LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine

PUBLIC LAWS

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1985

cludes current rules and proposals to remove any inconsistencies that exist.

Both reports shall be submitted to the Maine Committee on Aging at the same time they are submitted to the legislative committee. The Maine Committee on Aging shall submit any comments on these reports to the joint standing committee of the Legislature having jurisdiction over human resources within 3 months and 5 months, respectively, of the effective date of this Act.

Effective July 16, 1986.

CHAPTER 739

H.P. 1588 - L.D. 2233

AN ACT to Improve Child Welfare Services in Maine.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Maine, like the nation, is experiencing an increase in referrals alleging all types of child abuse and neglect; and

Whereas, ensuring that Maine children are protected from abuse and neglect is vitally important; and

Whereas, clarifying procedures used by the Department of Human Services and the courts to protect children from abuse and neglect is necessary; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

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

1. Abuse or neglect. "Abuse or neglect" means a threat to a child's health or welfare by physical ~~or~~ , mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.

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

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

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

B. Termination of parental rights for the purposes of adoption;

C. Custody to an appropriate person;

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

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

F. Emancipation of the child, if the requirements of Title 15, section 3506, are met.

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

B. Serious mental or emotional injury or impairment, ~~evidenced by~~ which now or in the future is likely to be evidenced by serious mental, behavioral or personality disorder, including severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously delayed development or similar serious dysfunctional behavior; or

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

3. Reunification as a priority. Give family rehabilitation and reunification priority as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible; and

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

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a report from the department pursuant to Title 19, section 533 or 751. Access to such a report or record shall be limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it;

Sec. 6. 22 MRSA §4008, sub-§5 is enacted to read:

5. Retention of unsubstantiated child protection services records. The department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period.

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

1. Reasonable cause to suspect. When, while acting in his professional capacity, a medical or osteopathic physician, resident, intern, emergency medical technician, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, guidance counselor, school official, social worker, homemaker, home health aide, medical or social service worker, psychologist, child care personnel, mental health professional ~~or~~, law enforcement official, state fire inspector, municipal code enforcement official or municipal fire inspector knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, he shall immediately report or cause a report to be made to the department.

A. Whenever a person is required to report in his capacity as a member of the staff of a medical or public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then cause a report to be made. The staff may also make a report directly to the department.

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

D. When, while acting in his professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, he shall immediately report or cause a report to be made to the appropriate district attorney's office, except as provided in subsection 1-A.

Sec. 8. 22 MRSA §4036, sub-§1, ¶G, as enacted by PL 1979, c. 733, §18, is amended to read:

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

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

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

Sec. 10. 22 MRSA §4036, sub-§4 is enacted to read:

4. Disposition of child in custody of department. The court may not order that a child who has been ordered into the custody of the department be placed with a parent. Nothing in this subsection prevents the department from placing a child in its custody in the home of a parent for a trial period.

Sec. 11. 22 MRSA §4038, sub-§1, as repealed and replaced by PL 1983, c. 185, is amended to read:

1. Mandated review. If a court has made a final protection order, it shall review the case at least once within 18 months of the final protection order and at least every 2 years thereafter, unless the child has been emancipated or adopted. If the court has ordered custody to any person, other than a parent or the department, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court.

Sec. 12. 22 MRSA §4038, sub-§2, as repealed and replaced by PL 1983, c. 185, is amended to read:

2. Review on motion. The court, the child's parent ~~or~~, custodian, or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

Sec. 13. 22 MRSA §4038, sub-§4, as repealed and replaced by PL 1983, c. 185, is repealed.

Sec. 14. 22 MRSA §4038, sub-§§5, 6 and 7 are enacted to read:

5. Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since 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.

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

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

7. Order to return to parent. When the child has been placed in the custody of the department, before the court may enter an order returning the custody of the child to a parent, the parent shall show that he has carried out his responsibilities set forth in section 4041, subsection 1, paragraph B, that, to the court's satisfaction, he has rectified and resolved the problems which caused the removal of the child and any subsequent problems which would interfere with his ability to care for and protect his child from jeopardy and that he can protect the child from jeopardy.

Sec. 15. 22 MRSA §4041, sub-§2, as amended by PL 1983, c. 862, §71, is further amended to read:

2. Determination of need to commence or discontinue rehabilitation and reunification efforts. The following provisions shall ~~govern discontinuation of~~ determine when rehabilitation and reunification efforts are not necessary or may be discontinued.

A. The department may either decide to not commence or to discontinue rehabilitation and reunification efforts with either parent or the court may order that rehabilitation and reunification efforts need not commence or that the department has no further responsibilities for rehabilitation and reunification with either parent when:

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

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

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

(4) The parent has abandoned the child;

(5) The parent has acted toward a child in a manner which is heinous or abhorrent to society or has failed to protect a child in a manner which is heinous or abhorrent to society, without regard to the intent of the parent; or

(6) If the victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:

(a) Murder;

(b) Felony murder;

(c) Manslaughter;

(d) Aiding or soliciting suicide;

(e) Aggravated assault;

(f) Rape;

(g) Gross sexual misconduct;

(h) Sexual abuse of minors;

(i) Incest;

(j) Kidnapping;

(k) Promotion of prostitution; or

(l) A comparable crime in another jurisdiction.

B. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at his last known address. This notice shall include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. This notice requirement ~~may be met by~~ must precede service of a copy of a petition to terminate parental rights under subchapter VI.

C. If the department discontinues efforts to return the child to a parent, but does not seek termination of parental rights, then subsection 1, paragraph A, subparagraph (1), division (e) and subsection 1, paragraph A, subparagraph (2), shall still apply.

Sec. 16. 22 MRSA §4055, sub-§1-A is enacted to read:

1-A. Rebuttable presumption. The court may presume that 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 if:

A. The parent has acted toward a child in a manner which is heinous or abhorrent to society or has failed to protect a child in a manner which is heinous or abhorrent to society, without regard to the intent of the parent; or

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

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding or soliciting suicide;

(5) Aggravated assault;

(6) Rape;

(7) Gross sexual misconduct;

(8) Sexual abuse of minors;

(9) Incest;

(10) Kidnapping;

(11) Promotion of prostitution; or

(12) A comparable crime in another jurisdiction.

Sec. 17. 22 MRSA §4058 is enacted to read:

§4058. Sunset provision

The provision in chapter 1071 dealing with family rehabilitation and reunification shall be reviewed in accordance with the Maine Sunset Act, Title 3, chapter 23, no later than June 30, 1989.

Sec. 18. Legislative intent. It is the intent of the Legislature that the court shall determine what circumstance constitutes a heinous or abhorrent parental act or failure to act. The Legislature intends the court to use its best judgment in making this determination according to generally accepted standards and mores of performance, behavior and responsibility in this culture; particularly in regard to the performance, behavior and responsibility of parents toward their children. The Legislature does not intend the court to base its judgment in any way on the intent of the parent. The Legislature finds that a parental action or failure to act can be considered heinous or abhorrent to society without any malevolent, evil, wicked or abominable intentions; parental acts or failure to act can be judged as heinous or abhorrent without regard to conscious or unconscious parental intent. Finally, the Legislature finds that when a parent has acted toward a child or failed to protect a child in a manner which is so unacceptable as to be heinous or abhorrent, the court may determine that the act is sufficient to establish parental unfitness.

Sec. 19. Allocation. The following funds are allocated from federal funds to carry out the purposes of this Act.

	1985-86	1986-87
HUMAN SERVICES, DEPARTMENT OF		
Bureau of Social Services		
Positions	(1)	(1)
Currently available federal funds from Title IV-B will be used to support changing the institutional abuse program specialist from a part-time position to a full-time position.		

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective April 18, 1986.

CHAPTER 740

H.P. 1656 - L.D. 2327

AN ACT to Permit Transmission of Electricity Between Affiliated Industrial Enterprises and to Study Power Purchases and Other Aspects of Transmission of Electrical Energy through the State.

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

Sec. 1. 35 MRSA §2330 is enacted to read:

§2330. Transmission or wheeling of electric power

1. Affiliated industrial enterprises. Upon the request of an industrial enterprise located in the State to transmit or wheel electric energy to another industrial facility in the State owned in whole or in part by or otherwise affiliated with the enterprise, the electric utility shall enter into an agreement of