

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1683

S.P. 635

In Senate, April 24, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

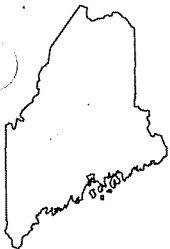
Presented by Senator BOST of Penobscot

Cosponsored by Representative ANTHONY of South Portland, Representative CHONKO of Topsham and Senator BRANNIGAN of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Concerning Children in Need of Social Services.



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

4 Sec. 1. 15 MRSA §3003, sub-§14-B, as enacted by PL 1985, c.
439, §4, is amended to read:

6 14-B. **Juvenile caseworker.** "Juvenile caseworker" means an
agent of the Department of Corrections authorized:

8 A. To perform juvenile probation functions;

10 B. To provide appropriate services to juveniles committed
12 to the Maine Youth Center who are on leave or in the
community on entrustment; and

14 C. To perform all caseworker functions established by this
16 Part for a juvenile alleged to have committed a juvenile
crime; and

18 D. To perform all caseworker functions for a child in need
20 of services pursuant to Title 19, chapter 5, subchapter IV.

22 Sec. 2. 19 MRSA c. 5, sub-c. IV is enacted to read:

24 SUBCHAPTER IV

26 CHILDREN IN NEED OF SERVICES

28 §291. Definitions

30 As used in this subchapter, unless the context otherwise
32 indicates, the following terms have the following meanings.

34 1. Child in need of services. "Child in need of services"
36 means a child under 18 years of age who persistently runs away
38 from the home of the child's parents or legal guardian or
40 persistently refuses to obey the lawful and reasonable commands
42 of the child's parents or legal guardian, resulting in the
parent's or guardian's inability to adequately care for and
protect the child, or a child 7 years of age or older and under
17 years of age who persistently fails to attend school or
persistently violates the lawful and reasonable regulations of
the child's school.

44 2. Juvenile caseworker. "Juvenile caseworker" means the
46 same as in Title 15, section 3003, subsection 14-B.

48 §292. Procedures

50 1. Jurisdiction. The District Court has jurisdiction over
52 any petition seeking a determination that a child is in need of
services.

2 2. Venue. The venue of a petition seeking a determination
3 that a child is in need of services is governed by Title 22,
4 section 4031, subsection 2.

5 3. Conduct of proceedings. All court proceedings
6 concerning a petition seeking a determination that a child is in
7 need of services are conducted according to the Maine Rules of
8 Civil Procedure and the Maine Rules of Evidence, except as
9 otherwise provided in this subchapter. At the request of a
10 party, the proceedings must be recorded. All proceedings and
11 records are closed to the public, unless the court orders
12 otherwise.

13 4. Out-of-court statements. The court may admit and
14 consider oral or written evidence of out-of-court statements made
15 by a child alleged to be in need of services and may rely on that
16 evidence to the extent of its probative value.

17 **§293. Petition and hearing**

18 1. Petitioners. A parent, a legal guardian having custody
19 of the child or a law enforcement officer may petition the court
20 alleging that the child persistently runs away from the home of
21 the parent or guardian or persistently refuses to obey the lawful
22 and reasonable commands of the parent or guardian, resulting in
23 the parent's or guardian's inability to adequately care for and
24 protect the child. The child's school principal may petition the
25 court alleging that the child persistently fails to attend school
26 or persistently violates the lawful and reasonable regulations of
27 the school.

28 2. Contents of petition. A petition must be sworn to and
29 include at least the following:

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

32 B. The name and address of the petitioner and nature of the
33 petitioner's relationship to the child;

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

36 D. A summary statement of the facts that the petitioner
37 believes constitute the basis for the petition;

38 E. An allegation that is sufficient for court action;

39 F. A request for specific court action;

40 G. A statement that the child is entitled to legal counsel
41 in the proceedings and that, if the child is not able to
42 in the proceedings and that, if the child is not able to

2 retain counsel, the court shall appoint counsel for the
3 child, and that the child or the child's parent or legal
4 guardian should contact the court as soon as possible to
5 request appointed counsel;

6 H. A statement that failure by the child to appear in court
7 and to participate in good faith in any service to which the
8 child is referred by the court is noted by the court in the
9 records of the Department of Corrections and considered in
10 any subsequent preliminary investigation by a juvenile
11 caseworker or dispositional hearing concerning the child
12 under Title 15, chapter 507; and

13 I. A statement that failure by the child's parents or legal
14 guardian to appear in court or to participate in good faith
15 in any services to which the parent or legal guardian is
16 referred by the court is noted by the court in the records
17 of the Department of Human Services and considered in any
18 subsequent child protection investigation or proceedings
19 concerning the child under Title 22, chapter 1071.

20 3. Notice. The petition and notice of hearing must be
21 served on the child alleged to be in need of services and, if
22 either of the child's parents or the child's legal guardian is
23 not the petitioner, on that parent or legal guardian, at least 10
24 days prior to the hearing date. Service is made in accordance
25 with the District Court Civil Rules.

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

28 4. Right to counsel. When a child alleged to be in need of
29 services appears before the court, the court shall inform the
30 child of the right to counsel and, if the child is not able to
31 retain counsel and does not have appointed counsel, shall appoint
32 counsel for the child. The court may assess against the parent
33 or legal guardian of the child the cost, or any part of the cost,
34 of counsel appointed to represent the child.

35 5. Hearing. The court shall hold a hearing prior to
36 referring the child to a juvenile caseworker for arrangement of
37 services. After hearing evidence in the adjudicatory phase of
38 the hearing, the court shall make a finding, by a preponderance
39 of the evidence, whether the child is in need of services.

40 If the court determines that the child is in need of services,
41 the court shall hear any relevant evidence regarding proposed
42 services, including written or oral reports, recommendations or
43 plans. Prior to the referral phase of the hearing, the court may
44 request a juvenile caseworker to make a preliminary inquiry and
45 report in writing to the court any recommendations or plans for
46 services for the child or the child and the child's parents or
47 guardian.

2 legal guardian. Written materials to be offered as evidence in
3 the referral phase of the hearing must be made available to each
4 party's counsel reasonably in advance of the referral phase.

5 If possible, the referral phase of the hearing is conducted
6 immediately after the adjudicatory phase. The court may refer
7 the child or the child's parent or legal guardian to any of the
8 services in section 294.

10 **§294. Services**

12 1. Referral. After hearing under section 293, the court
13 may refer the child or the child and the child's parents or legal
14 guardian to any of the following services:

16 A. Medical services;

18 B. Drug or alcohol programs or services;

20 C. Psychological, psychiatric or counseling services;

22 D. Educational programs or services;

24 E. Occupational programs or services; or

26 F. Other social services.

28 The court may assess against the parent or legal guardian of the
29 child the cost, or any part of the cost, of services provided
30 under this section.

32 2. Arrangements. The court shall request a juvenile
33 caseworker to provide assistance in arranging services designated
34 under subsection 1. The juvenile caseworker shall report to the
35 court if the child or the child's parents or legal guardian fail
36 to participate in good faith in any services arranged by the
37 juvenile caseworker pursuant to the referral by the court under
38 subsection 1.

40 3. Duration. Services provided for under this section may
41 not extend for longer than a 6-month period. The court shall set
42 the duration of the services in its referral.

44 The child and the child's parents or legal guardian may agree in
45 writing to an extension of the services beyond the time period
46 set by the court. If an extension is not agreed to and if, upon
47 completion of the initial period of services set by the court,
48 the court, after hearing, determines that the services should be
49 extended for an additional period, not to exceed 6 months,
50 because the court finds that the purposes of the services have
51 not been accomplished and that an extension is reasonably likely
52 to further those purposes, the court may refer the child or the

2 child and the child's parents or legal guardian to continue
3 services.

4 **§295. Failure to appear or participate; appeal**

6 **1. Appearance and participation.** Neither the child nor the
7 child's parents or legal guardian may be required to appear at
8 the hearing under section 293 or to participate in services
9 arranged under section 294.

10 If a child alleged to be in need of services fails to appear at
11 the hearing under section 293, or if a child found to be in need
12 of services fails to participate in good faith in services
13 arranged under section 294, the court shall cause this fact to be
14 noted in the records of the Department of Corrections for
15 consideration in any subsequent preliminary investigation by a
16 juvenile caseworker or dispositional hearings concerning the
17 child under Title 15, chapter 507. This notation is a public
18 record, but is governed by the provisions of Title 15, chapter
19 507, concerning inspection of records if the notation becomes
20 part of the records of a juvenile proceeding.

21 If the parents or legal guardian of the child fail to appear at
22 the hearing under section 293, or fail to participate in good
23 faith in services arranged under section 294, the court shall
24 cause this fact to be noted in the records of the Department of
25 Human Services for consideration in any subsequent child
26 protection investigation or proceedings under Title 22, chapter
27 1071. This notation is not a public record, but is governed by
28 the provisions of Title 22, chapter 1071, concerning
29 confidentiality of records if the notation becomes part of the
30 records of child protective activities.

31 **2. Appeal.** A party aggrieved by a finding or referral
32 under this chapter may appeal to the Superior Court in accordance
33 with the District Court Civil Rules.

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38 **STATEMENT OF FACT**

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41 This bill provides an opportunity for a court to review the
42 circumstances of a child who runs away from home, refuses to obey
43 the child's parents or guardian or fails to attend school. If
44 the court, upon the petition of a parent or guardian, law
45 enforcement officer or school principal, finds that the child is
46 in need of services the court may refer the child, or the child
47 and the child's parents or guardian, to a juvenile caseworker for
48 the arrangement of medical, psychological or other social
49 services.

50
51 The child found in need of services has not committed a
52 crime under this bill. The child is not penalized but rather is

2 given an opportunity for help. Neither the child nor the child's
3 parents or guardian may be required to attend a hearing or any
4 services resulting from a petition alleging a child to be in need
5 of services. Failure to attend will, however, be noted in
6 records, to be kept confidential, that will be available in any
subsequent juvenile proceeding or child protective proceedings
concerning the child.