

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 415

H.P. 303

House of Representatives, February 23, 1989

Submitted by the Department of Human Services pursuant to Joint Rule 24.
Reference to the Committee on Human Resources suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

Presented by Representative PINES of Limestone.

Cosponsored by Senator WEBSTER of Franklin, Senator BRANNIGAN of Cumberland and Representative ANTHONY of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Amend the Child and Family Services and Child Protection
Act and the Law Governing Shelters for Children.



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

3 **Sec. 1. 22 MRSA §4007, sub-§3,** as enacted by PL 1979, c. 733,
5 §18, is amended to read:

7 **3. Motion for examination.** At any time during the
9 proceeding, ~~after a clear and convincing showing of the necessity~~
11 ~~for information that cannot be obtained by other means,~~ the court
13 may order that a child, parent, alleged parent, person
15 frequenting the household or having custody at the time of the
17 alleged abuse or neglect, any other party to the action or person
19 seeking care or custody of the child be examined ~~by a physician,~~
21 ~~psychologist or psychiatrist~~ pursuant to the Maine Rules of Civil
23 Procedure, Rule 35.

25 **Sec. 2. 22 MRSA §4008, sub-§2, ¶F,** as amended by PL 1987, c.
27 714, §5, and c. 744, §4, is repealed and the following enacted in
29 its place:

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

45 **Sec. 3. 22 MRSA §4008, sub-§2, ¶G,** as amended by PL 1987, c.
47 714, §6 and c. 744, §5, is repealed and the following enacted in
49 its place:

49 G. Any agency or department involved in licensing or
51 approving homes for, or the placement of, children or
53 dependent adults, with protection for identity of reporters
55 and other persons when appropriate;

57 **Sec. 4. 22 MRSA §4008, sub-§2, ¶H,** as enacted by PL 1987, c.
59 714, §7 and c. 744, §6, is repealed and the following enacted in
61 its place:

63 H. Persons and organizations pursuant to Title 5, section
65 9057, subsection 6, and pursuant to chapter 857;

67 **Sec. 5. 22 MRSA §4008, sub-§2, ¶¶I and J** are enacted to read:

69 I. The representative designated to provide child welfare
71 services by the tribe of an Indian child as defined by the
73 Indian Child Welfare Act, United States Code, Title 25,
75 Section 1903; and

1 J. A person making a report of suspected abuse or neglect.
2 Disclosure is limited to whether the department has accepted
3 the report for investigation, unless other disclosure
4 provisions of this section apply.

5
6 **Sec. 6. 22 MRSA §4011, sub-§1**, as amended by PL 1987, c. 744,
7 §8, is further amended to read:

8 **1. Reasonable cause to suspect.** When, while acting in a
9 professional capacity, an adult who is a medical or osteopathic
10 physician, resident, intern, emergency medical services' services
11 person, medical examiner, physician's assistant, dentist, dental
12 hygienist, dental assistant, chiropractor, podiatrist, registered
13 or licensed practical nurse, teacher, guidance counselor, school
14 official, social worker, court appointed special advocate or
15 guardian ad litem for the child, mediator in a divorce action,
16 homemaker, home health aide, medical or social service worker,
17 psychologist, child care personnel, mental health professional,
18 law enforcement official, state fire inspector, municipal code
19 enforcement official or municipal fire inspector knows or has
20 reasonable cause to suspect that a child has been or is likely to
21 be abused or neglected, that person shall immediately report or
22 cause a report to be made to the department.

23
24 **A.** Whenever a person is required to report in a capacity as
25 a member of the staff of a medical or public or private
26 institution, agency or facility, that person shall
27 immediately notify either the person in charge of the
28 institution, agency or facility, or a designated agent, who
29 shall then cause a report to be made. The staff may also
30 make a report directly to the department.

31
32 **B.** Any person may make a report if that person knows or has
33 reasonable cause to suspect that a child has been or is
34 likely to be abused or neglected.

35
36 **D.** When, while acting in a professional capacity, any
37 person required to report under this section knows or has
38 reasonable cause to suspect that a child has been abused or
39 neglected by a person not responsible for the child, the
40 person shall immediately report or cause a report to be made
41 to the appropriate district attorney's office.

42
43 **Sec. 7. 22 MRSA §4021, sub-§3, ¶A**, as enacted by PL 1981, c.
44 369, §10, is amended to read:

45
46 **A.** The department may interview a child without prior
47 notification to the parent or custodian when the child
48 contacts the department, a person providing services to the
49 child puts the child into contact with the department, or
50 when the department has reasonable grounds to believe that
51

1 prior notice would increase the threat of serious harm to
the child or another person.

3
5 **Sec. 8. 22 MRSA §4023, sub-§2**, as enacted by PL 1979, c. 773,
§18, is amended to read:

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

- 13 A. Threatened with serious harm;
- 15 B. A runaway from ~~his~~ the child's parents or custodian; or
- 17 C. Without any person responsible for ~~him,~~ the child; or
- 19 D. Taken into interim care by a law enforcement officer.

21 **Sec. 9. 22 MRSA §4023, sub-§4, ¶A**, as amended by PL 1983, c.
354, §5, is further amended to read:

23 A. Prior to or on initiating short-term emergency services,
25 the department or agency shall take reasonable steps to
notify a custodian that the child will receive or is
27 receiving the services. Notwithstanding this subsection,
shelters for homeless children, as defined in section 8101,
subsection 4-A, are governed by the parental notification
29 requirements contained in the Department of Human Services
rules for the licensure of shelters for homeless children.

31 **Sec. 10. 22 MRSA §4023, sub-§5**, as enacted by PL 1979, c. 733,
33 §18, is amended to read:

35 5. **Time limit.** Short-term emergency services shall not
exceed 72 hours from the time of the department's assumption of
37 responsibility for the child. Notwithstanding this subsection
shelters for homeless children, as defined in section 8101,
39 subsection 4-A, are governed by the time limits requirements
contained in the Department of Human Services rules for the
41 licensure of shelters for homeless children.

43 **Sec. 11. 22 MRSA §4024** is enacted to read:

45 **§4024. Interim care**

47 1. Interim care. A child may be taken into interim care by
a law enforcement officer without order by the court when the
49 officer has reasonable grounds to believe that the child is in
immediate risk of serious harm and that immediate care is
51 necessary for the child's protection.

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2. Limit. Under no circumstances may the child be held for more than 6 hours.

3. Notification. Prior to or upon initiating interim care, the law enforcement officer or department shall take reasonable steps to notify a custodian of the action being taken and services being provided.

Sec. 12. 22 MRSA §4031, sub-§1, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

~~B. The Probate Court and the Superior Court shall have concurrent jurisdiction to hear petitions under sections 4032 and act on requests for preliminary child protection orders under section 4034. The As soon as the action is taken by the Probate Court may transfer a case or the Superior Court, the matter shall be transferred to the District Court on the motion of any party or its own motion. The Probate Court order shall remain in effect unless modified by the District Court.~~

Sec. 13. 22 MRSA §4031, sub-§1, ¶C, as enacted by PL 1985, c. 547, is repealed.

Sec. 14. 22 MRSA §4033, sub-§3, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

~~B. Service in accordance with the District Court Civil Rules Maine Rules of Civil Procedure. Notwithstanding the Civil Rules Maine Rules of Civil Procedure, service by publication of a preliminary protection order shall be complete 5 days after a single publication not be required for a party whose whereabouts are unknown; or~~

Sec. 15. 22 MRSA §4038, sub-§6, as enacted by PL 1985, c. 739, §14, is amended to read:

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

~~A. Return the child to his parent;~~

~~B. Continue reunification efforts for a specific limited time not to exceed 6 months and to judicially review the matter within the time specified; or~~

1 ~~C. Enter an order under section 4036, subsection 1,~~
3 ~~paragraph G-1.~~

5 Sec. 16. 22 MRSA §4038, sub-§7, as enacted by PL 1985, c. 739,
7 §14, is repealed and the following enacted in its place:

9 7. Review of child in custody of the department. When a
child has been placed in the custody of the department, the
following shall be accomplished.

11 A. The court shall review the final protection order and
make a determination within 18 months of its initial order
13 either to:

15 (1) Return the child to the parent;

17 (2) Continue reunification efforts for a specific
limited time not to exceed 6 months and to judicially
19 review the matter within the time specified; or

21 (3) Enter an order under section 4036, subsection 1,
paragraph G-1.

23 B. Before the court may enter an order returning the
custody of the child to a parent, the parent shall show that
25 the parent has carried out the responsibilities set forth in
section 4041, subsection 1, paragraph B, that, to the
27 court's satisfaction, the parent has rectified and resolved
the problems which caused the removal of the child and any
29 subsequent problems which would interfere with the parent's
ability to care for and protect the child from jeopardy and
31 that the parent can protect the child from jeopardy.

33 Sec. 17. 22 MRSA §8101, sub-§4-A is enacted to read:

35 4-A. Shelter for homeless children. "Shelter for homeless
37 children" means an emergency shelter designed to provide for the
overnight lodging and supervision of children 10 years of age or
39 older for no more than 30 consecutive overnights.

41 **STATEMENT OF FACT**

43 This bill amends several parts of the Child and Family
45 Services and Child Protection Act.

47 Section 1 serves 2 purposes. First, it clarifies how the
49 District Court is to handle motions for psychological, medical or
51 paternity examinations by providing that the Maine Rules of Civil
Procedure will govern such motions, thereby providing an
established body of law for the parties and court to utilize.

1 Second, because of the recent Law Court decision in In Re:
3 Michael V., there have been some questions about motions for
5 examinations. This revision makes it clear that the court has
the discretion to deal with such requests and connects this
section to established rules regarding discovery.

7 Sections 2 through 5 correct errors and inconsistencies in
the Maine Revised Statutes, Title 22, section 4008, subsection 2.

9
11 Section 5, in section 4008, subsection 2, paragraph J,
explicitly permits the Department of Human Services to inform
13 reporters whether their reports are being accepted for
investigation.

15 Section 6 adds 2 groups to the list of mandated reporters,
at their request: court appointed special advocates, who serve
17 as guardians ad litem in child protection court cases, and
mediators in divorce cases.

19
21 Section 7 clarifies the circumstances under which the
department can interview a child without prior notice to the
parent.

23
25 Section 8 links authorization for short-term emergency
services by the department to the 6-hour interim care by law
enforcement.

27
29 Section 9 adds an exemption to the notice requirement for
short-term emergency services. The exemption is in accordance
31 with the department's rules for the licensure of shelters for
homeless children which were developed to provide for "street
33 kids." The rules permit services in the shelter for up to 3
successive nights without notice to the child's guardian if the
35 child makes this request in writing. For a 4th night, if the
child does not agree to a contact with the guardian, a referral
must be made to the department which must attempt to contact the
37 custodian.

39
41 Section 10 adds an exemption to the length of time
short-term emergency services can be provided. The exemption is
43 in accordance with the department's rules for the licensure of
shelters for homeless children. The rules authorize shelter care
45 services only from 4 p.m to 9 a.m. Moreover, a child may stay
for up to 3 nights without notice to the guardian. This may
slightly exceed 72 hours. A 4th night, while the department is
attempting to contact the custodian, would likely exceed 72 hours.

47
49 Section 11 explicitly states in the child protection laws
the authority of a law enforcement officer to take a child into
6-hour hold. The interim care 6-hour hold by law enforcement
51 provision in the Maine Juvenile Code, Maine Revised Statutes,

1 Title 15, section 3501, is used on occasion in child protection
3 cases when the child is in immediate risk of serious harm in
5 order to give the department caseworker time to request a
7 preliminary protection order from the court. To make the
9 authorization clear, it should also be stated in the Maine
11 Revised Statutes, Title 22, chapter 1071. The language proposed
13 deletes references to detention and criminal matters which are
15 irrelevant in this context.

17
19 Sections 12 and 13 provide for automatic transfer of child
21 protection cases to the District Court from the Probate Court by
23 deleting language in section 4031, subsection 1, paragraph B and
25 incorporating entirely the language of section 4031, subsection
27 1, paragraph C regarding the use of Superior Court and automatic
transfer to the District Court. This change provides for
consistency in management of jurisdiction.

31
33 Section 14 deletes the requirement of service by publication
35 for a hearing on a preliminary protection order when a party's
37 whereabouts are unknown. Since the enactment of this law 10
39 years ago, the appearance of a person served in this manner has
41 been extremely rare. Continuances because of the publication
complications have frequently deprived custodial parents of a
prompt hearing. Service by publication would still be required
for any absent party prior to any hearing on the basic petition
for a child protection order.

Sections 15 and 16 are intended to require that the court
review a final protection order, but that the review take place
within 18 months of any order placing custody in the department.

31
33 Section 17 defines shelter for homeless children. In order
35 to meet the needs of "street kids," the department has developed
37 rules for the licensure of shelters for homeless children. The
39 new category of shelter for homeless children is not open 24
41 hours a day, operation hours being limited to no earlier than 4
p.m. to no later than 9 a.m. Notification to the child's
guardian that the child is receiving shelter care may be delayed
when specific conditions are met. A new statutory definition is
necessary for this type of shelter. The rules developed by the
department describe the procedures and requirements for licensing
of shelters for homeless children.