

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 177

H.P. 166

House of Representatives, January 16, 2001

An Act Regarding Child Abuse and Neglect Investigation.

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative FULLER of Manchester.
Cosponsored by Senator MITCHELL of Penobscot and
Representatives: BAKER of Bangor, BROOKS of Winterport, KANE of Saco,
McLAUGHLIN of Cape Elizabeth, O'BRIEN of Augusta, TWOMEY of Biddeford,
WATSON of Farmingdale, Senator: LONGLEY of Waldo.

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

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4 **Sec. 1. 22 MRSA §4088, sub-§1, ¶D**, as amended by PL 1995, c. 560, Pt. K, §82 and affected by §83, is further amended to read:

6 D. "Out-of-home abuse and neglect" means abuse and neglect
8 of a child ~~which~~ that occurs in a facility or program or by
10 a person subject to licensure or inspection by this
12 department, the Department of Education, the Department of
14 Corrections and the Department of Mental Health, Mental
 Retardation and Substance Abuse Services or in a facility
 operated by these departments or in connection with services
 funded in whole or in part by these departments.

16 **Sec. 2. 22 MRSA §4088, sub-§2**, as enacted by PL 1989, c. 400,
§9, is amended to read:

18 **2. Team established.** The out-of-home abuse and neglect
20 investigating team is established to investigate reports of
22 suspected abuse and neglect of children by persons or in
24 facilities or programs subject to licensure pursuant to this
26 Title or in connection with services funded in whole or in part
28 by the department. The team is also authorized to assist other
30 persons or agencies to investigate suspected abuse and neglect by
32 persons or in facilities or programs providing services to
 children that are subject to licensure pursuant to other Titles
 or in connection with services that are funded in whole or in
 part by the Department of Education, the Department of
 Corrections or the Department of Mental Health, Mental
 Retardation and Substance Abuse Services and to assist in
 investigations of suspected abuse and neglect in state-operated
 facilities providing services for children.

34 **Sec. 3. 22 MRSA §4088, sub-§3**, as amended by PL 1995, c. 560,
36 Pt. K, §82 and affected by §83, is further amended to read:

38 **3. Authority and responsibility.** The team ~~shall have~~ has
40 the following authority and responsibilities regarding
42 investigation of out-of-home abuse and neglect. The team:

44 A. Shall receive all reports of out-of-home abuse and
46 neglect;

48 B. Shall investigate all reports received by the department
 regarding alleged out-of-home abuse and neglect occurring in
 facilities or programs or by persons subject to licensure by
 the department or in connection with services funded in
 whole or in part by the department;

2 C. Shall conduct a single investigation sufficient to
3 determine not only if abuse or neglect has occurred but also
4 to determine whether a licensing violation has occurred in
5 order to protect children from further harm and establish a
6 basis upon which to take licensing action. This procedure
7 minimizes duplicative or redundant investigations to the
8 extent possible in response to the same or related
9 allegations of out-of-home abuse or neglect in facilities or
10 programs or by persons subject to licensure by the
11 department or in connection with services funded in whole or
12 in part by the department;

13 D. Shall coordinate and consult with the bureau staff
14 performing general licensing functions to eliminate
15 duplicative or redundant investigations to the extent
16 possible and to prevent, correct or eliminate the abuse or
17 neglect or threat of abuse or neglect in out-of-home
18 settings;

19 E. Shall provide the results of the investigation to the
20 bureau's licensing staff for appropriate action;

21 F. Shall include relevant professionals outside the
22 department as members of the team for all investigations of
23 residential treatment centers, group homes or day care
24 centers mandated by this subchapter and for other child care
25 facilities as warranted;

26 G. When a report alleges out-of-home abuse and neglect in
27 facilities or programs or by persons ~~not--subject--to~~
28 ~~licensure-by-the-department~~ licensed by the Department of
29 Education, the Department of Corrections or the Department
30 of Mental Health, Mental Retardation and Substance Abuse
31 Services or in connection with services funded in whole or
32 in part by these departments, shall immediately refer the
33 report to the agency or department ~~charged--with--the~~
34 ~~responsibility-to-investigate--such-a-report~~ that licensed
35 the facility, person or program or funded the services or,
36 if applicable, to the state department operating the
37 facility;

38 H. With respect to reports described in paragraph G, may,
39 on its own initiative or upon request of another department
40 or agency ~~charged-with-the-responsibility-to-investigate,~~
41 participate in the out-of-home abuse and neglect
42 investigation of persons, programs or facilities subject to
43 licensure or funded in whole or in part or operated by the
44 Department of Education, the Department of Corrections or
45 the Department of Mental Health, Mental Retardation and
46 Substance Abuse Services. With regard to these reports, the
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2 team shall investigate if the department involved does not
3 undertake its own investigation;

4 I. Shall refer to the office of the district attorney or
5 office of the Attorney General, when appropriate, any case
6 in which criminal activity is alleged and shall coordinate
7 its investigation with that office to minimize the trauma to
8 the children involved; and

10 J. Shall consult and train law enforcement personnel,
11 advocates and others in the identification, reporting,
12 prevention and investigation of out-of-home abuse and
13 neglect as time allows.

14 **Sec. 4. 22 MRSA §4088, sub-§§4 to 6,** as enacted by PL 1989, c.
15 400, §9, are amended to read:

18 **4. Training.** The team shall must be trained in techniques
19 of investigating out-of-home abuse and neglect of children, as
20 well as child development; identification of abuse and neglect;
21 interview techniques; treatment alternatives for perpetrators,
22 victims and their families; licensing regulations applicable to
23 facilities, programs or persons licensed pursuant to Subtitle 6;
24 rules applicable to contracted services for children; and other
25 statutory and regulatory remedies available to prevent, correct
26 or eliminate abuse and neglect in out-of-home settings.

28 **5. Records; confidentiality; disclosure.** Records created
29 pursuant to this subchapter shall must be maintained in
30 accordance with section 4008 and shall may not be disclosed
31 except as provided by that section or by section 7703,
32 subsections 2 to 4.

34 **6. Assistance.** Staff performing general licensing and
35 contracting functions may assist the team in conducting
36 out-of-home investigations upon the request of the Director of
37 the Bureau of Child and Family Services, ~~provided that~~ as long as
38 the licensing or contracting staff member has ~~neither~~ not
39 currently licensed ~~nor,~~ contracted with or monitored for
40 compliance the subject of the investigation.

42 **Sec. 5. 22 MRSA §7703, sub-§4, ¶¶C, E and F,** as enacted by PL
43 1983, c. 691, §2, are amended to read:

44 C. A court on its finding that access to those records may
45 be necessary for the determination of any issue before the
46 court. Access shall ~~be~~ is limited to in camera inspection,
47 unless the court determines that public disclosure of the
48 information is necessary for the resolution of an issue
49 pending before it;

2 E. An appropriate state executive or legislative official
with responsibility for adult or child protection services
4 in carrying out his the official functions, provided except
that no personally identifying information may be made
6 available unless necessary to his the official's functions;

8 F. The Protection and Advocacy Agency for the
Developmentally Disabled in Maine in connection with
10 investigations conducted in accordance with Title 5, chapter
96~~1~~ 511. The determination of what information and records
12 are relevant to the investigation shall must be made by
agreement between the department and the agency; and

14 **Sec. 6. 34-B MRSA §1205, sub-§4**, as amended by PL 1989, c.
16 731, §3, is further amended to read:

18 **4. Access to files and records.** The Office of Advocacy,
through the chief advocate and the other advocates, has access,
20 limited only by the law, to the files, records and personnel of
any institution, facility, program, person, service or agency
22 administered, licensed or funded by the department. All persons
with knowledge about an incident related to client care,
24 including client-to-client assault, staff-to-client assault,
client-to-staff assault, excessive use of seclusion or mechanical
26 or chemical restraint, incidents stemming from questionable
psychiatric and medical practice or any other alleged abuse or
28 neglect, shall immediately report the details of that incident to
the Office of Advocacy. A copy of any incident report shall must
30 be provided to the Office of Advocacy by the person making the
report.

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SUMMARY

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This bill does the following.

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1. It adds children's services programs and providers of
services funded in whole or in part by the Department of Human
40 Services, Department of Education, Department of Corrections and
Department of Mental Health, Mental Retardation and Substance
42 Abuse Services to the settings in which the out-of-home abuse and
neglect investigating team may investigate reports of suspected
44 abuse and neglect of children. If one of these departments is
involved and does not undertake an investigation, the bill
46 requires the team to investigate the report.

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2. It corrects a cross-reference regarding confidentiality
of information regarding investigations conducted by the

2 Disability Rights Center under the Maine Revised Statutes, Title
5, chapter 511.

4 3. It adds programs, services and persons administered,
6 licensed or funded by the Department of Mental Health, Mental
Retardation and Substance Abuse Services to the law providing
8 access to records for the Office of Advocacy within the
Department of Mental Health, Mental Retardation and Substance
Abuse Services.