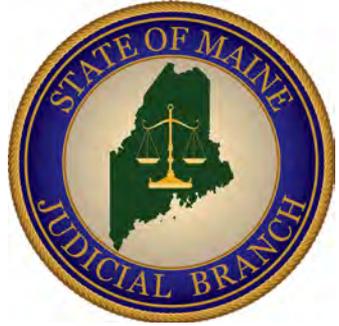


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A GUIDE FOR

Families in Child Protection Cases

Published by

Maine Judicial Branch
Administrative Office of the Courts

January 2018

IMPORTANT INFORMATION

Use this space to write down dates, times, and places of court hearings and other information. Ask your lawyer about any information that you find unclear.

Your Lawyer

Name _____

Address _____

Phone _____

Email _____

Department Caseworker

Name _____

Phone _____

Email _____

Supervisor's name _____

Phone _____

Email _____

Guardian ad Litem (GAL)

Name _____

Phone _____

Email _____

*Child Welfare Ombudsman

Phone: (207) 213-4773

Email: ombudsman@cwombudsman.org

Preliminary Protection Hearing

Date & Time _____

Place _____

**This program provides a trained person to look into complaints when you have not been able to resolve an issue with the Department. The Ombudsman Program is independent of the Department.*

Case Management Conference

Date & Time _____

Place _____

Visiting Schedule

Day(s) & Time(s) _____

Place _____

Family Team Meeting

Date & Time _____

Place _____

COURT DATES

Jeopardy Hearing

Date & Time _____

Place _____

Judicial Review Hearing

Date & Time _____

Place _____

Judicial Review Hearing (second)

Date & Time _____

Place _____

Termination of Parental Rights Hearing

Date & Time _____

Place _____

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Important Disclaimer

The specific requirements concerning your case are contained in the statutes, rules, and administrative orders. This is only a guide.

INTRODUCTION — *What is this guide for?*

This guide will help you understand your rights and responsibilities, and what happens in a Child Protection case (Protective Custody or “PC” case).

The guide will also help family members and others who have a significant relationship with your child understand how they may be able to attend or participate in a PC case.

A PC case can be very upsetting and confusing for parents and children.

This guide will help you know what the process is going to be. Make sure to read the entire guide, because answers to your questions likely appear throughout the guide.

Not every hearing or event described in this guide may take place in every PC case. The laws that apply to PC cases are the same, but each case involves different facts. Some cases can be resolved quickly. Other cases may take many months to complete.

Please keep in mind that the purpose of a PC case is to keep children safe and help families make a safe home for their children. A case is not meant to punish parents or separate families. Rather, the goal is to keep families together, and return children to their parents if they were removed for a period of time.

The most important things you can do to help yourself and your child throughout the case are:

- ✓ Stay in touch and work with your lawyer;
- ✓ Go to every hearing and meeting in your case; and
- ✓ Get the services and supports you may need to help yourself and your family.

PART 1 — *Why has a court case been started?*

A PC case usually starts when the Department of Health and Human Services (the Department) files court papers in the District Court. This can happen after the Department investigates a report of abuse or neglect about your child. If the

child lives with you, a caseworker has already been in touch with you or working with your family on safety issues concerning your child.

Reasons the Department may investigate include:

- Your child has serious, unexplained injuries;
 - Your young child was left alone or in a dangerous situation;
 - Your child has health problems or medical needs that have not been met;
- or*
- Your child's other basic needs have not been met.

The Department's investigation may result in a report called a "Child Protection Assessment" (the Assessment). After doing the Assessment, the Department may develop a Safety Plan to keep your child safe. It is important to work with the Department to come up with a Safety Plan together.

Most families agree to meet and talk with the caseworker during the Assessment. Often, parents have gone to one or more Family Team Meetings to work on safety issues.

If you choose not to speak to the caseworker, do not cooperate in the investigation, or do not follow the Safety Plan, the caseworker will continue the Assessment as required by law. If the Department believes there is an "immediate risk of serious harm" to your child, or if your child is in "circumstances of jeopardy" (legal terms that your lawyer can explain to you), it may then ask a court to get involved. Only the court may order your child to be removed from your care.

If the Department believes your child is in immediate risk of serious harm, the Department will file paperwork with the court called a "Request for a Preliminary Protection Order" (also called a "Request for a PPO"), which, if granted, would allow the Department to immediately remove your child from your care.

The Department will also file a document called a "Petition for a Child Protection Order" (Petition), stating reasons why it believes your child is in jeopardy. The Department may file a Petition but not a Request for a PPO when it is **not** asking the court to immediately take custody of your child. In this situation, your child may remain in your home, or may be in a relative's home as part of the Safety Plan. As explained on the next page, you will go to court sooner if the court issues a PPO.

Legal terms are used in this guide. If you are not sure of what any terms mean, ask your lawyer.

PART 2 — *What is a Preliminary Protection Order (PPO)?*

If the Department believes there is a risk of serious harm to your child, it may ask the court to order that your child be removed from your care immediately. The papers the Department files are the Petition and Request for a PPO. The court usually rules on a Request for a PPO right away.

Asking a court for a PPO is an emergency, so you may not get copies of the court papers until after the court has decided whether to grant a PPO. If the court agrees to the Department's request, you and your child's other parent will have a chance for a hearing. You and your child's other parent will each be assigned a lawyer by the court. (See Part 11 for more information.) At the hearing, the Department will need to prove that your child's safety is at immediate risk. You will have the chance to challenge the Department's case.

If the court grants a PPO, the order will say if your child will stay with an approved relative until the court decides it is safe for the child to return home. If an approved relative is not available to be a caregiver for your child, he or she will be placed in a foster home.

If the court does not grant the PPO, this does not mean the case is done. The court will still schedule a hearing on the Department's Petition within about 120 days (roughly four months) from when the Petition was filed.

PART 3 — *When will I be able to go to court if a PPO has been granted?*

If the court grants a PPO, you will have a chance to make the Department prove its case at a hearing before a judge. This hearing is scheduled within 7-14 days (or sooner if your lawyer asked and the court is able to do so). You will receive the date ahead of time. Unless the court finds there is a very strong reason not to do so, the Department caseworker will also work with you to arrange regular visits with your child within seven (7) days of when the PPO was granted.

A. Will I be told where my child is staying?

In most cases, yes. Unless the Department's Petition says that releasing this information may result in serious harm to your child, a caregiver, or the Department

caseworker, the court papers you receive on the PPO will include:

- The location where your child is staying; and
- The Department caseworker's name and work telephone number.

Please contact the Department caseworker about setting up visitation with your child.

B. How should I prepare for the PPO hearing?

You should get copies of the PPO and other court papers before the hearing. The papers will list the name and telephone number of the lawyer who the court has assigned to represent you throughout the case, as long as you qualify financially. If the name of the lawyer who has been assigned to represent you is **not** in the court papers, contact the clerk's office in the court listed in the paperwork for that information. Your child's other parent will also be assigned his or her own lawyer.

It is important to read the court papers before the hearing. It is also important to call your lawyer right away. Talk over your case and what you will say in court with your lawyer.

C. What happens at the PPO hearing?

At the PPO hearing, you will have one of two choices: you may agree to allow the PPO to remain in effect until the next stage of the case, or require the Department to prove its case at a hearing. If you agree to a PPO, you are allowing the Department to continue to have temporary custody of your child. If a hearing is held, an Assistant Attorney General (AAG) will present the Department's case to the judge. Your lawyer will present your case. You will have a chance to testify.

Others who may testify at the PPO hearing include the child's other parent, a person assigned by the court to be your child's "Guardian ad Litem" or "GAL" (see Part 4.D. for information on the GAL), and relatives or foster parents who are caring for your child. PC cases are not open to the public, and all records are confidential.

After the hearing, the court will decide if the PPO should remain in effect and what should happen next.

If your child is in the Department's custody, the Department must develop a Reunification Plan to reunify you with your child, unless it shows good reasons for not doing so. If the court finds an "aggravating factor" in the case (a legal term that your lawyer can explain to you), the court may tell the Department it does not have to prepare a Reunification Plan. Part 5 has more information on the Reunification Plan.

It is very important for you to attend and participate in the PPO hearing. If you do not attend, your parental rights may be at risk.

PART 4 — *What are the papers in a child protection case?*

Some papers filed in a PC case have already been mentioned in this guide. Here is more information on each:

A. Petition

The Petition contains one or more statements or reasons why the Department is asking the court to be involved with your family. Statements in a Petition must be proven by the Department. The purpose of a hearing is to determine whether there is reliable evidence to support the Petition.

B. Order appointing a lawyer to represent you

At the same time the Petition is filed, the court assigns a lawyer to each parent or legal guardian. Make a note of your lawyer's name and phone number and contact him or her as soon as possible to prepare for your hearing. If a lawyer has not been assigned, you may contact the clerk's office in the court where the case will be heard for information about having a lawyer assigned.

C. Child Protection Financial Affidavit

Every parent and legal guardian who is assigned a lawyer must file a sworn statement about his or her income and financial situation with the court. This form is called the Child Protection Financial Affidavit.

You may be asked to meet with a financial screener at the courthouse on the date and time indicated in the court papers. You will need to fill out information on your income and financial situation. After you complete the form, the court will decide whether or not to continue to pay for some or all of the cost of the

assigned lawyer at State expense. Parents or legal guardians who do not file the Child Protection Financial Affidavit may lose their court-assigned lawyer.

D. Order appointing a Guardian ad Litem (GAL)

Your child will have a person named by the court to look out for his or her best interest. This person is called a Guardian ad Litem or GAL. This person does not work for the Department, but is a neutral party who will get to know your child and family.

The GAL's job is to gather relevant information about your family. The GAL does this by reviewing records and reports, talking to your child, and talking to you and others who have cared for or treated your child. The GAL will write a report for the court that includes recommendations about what the GAL believes is in your child's best interest. The GAL must also tell the court what your child's wishes are.

If you do not understand any part of the Petition or other court papers, ask your lawyer. See Part 11, "Working with Your Lawyer," for more information about how your lawyer can help you in the PC case.

PART 5 — *What is a Case Management Conference and when is it held?*

A Case Management Conference (CMC) is a meeting with the judge to discuss what has happened and what is going to happen in the case. If the Department did not ask for a PPO, this will be your first court date. You, the other parent or legal guardian, the lawyers representing each of you, the GAL, and the AAG representing the Department all attend. At the CMC, the court finds out from the lawyers how much time is needed for the next stage of the case—the Jeopardy Hearing—and how many witnesses will be called to testify. The CMC is not a hearing. No evidence or testimony is presented at the CMC.

The CMC is held within a few weeks after the start of the case. Make a note of the date, time, and place of the CMC.

At or near the time of the CMC, the Department must file a Reunification Plan. The Plan sets out what the Department must do and what you must do. Each plan is made specifically for individual parents. The Plan is a

**The CMC is held
a few weeks
after the start of
the case.**

very important part of the case because your participation can help you progress towards reunification with your child. Make sure you go over it with your lawyer and that you understand it.

PART 6 — *What is a Jeopardy Hearing and when is it held?*

The Jeopardy Hearing generally takes place within 120 days (about four months), from the date the Petition was filed, unless there are good reasons to delay it. The court must make a decision whether to issue a jeopardy order within 120 days.

The purpose of the Jeopardy Hearing is to present evidence to the court so the court may decide if your child is in “circumstances of jeopardy” to her or his health or welfare. “Jeopardy” includes, among other things, serious harm, or a threat of serious harm to your child. Ask your lawyer to explain this term more fully if you are not sure what it may mean in your situation.

If the Department did not ask for a PPO (see Part 2), the Jeopardy Hearing will be the first court hearing in the case when witnesses will testify.

Before the Jeopardy Hearing begins, a draft of a Jeopardy Order is often given to you and your lawyer to review. The order will state the reasons for the finding of jeopardy. If you agree with the draft order, you may enter into an order by agreement without having a hearing. The judge will ask you questions about the order to make sure you understand it and agree with it. If you do not agree with the draft order or cannot come to an agreement, the court will hold the hearing.

If you wish to have a hearing, the court will listen to evidence from the Department, from you and the other parent or legal guardian, and the GAL.

After hearing the evidence, the court decides if jeopardy exists. If the court decides there is no jeopardy, the case is over and your child will be returned to your care (or remain in your care, if the child was not removed by a PPO or Safety Plan).

If the court finds that jeopardy does exist, the court issues the order. As mentioned earlier, the order will require the Department to work toward reunifying you and your child, unless the court has found an aggravating factor in your case. You will begin working with a new caseworker from the Department on reunification.

If the court finds that jeopardy does exist, the court issues the Jeopardy Order.

The order will say:

- ✓ Whether you, the Department, or some other person will have custody of your child;
- ✓ Where your child will live;
- ✓ Whether evaluations and/or services are required for you and other members of the household; and
- ✓ Whether you must keep certain people from having contact with your child.

The court may also enter findings about whether you can afford to pay child support, and, if so, how much you should pay.

If you do not agree with the court's decision finding jeopardy, you should talk with your lawyer about whether you should appeal the decision. (An "appeal" is a written request to another court to review, and change or reverse a decision of a trial court. In a PC case, the District Court is the trial court. An appeal would be submitted to the Supreme Judicial Court.)

It is very important that you attend and participate in the Jeopardy Hearing. If you do not attend, you will be putting your parental rights at risk.

If the court enters a Jeopardy Order, go over the order with your lawyer right away. If the order requires you to receive services or supports, make sure you understand what these are and **exactly what you need to do to comply**. Take full advantage of the supports and services offered. Follow the plan, and keep in contact with your caseworker and lawyer.

PART 7 — *Why is a Judicial Review Hearing held?*

If a court issues a Jeopardy Order, it must review the case at least once every six (6) months. You, your child's other parent, the AAG, or the child's GAL may ask the court to review the case sooner. This check-in hearing is called a Judicial Review.

At this hearing, the court reviews what has happened in the case since the last court date and decides what should happen next. The goal at this stage is the long-term welfare and safety of your child. The court will ask:

- Have you made positive changes or addressed the issues that you were required to address in the Jeopardy Order?
- Have you reduced or eliminated the issues that led to the order?

Based on the information presented, the court may make changes in what you or the Department are required to do. The court may decide that the case should be dismissed (end), and your child returned to your custody; that reunification efforts should continue; or that the Department should stop reunification efforts. The decision to end reunification efforts is not an easy one, and usually is made after repeated efforts to reunify have failed for a sufficient amount of time.

There likely will be more than one Judicial Review, depending upon the facts of your case.

PART 8 — *What is a Permanency Planning Hearing and when is it held?*

The court usually also holds a Permanency Planning Hearing within 12 months of when your child entered foster care. At the Permanency Planning Hearing, the court's focus is what is in the long-term best interest of your child, including whether your child should be:

- Returned to you;
- Cared for by a permanency guardian;
- Placed with a fit and willing relative;
- Placed for adoption; or
- Placed in another planned permanent living arrangement.

A Permanency Planning Hearing may be held at the same time as a Judicial Review (see Part 7).

PART 9 — *What is a Termination of Parental Rights?*

If the Department believes you are unable or unwilling to resolve the risk of abuse or neglect to your child, it may file a Petition to Terminate your Parental Rights. You may also voluntarily agree to a Termination of Parental Rights if you think that is in the best interest of your child. Before making a decision, you should discuss your options with your lawyer.

If you have not agreed to a Termination of Parental Rights, the court will only order that this be done if it finds very strong evidence ("clear and convincing" evidence) after a hearing that one or more of the following four factors exists:

1. You are unwilling or unable to protect your child from jeopardy, and that these circumstances are unlikely to change within an amount of time reasonably calculated to meet the child's needs; or
2. You have been unwilling or unable to take responsibility for your child within an amount of time reasonably calculated to meet the child's needs; or
3. Your child has been abandoned; or
4. You have failed to make a good faith effort to rehabilitate and reunify with your child; AND

That termination of your parental rights is in your child's best interest.

The four factors above are legal requirements. Your lawyer will be able to explain how the court could apply requirements in your specific case.

As with other hearings in a PC case, you have the right to participate, testify, and present evidence. Your lawyer may call witnesses to support your case, and may question or cross-examine the Department's witnesses and your child's GAL. The GAL will also be at the hearing and will submit a report with his or her recommendations concerning your child.

When deciding whether to terminate your parental rights, the court considers your child's age and attachments to other people, his or her physical or emotional needs, and what is in your child's best interest.

If the court orders that your parental rights should be terminated and you disagree, you may talk with your lawyer about whether to appeal the decision.

PART 10 — Appeals

As mentioned earlier, an appeal is a request to a different court to review, and change or reverse a decision of a trial court. In PC cases, only Jeopardy Orders, Termination of Parental Rights Orders, and Medical Treatment Orders (if the court ordered medical treatment for your child) by the District Court can be appealed. Child Protection appeals are appealed directly to the Maine Supreme Judicial Court.

PART 11 — *Working with your lawyer*

Each parent or legal guardian is entitled to be represented by his or her own lawyer at State expense if the parent or legal guardian cannot afford to pay a lawyer. Even if you are married to the child's other parent or living together, each of you will be assigned your own lawyer.

Make sure your lawyer knows how to reach you by keeping him or her up to date on your address and phone number. Your lawyer cannot effectively represent you if you do not keep in touch. When your lawyer calls or writes to you, respond right away.

Your lawyer will:

- ✓ Meet with you before any hearings and conferences in the case and speak for you and your interests in court;
- ✓ Help you understand your rights, legal terms and requirements in the Jeopardy Order, Reunification Plan and other documents in the case;
- ✓ Explain what to expect at hearings and conferences; and
- ✓ Present evidence and advocate on your behalf at hearings.

PART 12 — *Working with Department caseworkers*

You will have a chance to work with one or more Department caseworkers at various stages during the PC case. Use these meetings as opportunities to voice concerns, share your ideas, ask questions, and get connected to services and supports you may need in order to help you make a safe home for your child.

The Department uses written guidelines when it works with families in a PC case. You may find it helpful to read over these guidelines, or review them with your lawyer if you have questions about them. The guidelines, called the Child Welfare Services Practice Model, can be found online at: www.maine.gov/dhhs/ocfs/cw/practicemodel.shtml.

If you don't have access to a computer, ask the caseworker for a printed copy of the guidelines. He or she may also be able to give you other helpful materials, including the Department's Handbook for Parents & Legal Guardians in Child

Protection Cases. This handbook is available online at: www.maine.gov/dhhs/ocfs/cw/handbook.html.

PART 13 — *The Maine Child Welfare Ombudsman Program*

The Maine Child Welfare Ombudsman is an office that specializes in helping people deal with concerns regarding child welfare services provided by the Department. The Ombudsman does not take sides and is independent of the Department. If you or someone you know is having a problem with how the Department or a caseworker is acting in a child protection case, you may contact the Ombudsman's Office for help. For example, if you feel the Department is unfairly interfering with your rights as a parent, the Ombudsman's Office may be able to help.

The Ombudsman often learns of complaints and issues from relatives, service providers, or state legislators. Anyone may submit a complaint or voice concerns. Contact the Ombudsman at 1-866-621-0758 or 207-213-4773, or send an email to: ombudsman@cwombudsman.org.

You can learn more about what the Ombudsman does by visiting the website at: cwombudsman.org.

PART 14 — *Rights of grandparents and others to attend and participate in the case*

Maine law provides that a child removed from his or her home be placed with an approved adult relative when possible. This is sometimes called a “kinship placement” or placement with a relative.

The Department will often try to find out if a temporary placement of your child with a grandparent or other family member might be possible before asking a court to get involved. Before placing your child with a relative, the Department must make sure the child will be in a safe environment by doing an assessment and background check. Sometimes a temporary placement with a relative is not possible before the Department files a Request for a PPO.

If a grandparent or other relative is providing care, he, she, or they will receive notice of hearings in the case and will have the right to attend. If a grandparent or other relative has not been providing care, he or she will not automatically be

notified of hearings and other actions in the case. He or she must ask the court's permission to attend a hearing or participate in the case. A request to attend or participate may be made to the court by contacting the clerk's office in the court where the PC case is being heard. These requests should be in writing.

Depending upon the person's relationship with the child, the court may designate the person as:

- An "interested person," meaning the person may attend and observe court proceedings only;
- A "participant," meaning the person may attend, observe, and testify in court proceedings only, but may not present or cross-examine witnesses; or
- An "intervenor," meaning the person has the same rights in the case as a party (a parent) has, unless otherwise noted by the court.

In order to attend or participate in a PC case in any capacity, the person must show that he or she has a significant relationship to the child and an interest in the child's well being. The court must decide that the participation is in the best interest of your child. Anyone who is permitted by the court to attend or participate in a PC case is subject to the same confidentiality and disclosure requirements of the child protection laws as are other participants.

PART 15 — *Summary of rights and responsibilities in a PC case*

Your rights

As a parent or legal guardian, you have many rights in a PC case, including the right to:

- Be represented by a lawyer at State expense if you cannot afford to pay for a lawyer;
- Receive copies of all papers and information submitted in the case;
- Be notified of all court hearings and other court events;
- Deny or admit statements presented in the Petition;

- Present your side of the case in court and challenge the Department's case; and
- Visit your child while the case is open, unless the court finds that visits are not in the best interest of the child.

Unless the court has issued a “cease reunification order,” you also have the right to have a clear, written Reunification Plan, listing services and supports to help resolve the problem that led to the filing of the Petition.

Your child's rights

Your child has the right to:

- Be safe and supervised by appropriate caregivers;
- Have adequate food, clothing, and shelter;
- Be protected from physical, sexual, and emotional abuse and neglect; and
- Receive treatment for medical and emotional conditions.

No two cases are the same.

This guide describes what may happen at various stages of a PC case. Please remember, however, no two cases are the same. Every decision the court makes is based on the specific facts and evidence before it. The actions you take in response to the facts of your case can greatly influence the court's decisions throughout the case, and the final outcome of the case.

APPENDIX — *General information*

Disability Accommodation



The Maine Judicial Branch makes every reasonable effort to provide accommodations and auxiliary aids and services to people with disabilities at no cost to them so that they may access the court and its services. Please talk to your lawyer about arranging for accommodations; contact the Court Access Coordinator at 207-822-0718, TTY: Maine Relay 711, or accessibility@courts.maine.gov with requests; or contact the clerk's office in the court where your case is being heard. A link to the Disability Accommodation Request Form on the Judicial Branch website may be found at: www.courts.maine.gov/maine_courts/admin/ada/accommodation-request.pdf

Language Access



The Maine Judicial Branch provides interpreters to people who have Limited English Proficiency (LEP) or who are deaf or hard of hearing at no cost to them so that they may access the court and its services. The Judicial Branch must also provide an ASL interpreter to court observers who are deaf or hard of hearing upon request. Please talk to your lawyer about arranging for an interpreter; contact the Communications Access Specialist directly at 207-822-0703, TTY: Maine Relay 711, or interpreters@courts.maine.gov with requests; or contact the clerk's office in the court where your case is being heard. More information on interpreter assistance can be found on the Judicial Branch website at: www.courts.maine.gov/maine_courts/admin/interpreters

Informational Purposes Only

This guide is to help parents, legal guardians, and family members affected by a Child Protection case better understand what happens in a case. To make the guide more readable, the court process and laws involved have been summarized.

Do not rely on the information in this guide as a complete description of all the laws that may come into play in a PC case. If you have questions about the law or court process, ask your lawyer.

SELECTED RESOURCES

A copy of this guide and other information related to the Judicial Branch can be found on the Judicial Branch website: www.courts.maine.gov. Information on Child Protection cases is also available on: www.courts.maine.gov/family/child_protect.html. Information on Guardian ad Litem can be found at: www.courts.maine.gov/maine_courts/family/gal.

The organizations below may offer information or help to parents, legal guardians, and other interested persons in PC cases. The caseworker in your PC case may be able to offer additional resources and information.

Pine Tree Legal Assistance

ptla.org

Statewide nonprofit organization providing free, civil legal assistance to low-income people in Maine on a variety of issues and types of cases. Pine Tree's online law guide on Maine Child Protection cases may be found at: ptla.org/maine-child-protection-proceedings#talk_to_DHHS.

Maine Child Welfare Ombudsman Program

cwombudsman.org

An independent, impartial office that assists people who have concerns or complaints about how the Department of Health and Human Services is handling a Child Protection case or child welfare services. Anyone with a concern or complaint may contact the Ombudsman at 207-213-4773 or 1-866-621-0758. You may also email the office at: ombudsman@cwombudsman.org.

Department of Health and Human Services, Office of Child and Family Services

www.state.me.us/dhhs/ocfs/cw

A Handbook for Parents: A Guide to Child Protective Services:

www.maine.gov/dhhs/ocfs/cw/handbook.html

Child and Family Services Policy: www.maine.gov/dhhs/ocfs/cw/policy

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www.courts.maine.gov

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Administration for Children and Families Court Improvement Program*