior to the court entering an order  
13 returning the custody of a child who had been placed  
14 in the custody of the department to the parents, that  
15 the parents have accomplished 3 things. First, the  
16 parents have carried out their responsibilities spec-  
17 ified in the rehabilitation and reunification plan.  
18 Second, the parents have demonstrated that the prob-  
19 lems which caused the removal of the child as well as  
20 any subsequent problems which would interfere with  
21 their ability to care for and protect the child have  
22 been rectified and resolved. Third, the parents can  
23 protect the child from jeopardy.

24           Section 14 clarifies that the department may ei-  
25 ther decide not to commence or to discontinue reha-  
26 bilitation or reunification efforts if the circum-  
27 stances listed are present. It also clarifies that  
28 the court may also order that rehabilitation or  
29 reunification efforts need not commence or that the  
30 department has no further responsibilities for reha-  
31 bilitation and reunification with either parent under  
32 the circumstances listed.

33           Section 14 also adds 2 additional circumstances  
34 for which the department may either decide not to  
35 commence or to discontinue rehabilitation or  
36 reunification efforts with either parent or for which  
37 the court may order that rehabilitation and  
38 reunification efforts need not commence or that the  
39 department has no further responsibilities for reha-  
40 bilitation and reunification with either parent.

41           Section 15 provides 2 circumstances in which the  
42 court may make a rebuttable presumption that the par-  
43 ent is unwilling or unable to protect the child from

1 jeopardy and these circumstances are unlikely to  
2 change within a time which is reasonably calculated  
3 to meet the child's needs. If the court makes this  
4 presumption, it may order termination of parental  
5 rights based upon the Maine Revised Statutes, Title  
6 22, section 4055, subsection 1, paragraph B, subpara-  
7 graph (2).

8 Section 16 clarifies Legislative intent for fu-  
9 ture reference regarding the phrase "heinous or ab-  
10 horrent to society" found in the Maine Revised Stat-  
11 utes, Title 22, sections 4041 and 4055.

12

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