

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred and Twelfth

Legislature

OF THE

STATE OF MAINE

VOLUME II

SECOND REGULAR SESSION

April 3 - April 16, 1986

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November 24, 1986

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On motion by Senator PEARSON of Penobscot, placed on the SPECIAL APPROPRIATIONS TABLE, pending ENACTMENT.

Under suspension of the Rules, the Senate considered the following inclusively:

Emergency

An Act to Establish the Cost of the 1986 Spruce Budworm Suppression Project and to Provide Operating Funds for the Spruce Budworm Management Program
H.P. 1591 L.D. 2244

Emergency

An Act Relating to Use of Sulfite as a Food Preservative
S.P. 908 L.D. 2275
(H "A" H-640; S "A" S-449)

Emergency

An Act to Require the Workers' Compensation Commission to Study the Causes of Delay and its Effects on the Participants in the Workers' Compensation System
H.P. 1636 L.D. 2309

Emergency

An Act to Require Emergency Vehicles to Stop and Proceed with Caution when Overtaking and Passing School Buses
H.P. 1644 L.D. 2318

These being an Emergency Measure and having received the affirmative vote of 30 Members of the Senate, with No Senators having voted in negative, and 30 being more than two-thirds of the entire elected Membership of the Senate, were PASSED TO BE ENACTED and having been signed by the President, were presented by the Secretary to the Governor for his approval.

Senator HICHENS of York moved that the Senate RECONSIDERED its action whereby it INDEFINITELY POSTPONED:

Bill "An Act to Improve the Marketing of Milk in Maine"
S.P. 939 L.D. 2352

(In Senate, April 9, 1986, READ A SECOND TIME. Subsequently, Bill and Accompanying Papers INDEFINITELY POSTPONED.)

On motion by Senator BALDACCI of Penobscot, Tabled until Later in Today's Session, pending the motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

ORDERS OF THE DAY

The Chair laid before the Senate the Tabled and specially assigned matter:

Bill "An Act to Improve Child Welfare Services in Maine"
H.P. 1588 L.D. 2233

Tabled - April 8, 1986, by Senator VIOLETTE of Aroostook.

Pending - the READING of Committee Amendment "A" (H-653)

(In Senate, April 8, 1986, the OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-653) Report READ and ACCEPTED. The Bill READ ONCE.)

(In House, April 8, 1986, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-653).)

Committee Amendment "A" (H-653) READ and ADOPTED, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Gauvreau.

Senator GAUVREAU: Thank you Mr. President, Men and Women of the Senate. I am not going to oppose the enactment of this legislative measure, but I did feel obligated to briefly express, on the Record, my concerns regarding one aspect of L.D. 2233. This is an Omnibus Bill which is the product of substantial work by the Joint Standing Committee on Audit and Program Review, regarding the troublesome issue of child abuse in this State of Maine and how the Department of Human Services can more appropriately marshal its limited resources to addressing that very troublesome problem. I must say that I have a great respect for the entire Membership of that Committee and the work which they have invested over the last year in this subject area.

I also feel that on balance, L.D. 2233 is a major step forward, in terms of allowing the State to address responsibly the area of child abuse and to ascertain and guarantee that children's best interests are observed in the child abuse projection system. I do have some reservations regarding one aspect of the Bill.

Under current law, the Department of Human Services is under a statutory mandate to in all cases perform reunification and rehabilitation services, in other words, if a child has been abused and placed into foster care, the Department has an obligation to thoroughly assess the liability of rehabilitation and to work toward that goal. To bring the victim, the child, back in with the parents at the earliest, practical date. It has become apparent to many of us that, although it is an honorable goal there are some limited cases where reunification is simply not practical and, in fact, is directly contrary to the best interest of the child. The Committee has appropriately resolved this issue by allowing, in some what narrow circumstances, the Department to deny reunification efforts. I have no problem with that, in fact I had a competing measure, which the Committee rejected, which would have done the same thing. My problem is with the approach the Committee has adopted. On page six of the Bill, section fourteen, there is language in L.D. 2233, which provides that if a parent is convicted in a court of law of any one of a series of criminal offenses, involving the victim, that automatically divests the Department of Human Services of its obligation to perform reunification efforts. These offenses, in fact, are very serious. Gross sexual misconduct, manslaughter, sexual abuse of minors, incest all of these offenses any reasonable person would recognize would cause one grave concern as to whether a child should ever be put back home with the offending parent, no question about that at all. In fact, courts regularly do give that serious consideration and would be most reluctant to return a child into a home where an offender resides, unless there were satisfactory assurances that the problems have been resolved.

My problem is that this Bill sets up an absolute rule, that the Department is automatically, in all cases, relieved of reunification responsibilities. It strikes me as though we ought not to be engaging in that kind of legislative measure. We ought to provide clear guidance and I have no problem with the parent having a responsibility to demonstrate that the problems occasioned by the criminal act have been addressed. It is my judgment that the inclusion of this language will have an unintended consequence, which actually will be contrary to many children's interest. Although on many issues, I really have to use my best judgment, rather than my personal experience, in this particular area I have been engaged for the last ten years in several cases representing not only parents, but also children and the guardianship in child abuse cases. My concern is as follows; if we allow the Department to shut off reunification efforts, if a parent has been convicted of a certain offense, that parent will almost definitely feel obligated to try his or her case in a court of law, and by doing that we are going to require the victim, child, to appear in court and present testimony to support the State's case. We all recognize the traumatize impact that has.

As a practical effect, under current practice, we don't do that quite often, we reach agreements where a parent who has been convicted of a certain offense will have to satisfy the Department that the objectives of a case plan or reunification plan have been addressed and have been met, before any return home will be offered by the Department. Under this practice, parents certainly recognize the responsibility they have, the burden is on them, to demonstrate that the problems which have rise to the abuse are being addressed. Under the language in the Statute, this situation changes and it seems to me that we ought not to do that. I have some real grave concerns regarding this matter. I know the Committee was very aware of the problems. This issue was debated at length in the Committee and a three year sunset has been placed on this provision of the Bill. I respect the Committee's intent, I understand they want to take a look at this and if there are adverse consequences, they will address those. My concern is that I feel that, although I respect the Committee's intent in this area, by taking this particular approach we may well force children, victims, into court and that is contrary to the intent of this legislation. I do have some major misgivings. I am not seeking to oppose this Bill or to kill this Bill today, but I do want this Body to be aware of my concerns so that if, in fact, the consequences do occur, I would be the first to come to this Body and propose legislative changes. I am not opposing the measure today and I want to thank the Committee for the work in which they have done. There is a lot that is very good in this measure. The Committee has introduced notions to expedite permanency for children, the Committee has also required that parents as well as children have to work actively in reunification plans, that is excellent and I applaud their efforts, and I am only expressing my concern, as far as one specific portion of the Bill. With that, I thank you for hearing me out this morning and hopefully the concerns that I have will not come about. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Maybury.

Senator MAYBURY: Thank you Mr. President and Members of the Senate. I didn't realize that we were going to have to have a small discussion of this Bill today, however, I do think the comments from the good Senator from Androscoggin, Senator Gauvreau, do need to be responded to. As all of you know, the Audit and Program Review Committee has had a long record of very thorough examination of the different areas that they are looking into and they are assigned to look into each year. With the new people who were added to the Committee, this last time, we felt that it was important that we live up to those high standards as well. We did, indeed, delve into this issue of child abuse and child welfare laws very seriously. As many of you know, I have been interested in this area for a long time, so I was especially pleased to be on the sub-committee. In direct response to the questions on this reunification that the good Senator has brought up, if you would refer to page five of L.D. 2233, section 6A, after a court hearing, there are a variety of options that are available, and one of them is to continue reunification efforts for a specific period of time for six months.

By doing this, it is going to encourage the parents to work very hard, it is also going to help the Department because they won't have to care for these youngsters for months and months and years. Disrupting their lives and causing an unneeded trauma to those individuals. I think that it is very important that the time limit is there and it helps everyone work to a speedy end. Also on page six of the Bill, section 14, sub-section 2A, it says that, "the Department may either decide not to 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 Department has no further responsibilities for rehabilitation and reunification with either parent, when" (and it lists a great variety of reasons when.) The good Senator from Androscoggin did come before the Committee towards the end of our deliberations and raised his concerns. We discussed that and we felt that this proposed legislation should have a chance to work and obviously, if there are some areas that are not working, they can be corrected. We felt that this does not force termination of reunification, but it does encourage all the parties involved and the welfare of the child to do their very best. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Matthews.

Senator MATTHEWS: Mr. President and Members of the Senate. I will be very brief. I just also want to, as a member of that sub-committee on child welfare services, echo the sentiments of the good Senator from Penobscot, Senator Maybury. That has been a long deliberation, the good Senator from Androscoggin, Senator Gauvreau, has participated in the debate and has shared some insight to the Committee and his concerns have been dealt with in the Committee. I just wanted the Senate to know that throughout the deliberations on this very trying topic of child abuse, we have had the best attorneys in the State of Maine present. The Attorney General's office, the Legal staff of the Department of Human Services and a lot of experts that have been in the field, both those in the front line dealing with protective cases, and those that have studied this problem for years. Something had to be done. The public outcry is enormous and all of us in the Senate know of that outcry and we share those concerns of the citizens of the State of Maine. We couldn't believe the status quo as is, we had to make some changes and I think those changes are going to be good ones. They are reflected in the Committee decision, it was unanimous and I think those changes will make this State safer for children, and that is the bottom line. Thank you,

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

The Chair laid before the Senate the Tabled and Later Today assigned matter:

Bill "An Act to Improve the Marketing of Milk in Maine"
S.P. 939 L.D. 2352

Tabled - April 9, 1986, by Senator BALDACCI of Penobscot.

Pending - Motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

(In Senate, April 9, 1986, READ A SECOND TIME. Subsequently, Bill and Accompanying Papers INDEFINITELY POSTPONED.)

On motion by Senator CLARK of Cumberland, Tabled 1 Legislative Day, pending the motion of Senator HICHENS of York to RECONSIDER INDEFINITE POSTPONEMENT.

On motion by Senator VIOLETTE of Aroostook, the Senate removed from the Unassigned Table the following:

Bill "An Act to Define Terms in the Manufactured Housing Zoning Law"
S.P. 738 L.D. 1891

Tabled - March 18, 1986, by Senator VIOLETTE of Aroostook.

Pending - ASSIGNMENT FOR SECOND READING

(In Senate, March 18, 1986, READ ONCE.)

The Bill TOMORROW ASSIGNED FOR SECOND READING.

On motion by Senator VIOLETTE of Aroostook, the Senate removed from the Unassigned Tabled the following:

Bill "An Act to Require Labeling of Coffees and Teas Decaffeinated with Methylene Chloride"
S.P. 911 L.D. 2278

Tabled - April 1, 1986, by Senator VIOLETTE of Aroostook.

Pending - PASSAGE TO BE ENGROSSED