

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

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Legislative Document

No. 2000

S.P. 794

December 18, 2007

**An Act To Authorize the Department of Health and Human Services
To Investigate Suspicious Deaths of Children**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Received by the Secretary of the Senate on December 18, 2007. Referred to the Committee
on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HASTINGS of Oxford.
Cosponsored by Representative CONNOR of Kennebunk.

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

2 **Sec. 1. 22 MRSA §4002, sub-§12** is enacted to read:

3 **12. Suspicious child death.** "Suspicious child death" means the death of a child
4 under circumstances in which there is reasonable cause to suspect that abuse or neglect
5 was a cause of or factor contributing to the child's death.

6 **Sec. 2. 22 MRSA §4004, sub-§1, ¶D,** as amended by PL 1993, c. 294, §1, is
7 further amended to read:

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

11 **Sec. 3. 22 MRSA §4004, sub-§1, ¶E,** as enacted by PL 1993, c. 294, §2, is
12 amended to read:

13 E. Establishing a child death and serious injury review panel for reviewing deaths
14 and serious injuries to children. The panel consists of the following members: the
15 Chief Medical Examiner, a pediatrician, a public health nurse, forensic and
16 community mental health clinicians, law enforcement officers, departmental child
17 welfare staff, district attorneys and criminal or civil assistant attorneys general.

18 The purpose of the panel is to recommend to state and local agencies methods of
19 improving the child protection system, including modifications of statutes, rules,
20 policies and procedures; and

21 **Sec. 4. 22 MRSA §4004, sub-§1, ¶F** is enacted to read:

22 **F. Investigating suspicious child deaths.**

23 **Sec. 5. 22 MRSA §4004, sub-§2, ¶A,** as enacted by PL 1979, c. 733, §18, is
24 amended to read:

25 A. Receive reports of abuse and neglect and suspicious child deaths;

26 **Sec. 6. 22 MRSA §4004, sub-§2, ¶B,** as amended by PL 1991, c. 824, Pt. A,
27 §45, is further amended to read:

28 B. Promptly investigate all abuse and neglect cases and suspicious child deaths
29 coming to its attention or, in the case of out-of-home abuse and neglect
30 investigations, the department shall act in accordance with subchapter XI-A 11-A;

31 **Sec. 7. 22 MRSA §4004, sub-§2, ¶E,** as enacted by PL 2001, c. 559, Pt. CC, §1,
32 is amended to read:

33 E. If, after investigation, the department does not file a petition under section 4032
34 but does open a case to provide services to the family to alleviate child abuse and
35 neglect in the home, assign a caseworker, who shall:

1 (1) Provide information about rehabilitation and other services that may be
2 available to assist the family; and

3 (2) Develop with the family a written child and family plan.

4 The child and family plan must identify the problems in the family and the
5 services needed to address those problems; must describe responsibilities for
6 completing the services, including, but not limited to, payment for services,
7 transportation and child care services and responsibilities for seeking out and
8 participating in services; and must state the names, addresses and telephone
9 numbers of any relatives or family friends known to the department or parent to
10 be available as resources to the family.

11 The child and family plan must be reviewed every 6 months, or sooner if
12 requested by the family or the department; and

13 **Sec. 8. 22 MRSA §4004, sub-§2, ¶F**, as enacted by PL 2001, c. 559, Pt. CC, §1,
14 is amended to read:

15 F. File a petition under section 4032 if, after investigation, the department
16 determines that a child is in immediate risk of serious harm or in jeopardy as defined
17 in this chapter; and

18 **Sec. 9. 22 MRSA §4004, sub-§2, ¶G** is enacted to read:

19 G. In the case of a suspicious child death, determine:

20 (1) Whether abuse or neglect was a cause or factor contributing to the child's
21 death; and

22 (2) The degree of threatened harm to any other child for whom the person or
23 persons responsible for the deceased child may be responsible now or in the
24 future.

25 **Sec. 10. 22 MRSA §4011-A, sub-§1**, as amended by PL 2003, c. 599, §8 and
26 affected by §§9 and 14, is further amended to read:

27 **1. Required report to department.** The following adult persons shall immediately
28 report or cause a report to be made to the department when the person knows or has
29 reasonable cause to suspect that a child has been or is likely to be abused or neglected or
30 that a suspicious child death has occurred:

31 A. When acting in a professional capacity:

32 (1) An allopathic or osteopathic physician, resident or intern;

33 (2) An emergency medical services person;

34 (3) A medical examiner;

35 (4) A physician's assistant;

36 (5) A dentist;

37 (6) A dental hygienist;

- 1 (7) A dental assistant;
- 2 (8) A chiropractor;
- 3 (9) A podiatrist;
- 4 (10) A registered or licensed practical nurse;
- 5 (11) A teacher;
- 6 (12) A guidance counselor;
- 7 (13) A school official;
- 8 (14) A children's summer camp administrator or counselor;
- 9 (15) A social worker;
- 10 (16) A court-appointed special advocate or guardian ad litem for the child;
- 11 (17) A homemaker;
- 12 (18) A home health aide;
- 13 (19) A medical or social service worker;
- 14 (20) A psychologist;
- 15 (21) Child care personnel;
- 16 (22) A mental health professional;
- 17 (23) A law enforcement official;
- 18 (24) A state or municipal fire inspector;
- 19 (25) A municipal code enforcement official;
- 20 (26) A commercial film and photographic print processor;
- 21 (27) A clergy member acquiring the information as a result of clerical
- 22 professional work except for information received during confidential
- 23 communications;
- 24 (28) A chair of a professional licensing board that has jurisdiction over
- 25 mandated reporters; and
- 26 (29) A humane agent employed by the Department of Agriculture, Food and
- 27 Rural Resources;
- 28 B. Any person who has assumed full, intermittent or occasional responsibility for
- 29 the care or custody of the child, regardless of whether the person receives
- 30 compensation; and
- 31 C. Any person affiliated with a church or religious institution who serves in an
- 32 administrative capacity or has otherwise assumed a position of trust or responsibility
- 33 to the members of that church or religious institution, while acting in that capacity,
- 34 regardless of whether the person receives compensation.
- 35 Whenever a person is required to report in a capacity as a member of the staff of a
- 36 medical or public or private institution, agency or facility, that person immediately shall

1 notify either the person in charge of the institution, agency or facility or a designated
2 agent who then shall cause a report to be made. The staff also may make a report directly
3 to the department.

4 **Sec. 11. 22 MRSA §4011-A, sub-§2**, as enacted by PL 2001, c. 345, §5, is
5 amended to read:

6 **2. Required report to district attorney.** When, while acting in a professional
7 capacity, any person required to report under this section knows or has reasonable cause
8 to suspect that a child has been abused or neglected by a person not responsible for the
9 child or that a suspicious child death has been caused by a person not responsible for the
10 child, the person immediately shall report or cause a report to be made to the appropriate
11 district attorney's office.

12 **Sec. 12. 22 MRSA §4011-A, sub-§3**, as enacted by PL 2001, c. 345, §5, is
13 amended to read:

14 **3. Optional report.** Any person may make a report if that person knows or has
15 reasonable cause to suspect that a child has been or is likely to be abused or neglected or
16 that there has been a suspicious child death.

17 **Sec. 13. 22 MRSA §4011-A, sub-§4**, as enacted by PL 2001, c. 345, §5, is
18 amended to read:

19 **4. Mental health treatment.** When a licensed mental health professional is required
20 to report under subsection 1 and the knowledge or reasonable cause to suspect that a child
21 has been or is likely to be abused or neglected or that a suspicious child death has
22 occurred comes from treatment of a person responsible for the abuse ~~or~~, neglect or death,
23 the licensed mental health professional shall report to the department in accordance with
24 subsection 1 and under the following conditions.

25 A. The department shall consult with the licensed mental health professional who
26 has made the report and shall attempt to reach agreement with the mental health
27 professional as to how the report is to be pursued. If agreement is not reached, the
28 licensed mental health professional may request a meeting under paragraph B.

29 B. Upon the request of the licensed mental health professional who has made the
30 report, after the department has completed its investigation of the report under section
31 4021 or has received a preliminary protection order under section 4034 and when the
32 department plans to initiate or has initiated a jeopardy order under section 4035 or
33 plans to refer or has referred the report to law enforcement officials, the department
34 shall convene at least one meeting of the licensed mental health professional who
35 made the report, at least one representative from the department, a licensed mental
36 health professional with expertise in child abuse or neglect and a representative of the
37 district attorney's office having jurisdiction over the report, unless that office
38 indicates that prosecution is unlikely.

39 C. The persons meeting under paragraph B shall make recommendations regarding
40 treatment and prosecution of the person responsible for the abuse ~~or~~, neglect or death.
41 The persons making the recommendations shall take into account the nature, extent

1 and severity of abuse or neglect, the safety of the child and the community and needs
2 of the child and other family members for treatment of the effects of the abuse or
3 neglect and the willingness of the person responsible for the abuse or, neglect or
4 death to engage in treatment. The persons making the recommendations may review
5 or revise these recommendations at their discretion.

6 The intent of this subsection is to encourage offenders to seek and effectively utilize
7 treatment and, at the same time, provide any necessary protection and treatment for the
8 child and other family members.

9 **Sec. 14. 22 MRSA §4021, sub-§1, ¶A**, as amended by PL 1993, c. 294, §5, is
10 further amended to read:

11 A. Issue subpoenas requiring persons to disclose or provide to the department
12 information or records in their possession that are necessary and relevant to an
13 investigation of a report of suspected abuse or neglect or suspicious child death, to a
14 subsequent child protection proceeding or to a panel appointed by the department to
15 review child deaths and serious injuries.

16 (1) The department may apply to the District Court to enforce a subpoena.

17 (2) A person who complies with a subpoena is immune from civil or criminal
18 liability that might otherwise result from the act of turning over or providing
19 information or records to the department; and

20 **Sec. 15. 22 MRSA §4021, sub-§1, ¶B**, as enacted by PL 1979, c. 733, §18, is
21 amended to read:

22 B. Obtain nonconviction data and other criminal history record information under
23 Title 16, ~~section 611, et seq., which he deems~~ chapter 3, subchapter 8 that the
24 commissioner, the commissioner's delegate or the legal counsel for the department
25 considers relevant to an abuse or neglect case or the investigation of a suspicious
26 child death.

27 **SUMMARY**

28 This bill authorizes the Department of Health and Human Services to investigate
29 suspicious child deaths in the same manner as suspected child abuse or neglect and
30 requires the same mandatory reporters of child abuse and neglect also to report any
31 suspicious child deaths.