

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 201

H. P. 153

House of Representatives, January 15, 1975

Referred to Committee on Human Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Mulkern of Portland.

Cosponsor: Mrs. Boudreau of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Relating to Mandatory Reporting of Child Abuse or Neglect.

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

Whereas, the Federal Government, under the Child Abuse Prevention and Treatment Act, has moneys in the form of grants and research and demonstration moneys available to states; and

Whereas, the State of Maine Department of Health and Welfare intends to make application for moneys from the Federal Government; and

Whereas, the State of Maine is not eligible for such moneys until there are certain revisions in Maine law; and

Whereas, this Act is necessary to make the State of Maine eligible for certain federal moneys; 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:

22 MRSA, §§ 3851 - 3855, as enacted by PL 1965, c. 68, are repealed and the following enacted in place thereof:

§ 3851. Purposes

The purpose of this chapter is to provide for the protection of children whose health and welfare are adversely affected or threatened by the conduct of those responsible for their care and protection in order to prevent further abuse and neglect, to enhance the welfare of these children and preserve family life whenever possible. The mandatory reporting of cases of suspected abuse or neglect by physicians, institutions and other persons to the appropriate authority will cause the protective services of the state to be implemented.

§ 3852. Definitions

When used in this chapter, unless the specific content indicates otherwise, the following words and phrases shall have the following meanings:

1. Child abuse or neglect. "Child abuse or neglect" means physical, mental or emotional harm, or a substantial risk thereof, to a child under 18 years of age, resulting from either the intentional or negligent actions of a parent or other person responsible for his care.

2. Department. "Department" means the Department of Health and Welfare.

§ 3853. Persons mandated to report suspected child abuse or neglect

When any physician, resident, intern, medical examiner, dentist, osteopath, chiropractor, podiatrist, registered or licensed practical nurse, hospital personnel engaged in admission, examination, care or treatment of persons, Christian Science practitioner, teacher, school official, social worker, psychologist, child care personnel, mental health professional or law enforcement official has reasonable cause to suspect that a child has been subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse, he shall immediately report or cause a report to be made to the department. Whenever such person is required to report under this chapter in his capacity as a member of the staff of a medical or public or private institution, school, facility or other agency, he shall immediately notify the person in charge of such institution, school facility or other agency or his designated agent, who shall then become responsible for making a report or cause such report to be made.

In addition to those persons and officials required to report suspected child abuse or neglect, any other person may make a report if such person has reasonable cause to suspect that a child has been abused or neglected.

§ 3854. Reporting procedures

1. Immediate report. Reports of child abuse or neglect made pursuant to this chapter shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if so requested by the department.

2. Information required. Such reports shall include the following information: The names and addresses of the child and his parents or other persons responsible for his care or custody, if known; the child's age, sex and race; the nature and extent of the child's physical injuries, if any; a descrip-

tion of any sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings; the name and address of the person allegedly responsible for the injuries, sexual abuse or neglect, if known; family composition; the source of the report, the person making the report, his occupation and where he can be contacted; the actions taken by the reporting source, including a description of any photographs or X-rays taken, as well as any other information that the person making the report believes may be helpful in the furtherance of the purposes of this chapter.

3. Copy of report. A copy of this report shall immediately be made available by the department to the appropriate district attorney for his consideration.

4. Report to be admissible evidence. A written report from persons or officials required by this chapter to report shall be admissible in evidence in any proceeding relating to the child abuse or neglect.

§ 3855. Mandatory reporting to a medical examiner and a postmortem investigation

Any person or official required to report cases of suspected child abuse or neglect under section 3853, who has reasonable cause to suspect that a child has died as a result of child abuse or neglect, shall report that fact to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his findings to the police, the appropriate district attorney, the department, and, if the institution making the report is a hospital, to the hospital.

§ 3856. Immunity from liability

Any person, official or institution participating in good faith and without malice in the making of a report pursuant to this chapter shall have immunity from any liability, civil or criminal, that otherwise might result by reason of such actions. Such immunity shall extend to participation in any judicial proceeding resulting from such report. For the purpose of any proceedings, civil or criminal, there shall be a rebuttable presumption that any person required to report cases of child abuse or neglect acted in good faith.

§ 3857. Abrogation of privileged communications

Privileged communication existing in common law or created by state statute, except that between lawyer and client, shall not constitute grounds for excluding evidence at any proceeding regarding child abuse or neglect of a child.

§ 3858. Liability for failure to report

Any person, official or institution required by this chapter to report a case of suspected child abuse or neglect, who willfully fails to do so, shall be civilly liable for any damage to the child proximately caused by such failure.

§ 3859. The guardian ad litem

The court, in every case involving abuse or neglect of a child, shall appoint a guardian ad litem for the child. The guardian ad litem shall be given access

to all reports relevant to the case. The guardian ad litem shall, in general, be charged with the representation of the child. To that end, he shall make such further investigation as he deems necessary to ascertain the facts, including reviewing psychiatric and physical examinations of the child, parents or other persons having custody, interviewing witnesses, examining and cross-examining witnesses, making recommendations to the court and participating further in the proceedings to the degree appropriate for adequately representing the child.

The court may, on its own motion or the motion of any party, order the examination by a physician, psychologist or psychiatrist of the child, parent or other person having custody of the child at the time of the alleged abuse or neglect, if the court finds such an examination is necessary.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect March 1, 1975.

STATEMENT OF FACT

This Act expands the definition of who is required to report child abuse and neglect and permits anyone to report with immunity from liability. It requires courts in judicial proceedings involving abuse or neglect of a child to appoint a guardian ad litem to represent the interests of the child. It limits privileged communication to that between lawyer and client in any proceeding regarding child abuse or neglect of a child. This Act assists in making the State of Maine eligible to apply for federal moneys under the Child Abuse Prevention and Treatment Act of 1974.