

MAINE STATE LEGISLATURE

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L.D. 2468

(Filing No. H-682)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
113TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1804, L.D. 2468,
Bill, "AN ACT to Promote More Effective Investigations
of Child Abuse Allegations in Out-of-Home Settings."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1. 22 MRSA §4004, sub-§1, as enacted by PL
1979, c. 733, §18, is amended to read:

1. General. The department may take appropriate
action, consistent with available funding, which will
help achieve the goals of section 4003 and subchapter
XI, including:

A. Developing and providing services which:

(1) Support and reinforce parental care of
children;

(2) Supplement that care; and

(3) When necessary, substitute for parental
care of children;

B. Encouraging the voluntary use of these and
other services by families and children who may

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1 need them;

2 C. Cooperating and coordinating with other
3 agencies, facilities or persons providing related
4 services to families and children; and

5 D. Establishing and maintaining a Child
6 Protective Services Contingency Fund to provide
7 temporary assistance to families to help them
8 provide proper care for their children.

9 Sec. 2. 22 MRSA §4004, sub-§2, ¶B, as enacted
10 by PL 1979, c. 733, §18, is amended to read:

11 B. Promptly investigate all abuse and neglect
12 cases coming to its attention or in the case of
13 out-of-home abuse and neglect investigations, the
14 department shall act in accordance with subchapter
15 XI;

16 Sec. 3. 22 MRSA §4008, sub-§2, ¶D, as enacted
17 by PL 1979, c. 733, §18, is amended to read:

18 D. A child named in a record who is reported to
19 be abused or neglected, or his the child's
20 parent or custodian, or the subject of the report,
21 with protection for identity of reporters and
22 other persons when appropriate;

23 Sec. 4. 22 MRSA §4008, sub-§2, ¶F, as amended
24 by PL 1983, c. 354, §1, is further amended to read:

25 F. Any person engaged in bona fide research,
26 provided that no personally identifying
27 information is made available, unless it is
28 essential to the research and the commissioner
29 or his the commissioner's designee gives prior
30 approval. If the researcher desires to contact a
31 subject of a record, the subject's consent shall
32 be obtained by the department prior to the
33 contact; and

34 Sec. 5 22 MRSA §4008, sub-§2, ¶G, as enacted by
35 PL 1983, c. 354, §2, is amended to read:

36 G. Any agency or department involved in licensing

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1 or approving homes for, or the placement of,
2 children or dependent adults, with protection for
3 identity of reporters and other persons when
4 appropriate; and

5 Sec. 6. 22 MRSA §4008, sub-§2, ¶H is enacted to
6 read:

7 H. The representative designated to provide child
8 welfare services by the tribe of an Indian child
9 as defined by the Indian Child Welfare Act, United
10 States Code, Title 25, Section 1903.

11 Sec. 7. 22 MRSA §4008, sub-§3, ¶F, as enacted
12 by PL 1985, c. 506, Pt. A, §45, is amended to read:

13 F. Where the information concerns teachers and
14 other professional personnel issued certificates
15 under Title 20-A, persons employed by schools
16 approved pursuant to Title 20-A or any employees
17 of schools operated by the Department of
18 Educational and Cultural Services, the information
19 shall be disclosed to the Commissioner of
20 Educational and Cultural Services. This paragraph
21 is repealed on June 30, 1989, pending review by
22 the joint standing committee having jurisdiction
23 over audit and program review and unless continued
24 by legislative Act.

25 Sec. 8. 22 MRSA §4011, sub-§1, as repealed and
26 replaced by PL 1985, c. 819, Pt. A, §§25 and 26, is
27 amended to read:

28 1. Reasonable cause to suspect. When, while
29 acting in his a professional capacity, an adult who
30 is a medical or osteopathic physician, resident,
31 intern, emergency medical services' person, medical
32 examiner, physician's assistant, dentist, dental
33 hygienist, dental assistant, chiropractor, podiatrist,
34 registered or licensed practical nurse, Christian
35 Science practitioner, teacher, guidance counselor,
36 school official, social worker, homemaker, home health
37 aide, medical or social service worker, psychologist,
38 child care personnel, mental health professional, law
39 enforcement official, state fire inspector, municipal
40 code enforcement official or municipal fire inspector
41 knows or has reasonable cause to suspect that a child

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1 has been or is likely to be abused or neglected, ~~he~~
2 that person shall immediately report or cause a report
3 to be made to the department.

4 A. Whenever a person is required to report in
5 his a capacity as a member of the staff of a
6 medical or public or private institution, agency
7 or facility, he that person shall immediately
8 notify either the person in charge of the
9 institution, agency or facility, or his a
10 designated agent, who shall then cause a report to
11 be made. The staff may also make a report
12 directly to the department.

13 B. Any person may make a report if that person
14 knows or has reasonable cause to suspect that a
15 child has been or is likely to be abused or
16 neglected.

17 D. When, while acting in his a professional
18 capacity, any person required to report under this
19 section knows or has reasonable cause to suspect
20 that a child has been abused or neglected by a
21 person not responsible for the child, he the
22 person shall immediately report or cause a report
23 to be made to the appropriate district attorney's
24 office, ~~except as provided in subsection 1-A.~~

25 Sec. 9. 22 MRSA §5005, sub-§1-A is enacted to
26 read:

27 1-A. Applicability of other definitions. Any
28 terms defined or used in subchapter II, section 4002
29 or 4021, have the same meaning when used in this
30 subchapter.

31 Sec. 10. 34-A MRSA §1203, sub-§1, as enacted by
32 PL 1983, c. 459, §6, is amended to read:

33 1. Establishment. The Office of Advocacy is
34 established within the department to investigate the
35 claims and grievances of committed offenders,
36 informally adjusted juveniles and contract clients, to
37 investigate, in conjunction with the Department of
38 Human Services, as appropriate, allegations of adult
39 and child abuse or neglect in correctional facilities
40 and to advocate for compliance by the department, any

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1 correctional facility or any contract agency with all
2 laws, administrative rules and institutional and other
3 policies relating to the rights and dignity of
4 committed offenders, informally adjusted juveniles and
5 contract clients.

6 Sec. 11. 34-A MRSA §1402, sub-§§7 and 8 are
7 enacted to read:

8 7. Abuse allegations in correctional facilities.
9 The commissioner shall be responsible for ensuring
10 appropriate intervention and remediation in cases of
11 substantiated abuse and neglect in correctional
12 facilities. The commissioner shall ensure, through
13 inspection at least every 2 years, that all
14 correctional facilities meet applicable federal and
15 state standards relating to the health and safety of
16 clients of these facilities.

17 8. Allegations of child abuse or neglect in
18 correctional facilities. The commissioner shall be
19 responsible for the investigation of all reports of
20 suspected child abuse or neglect in correctional
21 facilities.

22 A. These investigations shall be conducted with
23 the Department of Human Services, as appropriate,
24 and, in cases where there are allegations or
25 indications of criminal conduct, with the
26 Department of the Attorney General, as appropriate.

27 B. The commissioner shall negotiate joint working
28 agreements with the Department of Human Services
29 and the Department of the Attorney General
30 concerning procedures and respective
31 responsibilities for conducting investigations of
32 allegations of child abuse or neglect in
33 correctional facilities.

34 Sec. 12. 34-B MRSA §1203, sub-§7 is enacted to
35 read:

36 7. Abuse allegations in state institutions. The
37 commissioner shall be responsible for ensuring
38 appropriate intervention and remediation in cases of
39 substantiated abuse and neglect in state
40 institutions. The commissioner shall ensure, through
41 inspection on a periodic basis, that all state

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1 institutions meet appropriate federal and state
2 standards relating to the health, safety and welfare
3 of clients of these institutions.

4 Sec. 13. 34-B MRSA §1205, sub-§1, as enacted by
5 PL 1983, c. 459, §7, is amended to read:

6 1. Establishment. The Office of Advocacy is
7 established within the department to investigate the
8 claims and grievances of clients of the department, to
9 investigate with the Department of Human Services, as
10 appropriate, all allegations of adult and child abuse
11 in state institutions and to advocate for compliance
12 by any institution, other facility or agency
13 administered by the department with all laws,
14 administrative rules and institutional and other
15 policies relating to the rights and dignity of clients.

16 Sec. 14. 34-B MRSA §1205, sub-§3, ¶C and D, as
17 enacted by PL 1983, c. 459, §7, are amended to read:

18 C. As an information source regarding the rights
19 of all clients, keep itself informed about all
20 laws, administrative rules and institutional and
21 other policies relating to the rights and dignity
22 of the clients and about relevant legal decisions
23 and other developments related to the field of
24 mental health and mental retardation, both in this
25 State and in other parts of the country; and

26 D. Make and publish reports necessary to the
27 performance of the duties described in this
28 section, except that only the chief advocate may
29 report any findings of the office to groups
30 outside the department, such as legislative
31 bodies, advisory committees to the Governor,
32 boards of visitors, law enforcement agencies and
33 the press; and

34 Sec. 15. 34-B MRSA §1205, sub-§3, ¶E is enacted
35 to read:

36 E. Negotiate joint working agreements with the
37 Department of Human Services concerning procedures
38 and respective responsibilities for conducting
39 investigations in state institutions of
40 allegations of abuse pursuant to the Child and

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1 Family Services and Child Protection Act, Title
2 22, chapter 1071.

3 Sec. 16. Report to the Legislature. The
4 Department of Human Services and the Department of
5 Educational and Cultural Services shall report to the
6 Joint Standing Committee on Audit and Program Review
7 by September 1, 1988 regarding the provisions in place
8 to ensure the confidentiality of information disclosed
9 pursuant to the Maine Revised Statutes, Title 22,
10 section 4008, subsection 3, paragraph F.'

11 STATEMENT OF FACT:

12 Sections 1 and 2 of this amendment add out-of-home
13 abuse and neglect investigations to the authorizations
14 of the Child and Family Services and Child Protection
15 Act and indicate that with reference to out-of-home
16 abuse and neglect investigations, the Department of
17 Human Services shall act in accordance with Title 22,
18 chapter 1071, subchapter XI.

19 Section 3 provides discretionary authority to the
20 Department of Human Services to release relevant
21 information to the subject of the report when that
22 person is not the child or the child's parent or
23 custodian.

24 Sections 4 and 5 expand the Department of Human
25 Services' optional disclosure of child protection
26 records to include other departments or agencies that
27 license facilities for adults and children.

28 Section 6 expands the Department of Human
29 Services' optional disclosure of child protection
30 records to include the representative designated to
31 provide child welfare services by the tribe of an
32 Indian child.

33 Section 7 broadens the Department of Human
34 Services' mandatory disclosure of child protection
35 records to the Commissioner of Educational and
36 Cultural Services to include persons employed by
37 approved schools or any employee of schools operated
38 by the Department of Educational and Cultural
39 Services. The intent is to include janitors, bus
40 drivers, lunch room personnel and other

1 nonprofessional school personnel. A termination date
2 is also established to ensure legislative review.

3 Section 8 changes the list of mandated reporters
4 to exclude minors who serve as child care personnel
5 and Christian Science practitioners from mandatory
6 reporting and deletes an outdated section.

7 Section 9 makes clear that the definitions and
8 provisions of Title 22, chapter 1071, subchapters I
9 and III and Title 22, subsection 4002, apply also to
10 Title 22, chapter 1071, subchapter XI.

11 Section 10 gives the Department of Correction's
12 Office of Advocacy the authority and responsibility to
13 conduct, in conjunction with representatives from the
14 Department of Human Services and Department of the
15 Attorney General, as appropriate, investigations of
16 allegations of abuse or neglect of offenders committed
17 to correctional facilities.

18 Section 11 makes clear that the Commissioner of
19 Corrections has responsibility for ensuring the
20 appropriate resolution of allegations of abuse against
21 clients of correctional facilities. All correctional
22 facilities must meet applicable health and safety
23 standards established by the commissioner to ensure an
24 environment that is not inherently abusive or
25 neglectful for clients of these facilities. This
26 section also makes it clear that the Commissioner of
27 Corrections is responsible for the investigation of
28 all allegations of child abuse or neglect in
29 correctional facilities and that these investigations
30 include representatives from the Department of Human
31 Services, as appropriate, and, if there are
32 indications of criminal conduct, the Department of the
33 Attorney General, as appropriate. In addition, the
34 commissioner is given the responsibility to negotiate
35 working agreements with the Department of Human
36 Services and the Office of the Attorney General for
37 the conduct of these investigations.

38 Section 12 makes clear that the Commissioner of
39 Mental Health and Mental Retardation has
40 responsibility for ensuring the appropriate resolution
41 of allegations of abuse against clients of state
42 institutions. All state institutions must meet
43 adequate health and safety standards established by

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1 the commissioner to ensure an environment that is not
2 inherently abusive or neglectful for clients of these
3 institutions.

4 Section 13 clarifies that the Department of Mental
5 Health and Mental Retardation's Office of Advocacy is
6 responsible for conducting investigations of all
7 allegations of child abuse in state institutions, in
8 cooperation with staff responsible for abuse
9 allegations in the Department of Human Services.

10 Sections 14 and 15 require that the Department of
11 Mental Health and Mental Retardation's Office of
12 Advocacy establish joint working agreements with
13 appropriate staff in the Department of Human Services
14 to clarify respective duties and responsibilities in
15 conducting abuse investigations in state institutions
16 of the department.

17 Section 16 requires the Department of Human
18 Services and the Department of Educational and
19 Cultural Services to report to the Joint Standing
20 Committee on Audit and Program Review regarding the
21 provisions in place to ensure the confidentiality of
22 information disclosed pursuant to Title 22, section
23 4008, subsection 3, paragraph F.

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Reported by the Committee on Audit and Program Review
Reproduced and distributed under the direction of the Clerk of the
House
4/12/88

(Filing No. H-682)