

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

September 1, 1978  
Official Opinion #78-HS-17

Mr. John Tretton  
Department of Health, Education and Welfare  
Office of Child Development  
J.F.K. Federal Building  
Government Center  
Boston, Massachusetts 02203

RE: 42 U.S.C. 5102(3)

Dear Mr. Tretton:

In your letter dated August 1, 1978, you apprised the State of Maine Department of Human Services that 42 U.S.C. 5102(3) had been amended to include the term sexual "exploitation". You specifically requested an opinion addressing the question whether or not the State of Maine Mandatory Child Abuse Reporting Act (22 M.R.S.A. 3851, et seq.) included within its applicable definition coverage for sexual exploitation. The reason for the request was to obtain assurance by your office that the Maine law was in conformance with the Federal law so as to enable the State of Maine to continue to receive Federal funds regarding the reporting of child abuse and neglect.

22 M.R.S.A. §3851, et seq. does include within its parameters the term sexual exploitation although not specifically mentioned therein. 22 M.R.S.A. §3852, which defines "Child abuse and neglect" for purposes of the Child Protective law, provides in pertinent part:

"Child abuse and neglect" means the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of 18 years of age by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby.

The terms of this definition, particularly "negligent or maltreatment" and "child's health or welfare," are broad in scope. The preceding quoted words evidence a legislative intent to include all types of harm, whether threatened or accomplished, to a child's health or welfare that occur as a result of acts or omissions by the person responsible for the child. Implicit in the sexual exploitation of a child is a harm to, or at least a threat to, the child's health or welfare.<sup>1/</sup> Sexual exploitation of a child is clearly within the definition of "child abuse and neglect" applicable to the reporting law. Sexual exploitation of a child is also determined by our office to constitute negligent treatment or maltreatment of a child so as to fit within the umbrella of 22 M.R.S.A. § 3852.

Sexual exploitation is treated as a form of sex abuse by our Child Protective Services. Approved Policy Statement #52, attached hereto, will further amplify this State's policy concerning this subject matter. For the above reasons, the term sexual "exploitation" is included in the applicable definition of 22 M.R.S.A. § 3851, et seq.



## DEPARTMENT OF THE ATTORNEY GENERAL

BY: James E. Smith  
 James E. Smith  
 Assistant Attorney General  
 Senior Attorney: Human Services  
 Section

This is to certify that Assistant Attorney General James E. Smith is authorized to sign opinions on behalf of the Department of the Attorney General.

Donald G. Alexander  
 DONALD G. ALEXANDER  
 Deputy Attorney General

JES/ec

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<sup>1/</sup> Explicitly, it is significant to note that each type of exploitive conduct specified in the definition of "sexual abuse" in Sep. 104(2) of P.L. 95-266, including "obscene or pornographic photography, filming, or depiction of children for commercial purposes," is now criminal conduct under Maine law.



STATE OF MAINE  
DEPARTMENT OF HUMAN SERVICES  
AUGUSTA, MAINE 04333

July 28, 1977

DAVID E. SMITH  
COMMISSIONER

TO: ALL APPROVED POLICY STATEMENT HOLDERS  
FROM: ROBERT O. WYLLIE, ACTING DIRECTOR, BUREAU OF RESOURCE DEVELOPMENT  
SUBJECT: Approved Policy Statement No(s) 52\*

COMPLETE REVISION TO APS 52

Attached to this memorandum please find approved policy statement release(s) as described below:

SUBJECT: Child Protective Services

CONTENT: Policy on child protection

EFFECTIVE DATE(S): July 1, 1977

OBSOLETE MATERIAL(S): APS 52 dated 12/19/73, effective 11/1/73, APS 45 Return to Own Families, effective 8/1/73 and revised 4/1/76.

COMMENTS: Complete revision of basic child protection policy, including after hours service, and incorporating APS 45.

*plus revision of section A.VIII.B.T.C. (pg 22)  
effective 10/24/77.*

OBJECTIVES OF DIRECT SERVICE

1. To determine if abuse, neglect, and/or exploitation exists to an unacceptable degree, or whether a child is at high risk.  
To accomplish this objective, four steps are necessary:
  - a. Provision for receipt of reports/referrals
  - b. Intake screening
  - c. Intake assessment
  - d. Intake study
2. To reduce jeopardy to children without removing them from the home when the factors causing jeopardy appear to be correctable and the children can be safely maintained in the home.
3. To legally remove children from the home by petitioning the court when factors causing jeopardy do not appear correctable, and the children cannot be safely maintained in their own home.
4. To assist the family in rehabilitation so that children in the custody of the Department may be safely returned to their own home.
5. To reduce risk to children who are not in jeopardy when it appears that the factors causing risk are likely to result in jeopardy if not corrected.

KEY TERMS AND CONCEPTS

Parents - means parents or caretaker responsible for the well-being of a child.

Protection is an action which guards or shields another from loss, injury, or danger. As a social service function, it connotes intervention in a life situation in which children are exposed to conditions jeopardizing their health, welfare, or morals. When a family has become dysfunctional to the point that it cannot protect its children from harm or threatened harm, then protective services are necessary.

Jeopardy is a situation in which there is danger of harm. A child is in jeopardy when his physical or mental health is harmed or threatened with harm by acts or omissions of his parents or other persons responsible for his well-being.

The degree of jeopardy must be evaluated in its context to determine the type and level of intervention that may be required to protect the child.

The following conditions, separately or collectively, indicate jeopardy:

1. Physical abuse - injury inflicted or allowed to be inflicted, including the use of excessive corporal punishment.
2. Sexual abuse/exploitation - a sexual offense committed or allowed to be committed.
3. Emotional abuse - resulting in clinically observable evidence of neurotic, psychotic, or adjustment reaction behavior.
4. Neglect - failure to adequately provide, which results in:
  - a. Food - danger of malnutrition, nutritional deficiencies, food poisoning, and/or disease.
  - b. Clothing - undue exposure to the elements, or harm to the body.
  - c. Shelter - undue exposure to the elements, or hazards of fire, injury, and/or disease.
  - d. Supervision - imminent danger, considering child's age, physical condition, or mental capacity.
  - e. Education - truancy or deprivation of prescribed specialized services.
  - f. Health care - clear danger of serious health impairment, due to negligence rather than religious convictions.
  - g. Emotional - clinically observable evidence of neurotic, psychotic, or adjustment reaction behaviors.