

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1314

H.P. 968

House of Representatives, March 11, 2003

### **An Act To Establish Accountability in Out-of-home Abuse and Neglect Investigations**

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

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative KANE of Saco.  
Cosponsored by Senator BRENNAN of Cumberland and  
Representatives: BULL of Freeport, CRAVEN of Lewiston, EARLE of Damariscotta,  
LAVERRIERE-BOUCHER of Biddeford, WALCOTT of Lewiston.

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 22 MRSA §4004, sub-§1**, as amended by PL 2001, c. 11,  
5 §4, is further amended to read:

6 **1. General.** The department may take appropriate action,  
7 consistent with available funding, that will help prevent child  
8 abuse and neglect and achieve the goals of section 4003 and  
9 ~~subchapter XI-A~~ section 1704, including:

10 A. Developing and providing services ~~which~~ that:

11 (1) Support and reinforce parental care of children;

12 (2) Supplement that care; and

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

15 B. Encouraging the voluntary use of these and other  
16 services by families and children who may need them;

17 C. Cooperating and coordinating with other agencies,  
18 facilities or persons providing related services to families  
19 and children;

20 D. Establishing and maintaining a Child Protective Services  
21 Contingency Fund to provide temporary assistance to families  
22 to help them provide proper care for their children; and

23 E. Establishing a child death and serious injury review  
24 panel for reviewing deaths and serious injuries to  
25 children. The panel consists of the following members: the  
26 Chief Medical Examiner, a pediatrician, a public health  
27 nurse, forensic and community mental health clinicians, law  
28 enforcement officers, departmental child welfare staff,  
29 district attorneys and criminal or civil assistant attorneys  
30 general.

31 The purpose of the panel is to recommend to state and local  
32 agencies methods of improving the child protection system,  
33 including modifications of statutes, rules, policies and  
34 procedures.

35 **Sec. 2. 22 MRSA §4004, sub-§2, ¶B**, as amended by PL 1991, c.  
36 824, Pt. A, §45, is further amended to read:

37 B. Promptly investigate all abuse and neglect cases coming  
38 to its attention or in the case of out-of-home abuse and

neglect investigations, the department shall act in accordance with ~~subchapter XI-A~~ section 7704;

**Sec. 3. 22 MRSA c. 1071, sub-c. 11-A**, as amended, is repealed.

**Sec. 4. 22 MRSA §7704** is enacted to read:

**§7704. Investigation of out-of-home abuse and neglect**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Abuse or neglect by an individual" means that which occurs when an agency employee, an individual licensee or a person who resides in or frequents a facility or program for children commits abuse or neglect of a child or children attending the facility or program.

B. "Division" means the Division of Child Care Licensing.

C. "Institutional abuse" means that which occurs whenever a child suffers harm or threat of harm while in the care of an agency or individual licensee who, by the agency's or licensee's actions, participates in or knowingly allows practices that cause harm to children.

D. "Institutional neglect" means that which occurs whenever a child or children suffers harm or threat of harm while in the care of an agency or individual licensee who, by the agency's or licensee's inaction, fails to act responsibly to prevent harm or threat of harm to a child or children.

F. "Investigations unit" means the out-of-home abuse and neglect investigations unit staff within the division.

G. "License" has the same definition as in Title 5, section 8002 and includes approval and certification.

H. "Out-of-home abuse and neglect" means abuse and neglect of a child that occurs in a facility or by a person subject to licensure or inspection by the department, the Department of Education, the Department of Corrections or the Department of Behavioral and Developmental Services or in a facility operated by those departments.

**2. Applicability of other definitions.** Any term defined or used in section 4002; chapter 1071, subchapter 2; section 4021; or chapter 1153, 1661, 1663, 1669, 1671, 1673 or 1675 has the

2 same meaning when used in this section and is applicable to the  
3 purpose of this section.

4 3. Investigations unit established. The investigations  
5 unit is established to investigate reports of suspected abuse and  
6 neglect of children by persons or in facilities subject to  
7 licensure pursuant to this Title. The investigations unit is  
8 also authorized to assist persons or agencies to investigate  
9 suspected abuse and neglect by persons or in facilities providing  
10 services to children that are subject to licensure pursuant to  
11 other Titles and to assist in investigations or suspected abuse  
12 and neglect in state-operated facilities providing services for  
13 children.

14 4. Authority and responsibility. The investigations unit  
15 has the following authority and responsibilities regarding  
16 investigation of out-of-home abuse and neglect. The  
17 investigations unit:

18  
19 A. Is authorized to receive all reports of out-of-home  
20 abuse and neglect, including reports of serious or chronic  
21 licensing violations;

22  
23 B. Shall investigate all reports received by the department  
24 regarding alleged out-of-home abuse and neglect occurring in  
25 facilities or by persons subject to licensure by the  
26 department or shall cause an investigation to be made by the  
27 appropriate licensing authority, if warranted;

28  
29 C. Shall conduct a single investigation sufficient to  
30 determine not only if abuse or neglect has occurred but also  
31 if licensing violations have occurred. Such investigations  
32 must be conducted in order to protect children from harm by  
33 establishing a basis upon which to take licensing action, if  
34 warranted. This procedure exists in order to minimize  
35 duplicative or redundant investigations to the extent  
36 possible in response to the same or related allegations of  
37 out-of-home abuse or neglect in facilities or by persons  
38 subject to licensure by the department;

39  
40 D. Shall direct and coordinate all out-of-home abuse and  
41 neglect investigations and consult with division staff  
42 performing licensing, placement, contracting or child  
43 protection functions to eliminate duplicative or redundant  
44 investigations;

45  
46 E. Shall provide the facts and findings of the  
47 investigation to the division's licensing staff and to the  
48 licensee for appropriate action;

49  
50

2 F. Shall include relevant professionals outside the  
3 department as members of the investigations unit for all  
4 investigations of residential treatment centers, group homes  
5 or day care centers mandated by this section and for other  
6 child care facilities as warranted;

7  
8 G. When a report alleges out-of-home abuse and neglect in  
9 facilities or by persons not subject to licensure by the  
10 department, shall immediately refer the report to the agency  
11 or department charged with the responsibility to investigate  
12 such a report or, if applicable, to the state department  
13 operating the facility;

14 H. With respect to reports described in paragraph G, may,  
15 on its own initiative or upon request of another department  
16 or agency charged with the responsibility to investigate,  
17 participate in the out-of-home abuse and neglect  
18 investigation of persons or facilities subject to licensure  
19 or operated by the Department of Education, the Department  
20 of Corrections or the Department of Behavioral and  
21 Developmental Services;

22  
23 I. Shall refer to the office of the district attorney or  
24 Office of the Attorney General, when appropriate, any case  
25 in which criminal activity is alleged and shall coordinate  
26 its investigation with that office in order to minimize the  
27 trauma to the children involved;

28  
29 J. Shall consult and train law enforcement personnel,  
30 advocates, providers of care, relevant professionals and  
31 others in the identification, reporting, prevention and  
32 investigation of out-of-home abuse and neglect as time  
33 allows; and

34  
35 K. Shall initiate an investigation within 48 hours of  
36 receipt of any report of out-of-home abuse or neglect when  
37 jeopardy to children, as defined in the Child and Family  
38 Services and Child Protection Act, is alleged.

39 **5. Due process.** Any finding of abuse or neglect made under  
40 this section is subject to the due process requirements of the  
41 Maine Administrative Procedure Act.

42  
43 **6. Training.** The investigations unit must be trained in  
44 techniques of investigating out-of-home abuse and neglect of  
45 children, as well as child development; identification of abuse  
46 and neglect; interview techniques; treatment alternatives for  
47 perpetrators, victims and their families; licensing regulations  
48 applicable to facilities or persons licensed pursuant to this  
49 Subtitle; and other statutory and regulatory remedies available  
50

2 to prevent, correct or eliminate abuse and neglect in out-of-home  
3 settings.

4 **7. Records; confidentiality; disclosure.** Records created  
5 pursuant to this section must be maintained in accordance with  
6 section 4008 and may not be disclosed except as provided by that  
7 section or by section 7703, subsections 2 to 4. Any finding of  
8 abuse or neglect against an individual must be maintained as a  
9 child protective record. Such findings may be disclosed, with  
10 written permission from the individual, upon request from any  
11 potential employer.

12 **8. Assistance.** Staff performing licensing or child  
13 protection functions may assist the investigations unit in  
14 conducting out-of-home investigations when staffing needs require  
15 such assistance. Law enforcement agencies may also participate  
16 in investigations when criminal actions are suspected. Whenever  
17 possible or practicable, the investigations unit shall coordinate  
18 with law enforcement. Within the department, the investigations  
19 unit shall direct and coordinate the conduct of all out-of-home  
20 abuse or neglect investigations. The investigations unit is  
21 solely responsible for reaching any finding of either  
22 institutional abuse or neglect or abuse or neglect by an  
23 individual.

24 **9. Findings.** The investigations unit shall make a report  
25 of the facts and findings in all investigations of out-of-home  
26 abuse or neglect within 6 months. Findings of institutional  
27 abuse or neglect or abuse or neglect by an individual are subject  
28 to due process requirements. Any licensing findings are subject  
29 to due process requirements if there is any licensing action  
30 taken against an individual or agency.

31 **10. Office of the Attorney General.** Representatives of the  
32 Office of the Attorney General shall represent the investigations  
33 unit and the division in any due process licensing actions and  
34 upon the request of the commissioner. The Office of the Attorney  
35 General shall advise and consult with the division and the  
36 investigations unit in all licensing or investigatory actions.

37 **11. Testimony of children.** In proceedings pursuant to this  
38 section, any testimony from children in administrative hearings  
39 or any other court having jurisdiction must be conducted in  
40 accordance with the terms of the Child and Family Services and  
41 Child Protection Act. The administrative hearing officer or the  
42 court of jurisdiction may rely on the statements of children made  
43 to others to the extent of its ability to rely on the person so  
44 testifying under oath.

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## SUMMARY

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This bill makes the following changes to the laws governing  
4 out-of-home abuse and neglect.

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1. It allocates the provisions to a different subtitle in  
the Maine Revised Statutes, Title 22.

8

2. It provides definitions of "institutional abuse,"  
10 "institutional neglect" and "abuse or neglect by an individual."

12

3. It adds to the duties of the investigations unit,  
formerly referred to as "the team," as follows:

14

A. The unit is authorized to receive reports of serious or  
16 chronic licensing violations;

18

B. The unit shall direct all out-of-home abuse and neglect  
investigations; and

20

C. The unit shall investigate within 48 hours of receipt  
22 any report of out-of-home abuse or neglect when jeopardy to  
children is alleged.

24

4. It specifies that findings of abuse or neglect under  
26 this portion of law are subject to due process requirements.

28

5. It authorizes increased assistance for the  
investigations unit in conducting out-of-home investigations.

30

6. It requires the investigations unit to make a report of  
32 facts in all investigations within 6 months.

34

7. It requires representation by and participation of the  
Office of the Attorney General in certain licensing or  
36 investigatory actions.

38

8. It requires that testimony from children in actions  
pursuant to this law must be conducted in accordance with the  
40 Child and Family Services and Child Protection Act.