

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1597

S.P. 551

In Senate, May 5, 2003

An Act To Implement Federal Requirements in Child Protection Matters

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services 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 BRENNAN of Cumberland.
Cosponsored by Representative KANE of Saco and
Representatives: CURLEY of Scarborough, EARLE of Damariscotta, LAVERRIERE-
BOUCHER of Biddeford.

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

2
4 Sec. 1. 22 MRSA §4036-B is enacted to read:

6 §4036-B. Removal of child from home

8 1. Application. The provisions of this section apply in
any case in which the court orders, or has ordered, the removal
of a child from home.

10 2. Welfare of child. Before a court may order removal of a
12 child from home, the court must specifically find that remaining
in the home is contrary to the welfare of the child.

14 3. Reasonable efforts to prevent removal. The department
16 shall make reasonable efforts to prevent removal of the child
from home, unless the court finds immediate risk of serious
18 harm. In an order providing for removal of the child from home,
or within 60 days of the date of removal of the child from home,
20 the court shall make a finding:

22 A. Whether or not the department has made reasonable
efforts to prevent the removal of the child from home; and

24 B. If the court finds that the department did not make
26 reasonable efforts to prevent the removal of the child from
home, whether or not there is an immediate risk of serious
28 harm.

30 4. Reasonable efforts to reunify. The department shall
make reasonable efforts to rehabilitate and reunify the family as
32 provided in section 4041, subsection 1-A unless the court has
ordered that the department need not commence or may cease
34 reunification pursuant to section 4041, subsection 2. In the
jeopardy order pursuant to section 4035 and in each judicial
36 review order pursuant to section 4038, the court shall make a
finding whether or not the department has made reasonable efforts
38 to rehabilitate and reunify the family.

40 5. Reasonable efforts to finalize permanency plan. The
department shall make reasonable efforts to finalize the
42 permanency plan. In each order determining a permanency plan
pursuant to section 4038, subsection 7-A, the court shall make a
44 finding whether or not the department has made reasonable efforts
to finalize the permanency plan.

46 6. Requirements for findings. A court order making any
48 finding required by this section must:

50 A. Be in writing;

2 B. State that the finding was based on the specific facts
4 and circumstances relating to the child; and

6 C. Explicitly document the basis for the finding.

8 **Sec. 2. 22 MRSA §4038, sub-§1-A, ¶A,** as enacted by PL 1987, c.
269, §2, is amended to read:

10 A. When custody has been granted to a person other than a
12 parent or the department; or

14 **Sec. 3. 22 MRSA §4038, sub-§1-A, ¶B,** as amended by PL 1997, c.
475, §3, is further amended to read:

16 B. When custody has been granted to a parent who did not
18 have custody at the time the child protection petition was
filed.

20 **Sec. 4. 22 MRSA §4038, sub-§1-A, ¶C,** as amended by PL 1997, c.
475, §3, is repealed.

22 **Sec. 5. 22 MRSA §4038, sub-§1-A, ¶D,** as enacted by PL 1997, c.
24 475, §4, is repealed.

26 **Sec. 6. 22 MRSA §4038, sub-§5,** as enacted by PL 1985, c. 739,
28 §14, is amended to read:

30 **5. Hearing.** The court shall hear evidence and shall
32 consider the original reason for the adjudication and disposition
under sections 4035 and 4036, the events that have occurred since
34 then and the efforts of the parties as set forth under section
4041 ~~and shall consider the effect of a change in custody on the~~
child. After hearing, the court shall make written findings that
determine:

36 A. The safety of the child in the child's placement;

38 B. The continuing necessity for and appropriateness of the
40 child's placement;

42 C. The effect of a change in custody on the child;

44 D. The extent of the parties' compliance with the case plan
46 and the extent of progress that has been made toward
alleviating or mitigating the causes necessitating placement
48 in foster care;

2 E. A likely date by which the child may be returned to and
3 safely maintained in the home or placed for adoption or
4 legal guardianship; and

5 F. If the child is 16 years of age or older, whether or not
6 the child is receiving instruction to aid the child in
7 independent living.

8
9 **Sec. 7. 22 MRSA §4052, sub-§2-A,** as enacted by PL 1997, c.
10 715, Pt. B, §14, is amended to read:

11 **2-A. Department as petitioner or as party.** The department
12 shall file a termination petition or seek to be joined as a party
13 to any pending petition ~~in the following circumstances:~~

14
15 A. A When a child has been in foster care for 15 of the
16 most recent 22 months. This paragraph does not apply if the
17 department is required to undertake reunification efforts
18 and the department has not provided to the family of the
19 child such services as the department determines to be
20 necessary for the safe return of the child to the child's
21 home consistent with the time period in the case plan; or
22 The department must file the petition before the end of the
23 child's 15th month in foster care. In calculating when to
24 file a termination petition:

25
26 (1) The time the child has been in foster care begins
27 when the child is considered to have entered foster
28 care as specified in section 4038, subsection 7-A,
29 paragraph A;

30
31 (2) When a child experiences multiple exits from and
32 entries into foster care during the 22-month period,
33 all periods in foster care must be accumulated; and

34
35 (3) The time in foster care does not include trial
36 home visits or times during which the child is a
37 runaway.

38
39 This paragraph does not apply if the department is required
40 to undertake reunification efforts and the department has
41 not provided to the family of the child such services as the
42 department determines to be necessary for the safe return of
43 the child to the child's home consistent with the time
44 period in the case plan;

45
46 B. A Within 60 days of a court order that includes a
47 finding of an aggravating factor and an order to cease
48 reunification; or

