

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1122

S. P. 337

In Senate, March 24, 1977

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

MAY M. ROSS, Secretary

Presented by Senator Snowe of Androscoggin.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT to Amend the Child Abuse and Neglect Laws.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 22 MRSA § 3791 is repealed.

Sec. 2. 22 MRSA § 3792, as last amended by PL 1973, c. 567, § 20, is further amended by adding at the end the following new paragraph to read:

When the court has ordered a change in the legal custody of a child under this section, and any person not entitled to custody of the child refuses to relinquish physical custody of that child to the department or person entitled to custody under the order, then at the request of the department or person entitled to custody, a law enforcement officer may take any necessary and reasonable steps to obtain physical custody of the child for the rightful custodian, including entering public property or private property when the officer has probable cause to believe that the child is present there.

Sec. 3. 22 MRSA § 3794, as amended by PL 1969, c. 139, is repealed and the following enacted in its place:

§ 3794. Maintenance and education

The department shall provide for the maintenance and care of any children committed to its custody under section 3792, in or by duly licensed or approved children's institutions, child welfare organizations or family homes.

Sec. 4. 22 MRSA § 3796, as amended by P&SL 1973, c. 53, is repealed.

Sec. 5. 22 MRSA § 3853, as last amended by PL 1975, c. 678, §§ 1 and 2, is repealed and the following enacted in its place:

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

1. **Reasonable cause.** When any medical physician, resident, intern, medical examiner, dentist, osteopathic physician, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, school official, social worker, homemaker-home health aide, medical or social service worker for families and children, psychologist, child care personnel, mental health professional or law enforcement official knows or has reasonable cause to suspect that a child has been subjected to abuse or neglect or observes the child being subjected to conditions of circumstances which would reasonably result in abuse or neglect, when such individual is acting in his professional capacity, he shall immediately report or cause a report to be made to the department. Whenever such person, is required to report under this section, 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. Any person may make a report if such person knows or has reasonable cause to suspect that a child has been abused or neglected.

This subsection does not require any person to report when the factual basis for knowing or suspecting child abuse or neglect came from treatment of the individual for suspected child abuse or neglect, the treatment was sought by the individual for a problem relating to child abuse or neglect, and, in the opinion of the person required to report, the child's life or health is not immediately threatened.

2. **Photographs.** Whenever a person is required to report under this section, in his capacity as a member of a law enforcement or medical staff of an institution, agency or facility, he shall make reasonable efforts to take or cause to be taken color photographs of any areas of trauma visible on a child. The person shall notify the department as soon as possible if he is unable to take or cause to be taken, such photographs.

Any photographs taken shall be sent to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services.

Any person, institution, facility or agency acting in good faith pursuant to this subsection, shall be immune from civil or criminal liability that otherwise might result from such action.

Sec. 6. 22 MRSA § 3854, sub-§ 2, as enacted by PL 1975, c. 167, § 1, is repealed and the following enacted in its place:

2. **Information required.** Such reports shall include the following information if within the knowledge of the person reporting:

- A. The names and addresses of the child and his parents or other persons responsible for his care or custody if known;
- B. The child's age and sex;

- C. The nature and extent of the child's physical injuries, if any;
- D. A description of any sexual abuse or neglect, including any evidence of previous injuries, sexual abuse or neglect to the child or his siblings;
- E. Family composition;
- F. The source of the report, the person making the report, his occupation and where he can be contacted;
- G. The actions taken by the reporting source, including a description of any photograph or x-rays taken; and
- H. Any other information that the person making the report believes may be helpful in the furtherance of the purposes of this chapter.

Sec. 7. 22 MRSA § 3856-A is enacted to read:

§ 3856-A. Privileged communications

The privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is hereby abrogated in situations involving known or suspected child abuse or neglect. Such privileged communications, excluding those of attorney and client, shall not constitute grounds for failure to report as required or permitted by law, to cooperate with the department in its child protective activities pursuant to law or to give or accept evidence in any judicial proceeding relating to the child abuse or neglect.

Sec. 8. 22 MRSA § 3857, 1st ¶, as enacted by PL 1975, c. 167, § 2, is repealed and the following enacted in its place:

Any person who knowingly fails to report as required in section 3853, shall be guilty of a civil violation and subject to a fine of not more than \$500.

Sec. 9. 22 MRSA § 3859, as enacted by PL 1975, c. 167, § 2, is repealed and the following enacted in its place:

§ 3859. Confidentiality of records; access to records

1. 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 subsection 2. 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.

2. Access to records. The Department of Human Services may release or turn over records and reports of child abuse and neglect to the following agencies or persons under the following conditions:

- A. An agency investigating a report of known or suspected child abuse or neglect pursuant to a legal mandate or an agreement with the department;
- B. A police or other law enforcement agency investigating a report of known or suspected child abuse or neglect;
- C. A physician who has before him a child whom he reasonably suspects may be abused or neglected;

D. An agency or institution having the legal responsibility or authorization to educate, care for, treat or supervise a child who is the subject of a report or record, or a parent, guardian or other person responsible for the child's welfare, including a member of a treatment team or group convened for purposes of planning for or treating a child or family which is the subject of a report or record;

E. Any person named in the report or record who is alleged to be abused or neglected; if the person named in the report or record is a minor or is otherwise incompetent, his guardian ad litem;

F. A parent, guardian or other person responsible for the welfare of a child named in a report or record, with protection for the identity of reporters and other appropriate persons;

G. A court, upon its finding that access to such records may be necessary for determination of any 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;

H. A grand jury upon its determination that access to such records is necessary in the conduct of its official business;

I. Any appropriate state or local official responsible for the child protective service or legislation carrying out his official functions; and

J. 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 commissioner gives prior approval; if the researcher desires to contact a subject of a report or record, the subject's consent to the contact shall be obtained by a departmental staff member who has worked with that subject or, if none, another appropriate staff person.

Sec. 10. 22 MRSA § 3860, as enacted by PL 1975, c. 167, § 2, and as amended, is repealed and the following enacted in its place:

§ 3860. Department's responsibilities

1. Action taken. The department shall:

A. Receive reports of known or suspected child abuse and neglect;

B. Investigate promptly all cases of child abuse and neglect coming to its attention;

C. Determine the degree of harm or threatened harm to each child in a case; and

D. Take whatever action, if any, is appropriate under the circumstances to further the purposes set forth in section 3851, and other pertinent sections of the child abuse and neglect laws.

2. Care of dependent child. The department may make provisions, without a court order, for the care of a dependent child at the request of the

child's parents or next of kin, if the child is without a parent of sufficient ability or without another relative able and willing to provide for its care.

3. Complete investigation.

A. To enable the department to perform a complete investigation, the commissioner of the department, his delegate or the department's legal counsel may issue subpoenas requiring persons to disclose or provide to the department any information or records in their possession, which are necessary and relevant to the investigation of a report of child abuse or neglect and which will aid the department in the performance of its duties in this area. The department may apply to the District Court to enforce a subpoena.

Any person who complies with such a subpoena shall be immune from civil or criminal liability that otherwise might result from such compliance. Compliance here means the act of turning over information or records to the department pursuant to a subpoena.

B. The commissioner of the department or his delegate is authorized to obtain criminal history record information which it deems relevant to a child abuse or neglect case. Such relevant criminal history record information may include information regarding a crime for which a person has been:

- (1) Convicted;
- (2) Arrested or charged by complaint, indictment or information, but without disposition within one year and where no active prosecution for the crime is pending; or
- (3) Charged by complaint, indictment or information which subsequently has been dismissed under circumstances precluding the State from reinitiating the criminal charge.

Any information or records disclosed or provided to the department pursuant to this subsection, shall be confidential, notwithstanding section 3859, subsection 2, and shall be used only for the purposes of making and implementing departmental decisions with respect to a child who is the subject of a case. The word "implementing" includes the use of the information or records in judicial proceedings to determine a child's custody when the department has initiated a petition for protective custody of the child.

STATEMENT OF FACT

The purpose of this bill is to increase the efficiency of the child abuse and neglect reporting law and the Department of Human Services' ability to respond to reports of child abuse and neglect.

The department's basic authority to act on child abuse and neglect would be altered to eliminate a criminally oriented approach. A civilly oriented

authority would be specifically set forth, along with an authority to investigate and obtain, by civil subpoenas and otherwise, sufficient information to make proper case plan decisions. The department's case data, and potential court evidence, would also be improved by having photographs of physical trauma on a child in certain cases, and by eliminating the restrictive effect of most privileged communications in this area.

Two more professional groups would be added to the list of people required to report cases of child abuse and neglect, and the section on liability for failing to report would be simplified.

Access to records provisions would be improved by eliminating or changing current nonsensical or inappropriate phrases, and by allowing access to a treatment group recently put into use by some regions.

Procedures to enforce court custody orders against noncomplying persons would be spelled out.

Inappropriate or out of date sections would be repealed, and some changes in form would make the statute more readable.