

MAINE STATE LEGISLATURE

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(EMERGENCY)
(New draft of H. P. 153, L. D. 201)

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1680

H. P. 1488

House of Representatives, April 11, 1975

Reported by Mr. Talbot of Portland from Committee on Human Resources.
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EDWIN H. PERT, Clerk

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:

Sec. 1. 22 MRSA §§ 3851-3855, as enacted by PL 1965, c. 68, are repealed and the following enacted in place thereof: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 con-

duct 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 and neglect. "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. Provided, however, that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone, shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well recognized church or religious organization be provided to the child, when his health requires it.

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

3. Court. "Court" shall mean the District or Probate Court.

§ 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, Christian Science practitioner, teacher, school official, social worker, psychologist, child care personnel, mental health professional or law enforcement official knows or has reasonable cause to believe 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 a report to be made. However, any person may make a report if such person knows or 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 if such is within the knowledge of the person reporting. 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 description of any sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings; 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.

§ 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 knows or has reasonable cause to believe 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.

Sec. 2. 22 MRSA §§ 3856 to 3860 are enacted to read:

§ 3856. Immunity from liability

Any person, official or institution who, in good faith, participates in the making of a report under this chapter or in a judicial proceeding resulting therefrom shall be immune from any liability, civil or criminal, that otherwise might result by reason of such actions. For the purpose of any proceedings, civil or criminal, there shall be a rebuttable presumption that any person acting pursuant to this chapter did so in good faith.

§ 3857. Liability for failure to report

Whoever knowingly and wilfully violates this chapter by failing to file a report as required shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both.

§ 3858. 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, psychologic and physical exam-

inations 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. Provided, however, that no statement made by the examinee to a physician, psychologist or psychiatrist during an examination order by the court shall be admissible in evidence if such statement would tend to incriminate the examinee in the commission of a criminal act.

§ 3859. Confidentiality of records

All records and reports concerning child abuse and neglect are deemed confidential and are subject to release only under the conditions set forth in section 3860. Any person who permits or encourages the unauthorized dissemination of their contents shall be deemed guilty of a misdemeanor and on conviction shall be punished by a fine of not more than \$1,000 or by imprisonment for 6 months, or by both.

§ 3860. Access to confidential records

The Department of Health and Welfare may release or turn over such records and reports to the following agencies or persons under the following conditions: A legally mandated, public or private child protective agency investigating a report of known or suspected child abuse or neglect or treating a child or family which is the subject of a report or record; a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect; a physician who has before him a child whom he reasonably suspects may be abused or neglected; a person legally authorized to place a child in protective custody when such person has before him a child whom he reasonably suspects may be abused or neglected and such person requires the information in the report or record in order to determine whether to place the child in protective custody; an agency having the legal responsibility or authorization to care for, treat or supervise a child who is the subject of a report or record, or a parent, guardian or other person who is responsible for the child's welfare or his guardian ad litem with protection for the identity of reporters and other appropriate persons; a court, upon its finding that access to such records may be necessary for determination of an issue before such court, but such access shall be limited to in camera inspection, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it; a grand jury upon its determination that access to such records is necessary in the conduct of its official business; any appropriate state or local official responsible for the child protective service or legislation carrying out his official functions; any person engaged in a bona fide research purpose, provided that no information identifying the subjects of the report shall be made available to the researcher, unless it is absolutely essential to the research purpose and the department gives prior approval.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

This bill 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. This bill assists in making the State of Maine eligible to apply for federal moneys under the Child Abuse Prevention and Treatment Act of 1974.