



What do I do if the State is threatening to take my kids?

Some basics about the Maine child protective system

You Do Have Rights!

The Maine Department of Health and Human Services (DHHS) has broad powers to intervene in families. When DHHS believes that a child is in danger of being harmed, it must investigate. But as a parent, you also have rights. One major protection is your right to be heard by a judge during the whole case. In deciding any child protection case, the judge must follow these principles in the order listed:

1. Protect the child from jeopardy.
2. Give custody to a parent if this will provide a safe environment for the child.
3. Make sure the decision is in the best interest of the child.
4. End DHHS custody at the earliest possible time.

Also, the law requires DHHS to try to work things out with you and to provide you with needed services.

What Is “Jeopardy”?

It is a threat to your child’s health or welfare. This threat can be in any of the following forms:

- Physical injury
- Emotional injury
- Sexual abuse or exploitation
- Neglect
- Failure to protect from any of the above listed factors
- Abandonment

Who reported me to the State?

As much as you would like to know, DHHS can refuse to tell you this. Doctors, counselors, teachers, social workers, guardians *ad litem*, and many other professionals are required by law to report suspected abuse or neglect to DHHS. A relative, friend or neighbor can also make a report, even though not required to do so. Regardless of the source, DHHS can keep the names of reporters secret. You can ask to review your DHHS file. But they can legally withhold the names of other people listed in your records.

What does DHHS do when they get a complaint?

One of three things can happen:

1. DHHS can decide that the complaint is not appropriate. They will take no further action beyond documenting the phone call. (**Example:** A family member is just trying to get back at someone, but there is really no basis for the complaint.)
2. DHHS can decide that the likely risk of harm is low to moderate. In these situations DHHS usually refers the case to a “Community Intervention Program” (CIP). The CIP will do a safety assessment and will offer voluntary services.
3. DHHS can decide to conduct an investigation by its staff, to find out more.



Do I have to talk to DHHS, or let them into my home, before I get a lawyer?

The legal answer is no, unless the DHHS worker:

- has a court order to enter your home, or
- is with a police officer who determines that the child is at “immediate risk,” based on something he sees or hears

But there is more to it than that. If you are hostile to DHHS, this could trigger a negative reaction from the DHHS worker. A good general rule is to be respectful of any DHHS person you talk to. At the same time, it is often best to consult a lawyer as early in the process as you can. So, if you feel uncomfortable talking to DHHS before you talk to a lawyer, explain that to the DHHS worker but move quickly so as not to unnecessarily frustrate the worker, who is mandated to do his job.

NOTE: To get a lawyer at this early stage, you will probably have to find one on your own and pay the fee. The court will appoint a free lawyer for you later on, if DHHS files a court case and if you cannot afford to pay (see page 4 below).

If you can't get a lawyer right away, you can refuse access. Or you can choose to cooperate with DHHS while still setting out some rules to protect yourself. For example, if you have a mental health worker, insist that he is present during any discussions with DHHS. You can politely refuse to see the DHHS worker without someone else being present—a friend who can remain calm and take notes, a pastor, relative, service provider or anyone who can reliably report on what happened in the interview. This witness can also be

prepared to say, “Carol would like to think about that and get back to you” when a surprise issue comes up.

It is important that you present yourself as calm and organized, not hostile. If you ask for support from others—to be present and take notes, for example—this shows DHHS that you are capable of handling difficult situations responsibly.

Can DHHS talk to my child without my permission?

It depends. If the DHHS worker believes that telling you ahead of time will put your child at an increased risk of harm, he can interview your child without telling you first. The interview can happen at school, a police station, hospital or other place where your child is. The interview should be tape-recorded.

What happens if DHHS decides that there is a problem in my household that is harming my kids?

This section outlines the beginning steps that DHHS and the Court follow in a child protection case. Each case is different, but this explains generally how the system works.

1. DHHS worker comes to your home

If DHHS believes there is a problem in your household, a “protective case worker” may visit you to investigate. He may also talk to others about your child’s situation.

At the end of this process, one of these three things happens:



1. DHHS determines that the child has been abused or neglected, putting the child at risk of harm. DHHS can then “Substantiate” the parent. They will then take further steps to protect the child (see below).
2. DHHS determines that the child has been abused or neglected but the risk of harm is not severe. The caseworker can “Indicate” the parent but do nothing further.
3. DHHS can find that the child has not been abused or neglected.

NOTE: Being “Indicated” or “Substantiated” means that you have a permanent record at DHHS. If you are “Substantiated,” this can have consequences for you later on. If you apply to work in the child services field, your potential employer can find out from DHHS that you have this record. It could prevent you from being hired. If you are “Indicated,” DHHS will keep your record private. If an employer asks about your record, DHHS will respond that you do not have one.

For more information about challenging what happens with your DHHS record, read our brochure on “DHHS Substantiation.”

2. Worker “substantiates” neglect or abuse and tries to develop a “safety plan”

In a case where you are “substantiated,” if you and the worker can agree, DHHS will open a file, do an assessment, and develop a “safety plan” with you. This means that you and the caseworker have agreed that your family needs help and that you and DHHS will work to correct the situation. Often DHHS will agree to give your family services you need. No court is involved, and your

children are not removed from your home. Your situation should be reviewed every three months to make sure that things are going as planned. The DHHS case will be closed when the problem in your home is resolved.

Sometimes safety plans are very simple and can be completed quickly. In other cases, especially where ongoing services are involved, plans can go on much longer.

If you and the caseworker cannot agree, and the caseworker believes that more must be done to protect the child, you will probably end up in court. The caseworker will file a **Child Protection Petition** asking a judge to approve or set up a plan to protect your child.

3. State petitions Court and asks for a Preliminary Protection Order (P.P.O.)

If DHHS files a Child Protection Petition, they will probably ask a judge for a **Preliminary Protection Order (PPO)**. This usually includes a request that your child be removed from your care. DHHS must have a PPO in order to remove your child from your care. The DHHS worker will ask for a PPO if he believes that there is an **“immediate risk of serious harm”** to your child. DHHS can ask the Court for a PPO without telling you first if the caseworker believes:

- that the child will suffer serious harm before the caseworker can send you proper notice, or
- that telling you would increase the risk of serious harm to the child

The Judge will review the petition and a sworn summary of the facts that support DHHS’ request. If you agree to the Order or



do not go to Court, the Judge will enter the PPO. If you go to Court and disagree, a hearing will be scheduled within 7 to 14 days. (See Summary Protection Hearing below.)

4. Your right to a lawyer

Each parent has the right to be represented by a lawyer. Even if the parents are married or live together, each parent will get his/her own lawyer.

If you cannot afford to pay, you can ask the Court to appoint you a free lawyer. You will receive a copy of DHHS' Petition, which is filed with the court. If you do not already have a lawyer when you get this, read your copy of the Petition carefully. The Petition will include a Notice of Hearing. If this Notice does not say that the court has appointed a lawyer for you, **contact the Court immediately to ask for a lawyer.**

Follow the court clerk's instructions. You will meet with a "financial screener" and fill out and sign an affidavit showing the court that you do not have enough money to hire a lawyer. If the Court agrees that you cannot afford a lawyer, it will appoint one for you. Talk to your lawyer as soon as possible to prepare for your first hearing.

There will be many court hearings throughout the whole DHHS case. The lawyer will represent you during all of the court hearings.

NOTE: Parents with mental health or mental disabilities issues **may** be able to get a lawyer through the Maine Disabilities Rights Center. Call 1-800-452-1948 (v/tty).

A state lawyer from the Attorney General's office will represent DHHS in court.

5. The Judge decides whether to grant a PPO and, if so, on what terms

The judge can protect your child with a PPO in a number of different ways. This includes allowing DHHS to remove your child from your home and place him with a relative, in a treatment center, or in a licensed foster home. Your child will be cared for until the judge or DHHS decides that the problem in your home has been resolved and your child can go home.

In order to get a PPO, DHHS must convince the judge that there is, in fact, an immediate risk of serious harm.

If the judge signs a PPO that allows your child to be physically taken from your home, you will be given the name and office phone number of the caseworker and your child's location. However, DHHS doesn't have to give you this information if the caseworker believes that this would cause a threat of serious harm to the child or another person.

The Order must also say that a visit between you and your children must be scheduled within 7 days, unless the Judge finds a compelling reason not to schedule this visit.

6. Guardian *ad litem* appointed to represent your child

If the Court enters a PPO removing your child from your care, the judge will appoint a guardian *ad litem* (GAL) to represent your child's best interests. The role of the GAL is to get to know your child by meeting with him, with you, and with other people who know your child. The GAL must then give the Court a written report, stating a plan that he believes is in your child's best interests. For



example, he could say that the child should return to your home or that the child should stay in foster care. The GAL will also share with the Court what your child's preferences are. The GAL should work to get any services your child may need if DHHS is not providing them.

In some counties in Maine, the GAL will be a volunteer with a group called CASA (Court Appointed Special Assistants). If CASA volunteers are not available, the court may appoint a lawyer to be your child's GAL. If you have more than one child, one GAL will represent all of your children's best interests.

The GAL must visit with your child within 7 days of being appointed by the Court and at least once every 3 months during the case. You should work closely with DHHS and the GAL to resolve any problems they identify.

7. Summary Preliminary Hearing (C-1 Hearing)

If you were not notified of the State's Petition before the Court issued a PPO, you can still ask for a court hearing. You must ask for the hearing within **ten days** of receiving the PPO. This hearing is sometimes called a C-1 hearing. Be sure to go to the hearing.

At that hearing, the court can limit testimony to the DHHS caseworker, you, the other parent, the child's custodian, the Guardian *ad litem*, and relatives or foster parents who are caring for your child. The court may review reports and records, which could not be used in other types of court hearings. At this hearing, DHHS must prove by a preponderance of the evidence that:

- your child would be in immediate risk of serious harm if returned to your care, and
- DHHS made efforts to avoid having to remove your child from your home

In very serious cases, DHHS will also present to the court its decision not to provide reunification services to your family. In this case, DHHS would propose an adoption or long-term foster care placement.

Again, DHHS must prove that your child is in "immediate risk of serious harm." If the judge thinks that DHHS has proved such risk, your child will stay in his current placement. If the judge does not believe that there is such a risk, the PPO will end and your child must be returned to you. But this is still only the beginning stage of your case. It is not over until the judge rules on DHHS' underlying Child Protection Petition.

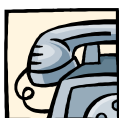
8. Reunification

"Reunification" is the state's goal. This means that the state must propose and develop a plan to help bring you and your child back together again.. The plan should be accomplished in 18 months or less. In some cases, DHHS can get the court to approve a longer plan. This plan should be developed cooperatively with you. It should arrange for services for yourself and your child, as appropriate. For example, the plan can provide parenting classes, counseling, transportation, childcare, or housing assistance. The plan should also provide for visitation with your child, which may be supervised. You should have input into the plan, and it should be put in writing. At every Court hearing, the Judge will review your plan and measure your progress.



If DHHS is trying to impose a plan that seems unreasonable, try to get a third party to help you convince DHHS of your need to be heard. This might be a social worker, minister or other professional who is involved with your family. Here's another resource you may want to try:

Maine Child Welfare Services
Ombudsman
(866) 621-0758



You can seek help from the Ombudsman when:

- You are concerned about what is happening between your children and DHHS.
- You think that DHHS is interfering with your rights as a parent.
- You disagree with the plan developed by a DHHS caseworker.

You are responsible for following the plan and making the needed changes in your parenting. You also must maintain meaningful contact with your child. You may be ordered to pay child support.

9. Case Management Conference

Several weeks later, the court will hold a conference. Usually the state's lawyer, you and your lawyer, the other parent and his lawyer, and the GAL will attend. It is not a formal court hearing. It is a more informal meeting where the Judge explores if you and DHHS can reach an agreement, to avoid a court hearing.

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10. Jeopardy hearing (C-2 Hearing)

Within 120 days (4 months) of the PPO, the court must hold a "jeopardy hearing"—sometimes called a C-2 Hearing—and issue its "Jeopardy Order." This hearing addresses the original Child Protection Petition. If DHHS did not ask for a PPO earlier (see Step 3 above), then the jeopardy hearing will be your first court hearing.

Now the judge decides whether your child would be "in circumstances of jeopardy to his health or welfare" if returned to you. DHHS has the legal burden of proving this. If the judge decides that the child is in jeopardy, she will issue a **Jeopardy Order**. This Order describes how your child is in jeopardy while in your care and what must be done to protect your child. This can range from DHHS supervision of your family while your children remain in your care to removing your child from the home. If the Judge does not find jeopardy, the DHHS case will be closed.

If you agree to DHHS' claims, there will not be a hearing. The Jeopardy Order will be entered by agreement.

What happens after the Jeopardy Hearing is over? How can I get my kids back?

Once the court makes its decision, or you and DHHS reach an agreement about jeopardy, DHHS will assign you a new worker called a "children's services caseworker." This caseworker will work with you to make the changes required of you and others in your home before you can regain custody. The caseworker must also see that your child's



needs are being met while your child is in DHHS custody.

You and the caseworker will write a "service agreement." It spells out everything that DHHS must do for you and your child and everything you are expected to do. The plan should be designed to reunify you and your children. This "service agreement" may require such things as evaluations by a psychologist or social worker, counseling, a substance abuse evaluation, or anything else that addresses the problems in your home.

You and DHHS should try to agree on the service providers (such as mental health workers or counselors) who will work with you. If you cannot agree, where MaineCare is paying for the services, you should be allowed to choose your provider. As long as you are opting for a qualified professional with the required skills, you should be able to choose a provider whom you know or trust.

Your plan should be clear about your behavioral goals. You want to be sure that if you meet certain behavioral goals, then you have successfully completed that part of the plan. Otherwise, you may find yourself in this position: you followed the plan and thought you were making progress, while DHHS says that you participated but didn't make any progress. In other words, it's important to clarify exactly what you need to accomplish to meet DHHS' expectations. Just saying that you're going to attend a certain class or go to treatment sessions is not enough.

Another common issue is DHHS requiring you to participate in treatment or meetings that have no record of success. You want to insist that the plan you are following is one involving methods that are proven to

effectively address your issues. If you know treatment professionals whom you trust, ask for their opinion about the type of treatment, or plan, DHHS is recommending.

The key goal for everyone is curing the problems identified in the plan. So, for example, if an evaluation says that you have a substance abuse problem, you will have to both attend substance abuse counseling and submit to drug tests. A refused test will generally be regarded as a positive test. The service providers and the guardian *ad litem* must tell the Court if you have resolved the problem.

Generally, you have only 15 months from the date DHHS filed its Petition to show that it is safe for your children to return. After that DHHS must move forward with another plan to protect your child, called a "permanency plan." Remember, the purpose of Child Protective is to protect the health and welfare of children. Providing stability is an important part of that process. So if reunification is not going to work, DHHS must develop a different permanent plan for your child.

Enter into a service plan as quickly as possible, and follow it. If DHHS believes that you are not cooperating, or not acting quickly enough, DHHS can start "Contingency Planning" before your service plan has been completed.



Will there be any other hearings?

Yes. You may also have two other types of court hearings.

Judicial Review

You, or your child's GAL, can ask the court to review the Jeopardy Order at any time. Also, except in a rare type of case, the court must review the order at least once every six months until the child turns 18, is adopted, or is emancipated (if at least 16 years old).

A Judicial Review is a "check-in." The Judge will review how you are progressing with the reunification or service plan and whether DHHS is providing you with the services you need. The Judge will also review how your child is doing.

At a judicial review, the judge may order any of the following:

- that your child be returned to you,
- that you and the caseworker continue to work on reunification, or
- that DHHS stop its reunification efforts and make permanent plans for the child's custody with someone else

Permanency Planning Hearing

If your child is placed in foster care, the court must also hold a "**permanency planning hearing**" within 12 months of the placement and at least once every 12 months after that. The "permanency plan" will state whether your DHHS is planning to return your child to you. If not, then the plan must state what other long-term ideas are being considered.

PTLA # 352

(For example: termination of parental rights and adoption, or placement with a relative. If your child is 16 years old or older, the permanency plan must address the services your child needs to learn about and adjust to independent living.

The court must also hold a "permanency planning hearing" within 30 days of issuing an Order that allows DHHS to stop providing reunification services.

What happens if DHHS says I have not met the goals of the Service Plan?

Petition to Terminate Parental Rights

If DHHS believes that you have not worked to correct the problems, which put your child in jeopardy (or too much time has passed without enough progress), DHHS can "cease reunification" between you and your child. This means that DHHS is no longer required to try to reunify you and your child. DHHS must tell you in writing when it decides to "cease reunification." DHHS must ask the court to approve its decision. The GAL will also say if she supports DHHS' decision to cease reunification. DHHS must ask for court approval either before stopping services or within 10 days of the time it stops services.

Reunification services may be stopped for a number of reasons. These are usually called "aggravating factors." Here are some examples:

- a parent has abused the child sexually or has treated the child outrageously in other ways
- a parent's parental rights to another child have been terminated



- a parent has refused to take part in treatment or has made so little progress that reunification could not take place within a reasonable time

If DHHS decides not to reunify you and your child, it must decide whether to file a **Petition To Terminate Parental Rights** (TPR). This Petition asks the court to end any rights you have as the parent of your child. The law requires DHHS to file a petition for TPR if:

- your child has been in foster care for 15 out of the previous 22 months, and you have not made enough progress toward reunification, or
- the court finds another "aggravating factor" and approves DHHS's decision to "cease reunification"

You have an **absolute right to a hearing** on DHHS' Termination Petition. At this hearing, DHHS must prove that you are unable or unwilling to parent your child. DHHS must also prove that it is in the best interests of your child to end your parental rights. DHHS must prove these points with "clear and convincing evidence"—a very high standard of proof. The Court will consider:

- what is in the best interests of your child,
- your rights as a parent,
- how long your child has been in DHHS custody, and
- what you have done to remove the risk of harm to your child

If the court agrees that you have not taken the necessary steps to provide a safe home for

your child, the court may terminate your rights.

In determining "fitness to parent," the judge must find that you:

- are unwilling or unable to protect your child, or take responsibility for your child,
- have abandoned your child, or
- have failed to make a good faith effort to rehabilitate yourself or reunify with your child

The judge must also consider your child's age and attachments to other people, as well as your child's physical or emotional needs. You may testify and present evidence and witnesses. Your lawyer may question the DHHS witnesses. The GAL will be at the hearing, will submit a report with her recommendations, and may testify.

You can agree to a termination of parental rights if you think that is in the best interests of your child.

If the Court terminates your parental rights after a hearing, you have the right to appeal this decision to the Maine Supreme Judicial Court. This appellate Court will decide whether the trial judge followed the law when it ended your parental rights. The Court will base its review of your case on what happened in the trial court. You will not have a new trial. If you have a court-appointed lawyer and you decide to appeal, this lawyer will continue to represent you.



If your parental rights are terminated, you will not have the right to visit your child or be involved in your child's life.

What are the rules about my family's privacy rights, including treatment records? Who will know about our personal information?

All information about your case is closed to the public. DHHS and court workers must follow rules that prohibit them from disclosing anything about your case. Also, you should not share any private records you receive with outside parties.

The GAL must also respect privacy rules. But be aware that the GAL does have access to all records about your children and you, including your mental health records.

What can I do to protect my child from the child's other parent?

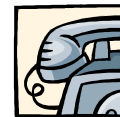
If you need to protect your child from the child's other parent and you are willing to live separately from the other parent, talk to your lawyer about getting a "parental rights and responsibilities order" from the court. The court may issue this type of order while the DHHS child protection case is pending, if it will protect the child and is in the child's best interest.

Can my children see each other if they have been placed in different homes?

If the court believes that this is in the children's best interests, yes. Through her guardian ad litem, a child may ask the court to order visits with her siblings. Also, DHHS

must work with prospective adoptive parents to arrange sibling visits for an adopted child, when DHHS believes that visits would be in the child's best interests.

More questions?



Talk to your lawyer or call:
Maine Child Welfare Services Ombudsman
(866) 621-0758

You can seek help from the Ombudsman when:

- You are concerned about what is happening between your children and DHHS.
- You think that DHHS is interfering with your rights as a parent.
- You disagree with the plan developed by a DHHS caseworker.

Remember: You have chances to work toward "reunification." You also have the right to be heard by a judge. DHHS must offer you services to help you address the problems in your home. If you cooperate, DHHS must try to help you reach the goal of returning your child to your home.

Prepared by Pine Tree Legal Assistance; Revised August 2007



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