

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

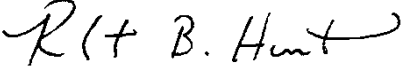
No. 1432

H.P. 977

House of Representatives, May 26, 2015

**An Act To Consolidate the Investigation of Out-of-home Child
Abuse and Neglect**

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative SANDERSON of Chelsea.

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

2 **Sec. 1. 22 MRSA §4021, sub-§3, ¶C**, as amended by PL 2007, c. 132, §1, is
3 further amended to read:

4 C. Upon the request of a department employee, school officials shall permit the
5 department to meet with and interview the child when the child is present at the
6 school.

7 (1) School officials may require that the department employee requesting to
8 interview the child provide a written certification that in the department's
9 judgment the interview is necessary to carry out the department's duties under
10 this chapter.

11 (2) The department caseworker shall discuss the circumstances of the interview
12 and any relevant information regarding the alleged abuse or neglect with the
13 child's teacher or guidance counselor or the school's nurse, social worker or
14 principal, as the caseworker determines is necessary for the provision of any
15 needed emotional support to the child prior to and following the interview.

16 (3) In order for the department to be able to conduct interviews in a manner
17 consistent with good forensic practice, except as provided in subparagraph (1),
18 school officials may not place any conditions on the department's ability to
19 conduct the interview. Without limiting the generality of this subparagraph,
20 school officials are specifically prohibited from:

21 (a) Requiring that certain persons be present during the interview;

22 (b) Prohibiting certain persons from being present during the interview; and

23 (c) Requiring notice to or consent from a parent or guardian.

24 (4) School officials shall provide an appropriate, quiet and private place for the
25 interview to occur.

26 (5) That the department intends to interview the child is confidential information
27 and may not be disclosed to any person except those school officials, including
28 an attorney for the school, who need the information to comply with the
29 provisions of this paragraph.

30 (6) School personnel who assist the department in making the child available for
31 the interview or who otherwise comply with this paragraph are "participating in a
32 related child protection investigation or proceeding" for purposes of section 4014.

33 Violation of this paragraph subjects any person involved in the violation, including
34 individual school personnel, to the penalty provided in section 4009. This section
35 does not apply to out-of-home abuse and neglect allegations as covered under ~~section~~
36 4088 chapter 1674.

37 **Sec. 2. 22 MRSA §4088**, as amended by PL 2013, c. 368, Pt. CCCC, §3, is
38 repealed.

39 **Sec. 3. 22 MRSA c. 1674** is enacted to read:

1 **CHAPTER 1674**

2 **INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT**

3 **§8351. Short title**

4 This chapter may be known and cited as "the Investigation of Out-of-home Child
5 Abuse and Neglect Act."

6 **§8352. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Abuse or neglect.** "Abuse or neglect" means a threat to a child's health or welfare
10 by physical, mental or emotional injury or impairment, sexual abuse or exploitation,
11 deprivation of essential needs or lack of protection from these, failure to ensure
12 compliance with school attendance requirements under Title 20-A, section 3272,
13 subsection 2, paragraph B or Title 20-A, section 5051-A, subsection 1, paragraph C by a
14 person responsible for the child.

15 **2. Child.** "Child" means any person who is less than 18 years of age.

16 **3. Custodian.** "Custodian" means the person who has legal custody and power over
17 the person of a child.

18 **4. Division.** "Division" means the division of licensing and regulatory services
19 within the department.

20 **5. Family foster home.** "Family foster home" has the same meaning as set out in
21 section 8101, subsection 3.

22 **6. Jeopardy.** "Jeopardy" means serious abuse or neglect, as evidenced by:

23 A. Serious harm or threat of serious harm;

24 B. Deprivation of adequate food, clothing, shelter, supervision or care or education
25 when the child is at least 7 years of age and has not completed grade 6;

26 C. Deprivation of necessary health care when the deprivation places the child in
27 danger of serious harm;

28 D. Abandonment of the child or absence of any person responsible for the child,
29 which creates a threat of serious harm; or

30 E. Other situations of serious abuse or neglect.

31 **7. Licensed.** "Licensed" means holding the whole or any part of any permit,
32 certificate, approval, registration, charter or similar form of permission required by law
33 that represents an exercise of the State's regulatory or police powers.

34 **8. Office.** "Office" means the Office of Child and Family Services in the department.

1 **9. Out-of-home child abuse or neglect investigation team; investigation team.**
2 "Out-of-home child abuse or neglect investigation team" or "investigation team" means
3 individuals employed by the division to investigate allegations of out-of-home child
4 abuse or neglect.

5 **10. Out-of-home child abuse or neglect.** "Out-of-home child abuse or neglect"
6 means child abuse or neglect that occurs in a facility or by a person subject to licensure or
7 inspection by the department, the Department of Education or the Department of
8 Corrections or in a facility operated by any of these departments.

9 **11. Person.** "Person" means an individual, corporation, facility, institution, public or
10 private agency or similar entity.

11 **12. Person responsible for the child.** "Person responsible for the child" means a
12 person with responsibility for a child's health or welfare including a licensed facility that
13 as part of its function provides for the care of the child.

14 **13. Resource family.** "Resource family" has the same meaning as in section 4002,
15 subsection 9-D.

16 **14. Runaway.** "Runaway" has the same meaning as in section 4099-D, subsection 3.

17 **15. Serious harm.** "Serious harm" means:

18 A. Serious injury;

19 B. Serious mental or emotional injury or impairment that now or in the future is
20 likely to be evidenced by serious mental, behavioral or personality disorder, including
21 severe anxiety, depression or withdrawal, untoward aggressive behavior, seriously
22 delayed development or similar serious dysfunctional behavior; or

23 C. Sexual abuse or exploitation.

24 **16. Serious injury.** "Serious injury" means serious physical injury or impairment.

25 **17. Suspicious child death.** "Suspicious child death" means the death of a child
26 under circumstances in which there is reasonable cause to suspect that abuse or neglect
27 was a cause of or factor contributing to the child's death.

28 **§8353. Investigation team**

29 **1. Investigation team established.** The investigation team is established within the
30 division to investigate reports of suspected abuse or neglect of children by persons or in
31 facilities subject to department licensure in accordance with this chapter.

32 **2. Participation with other departments.** The investigation team, on its own or
33 upon request, may assist and participate with another department or agency charged with
34 the responsibility to investigate child abuse or neglect, including the Department of
35 Education or the Department of Corrections.

36 **3. Addition of relevant professionals.** The investigation team shall include, as
37 appropriate, relevant professionals to participate as members of the investigation team for

1 investigations of residential treatment centers, group homes, certified family child care
2 providers or child care facilities.

3 **4. Assistance by licensing staff.** Upon the request of the division, department staff
4 that performs general licensing functions may assist the investigation team in conducting
5 out-of-home child abuse or neglect investigations.

6 **5. Consultation with law enforcement and others.** The investigation team may
7 consult with law enforcement personnel, advocates and others in the investigation of out-
8 of-home child abuse or neglect.

9 **6. Results.** The investigation team shall provide the results of its investigation to the
10 applicable department for appropriate action.

11 **7. Investigation team training.** The investigation team shall receive training in the
12 following:

13 A. Child development;

14 B. Identification of abuse and neglect;

15 C. Interview techniques, including but not limited to techniques for interviewing
16 children who are nonverbal or have limited verbal ability;

17 D. Licensing laws and rules applicable to facilities or persons subject to this chapter;
18 and

19 E. Remedies available to prevent, correct or eliminate abuse and neglect in out-of-
20 home settings.

21 **§8354. Duties of the investigation team**

22 The duties of the investigation team include but are not limited to the following.

23 **1. Receive reports of alleged abuse or neglect.** The investigation team shall
24 receive reports of alleged out-of-home abuse, neglect or suspicious child death under
25 circumstances set out in this chapter.

26 A. When the investigation team receives a report that alleges abuse or neglect in
27 facilities or by persons not subject to licensure by the department, the investigation
28 team shall immediately refer the report to the agency or department charged with the
29 responsibility to investigate such a report.

30 B. When the investigation team receives a report that alleges out-of-home abuse or
31 neglect in a residential care facility, the team shall use the facility's name as the
32 identifier.

33 C. Information that identifies, directly or indirectly, a reference, complainant or
34 reporter of suspected abuse or neglect is confidential.

35 **2. Investigate.** The investigation team shall investigate reported out-of-home abuse
36 or neglect or suspicious child death.

1 A. The investigation team shall complete an investigation within 90 days from the
2 date that the investigation was initiated, except in circumstances when the
3 information necessary to complete the investigation is unavailable to the investigation
4 team.

5 B. The investigation team’s investigation of a report that alleges jeopardy to a child
6 in a residential care facility must be initiated within 3 business days of the date of
7 receipt of the report. If the investigation team cannot initiate its investigation within 3
8 business days, the investigation team shall request a safety plan from the facility.

9 C. To minimize redundant department investigations in response to the same or
10 related allegations of out-of-home abuse or neglect, the investigation team shall
11 conduct a single investigation sufficient to determine whether abuse or neglect
12 occurred and whether a licensing violation has occurred. The investigation team shall
13 coordinate and consult with the department entity that performs general licensing
14 functions.

15 D. The investigation team shall refer allegations of criminal activity to the office of
16 the district attorney or the Office of the Attorney General when appropriate and shall
17 coordinate its investigation with the office to which allegations are referred to
18 minimize trauma to the child or children involved.

19 E. The investigation team’s investigation of a suspicious child death is subject to and
20 may not interfere with the authority and responsibility of the Office of the Attorney
21 General to investigate and prosecute homicides pursuant to Title 5, section 200-A.

22 F. The investigation team shall conduct interviews as needed to investigate
23 allegations and determine if abuse or neglect has occurred.

24 (1) The investigation team shall conduct interviews of a child involved in the
25 alleged abuse or neglect in a manner that is in the best interest of the child.

26 (2) The investigation team shall notify the parent, guardian or legal custodian of
27 a child prior to initiating an interview of the child except under circumstances in
28 which prior notification is not in the child’s best interest.

29 (3) The investigation team shall conduct an interview of a child without prior
30 notification in accordance with section 4021, subsection 3 and rules adopted
31 pursuant to this chapter.

32 G. The investigation team, to the extent possible, shall record interviews using audio
33 or video in accordance with applicable rules adopted by the department and pursuant
34 to section 4021.

35 (1) Information collected in an interview that was not recorded may not be
36 excluded from use in court proceedings solely because the interview was not
37 recorded.

38 (2) A person being questioned or interviewed under this chapter may not be
39 prohibited from recording the questioning or interview.

40 H. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation
41 team is conducting an investigation of a person at the Maine Educational Center for
42 the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is

1 subject to licensure by the Department of Education, the Maine Educational Center
2 for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and
3 the Department of Education shall disclose the following information to the
4 investigation team:

5 (1) Background checks related to the person;

6 (2) The person's credentials;

7 (3) Any conduct on the part of the person related to the allegation; and

8 (4) Any action taken by the Maine Educational Center for the Deaf and Hard of
9 Hearing and the Governor Baxter School for the Deaf or the Department of
10 Education in response to conduct of any person at the Maine Educational Center
11 for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf
12 that is similar to the allegation.

13 **3. Investigative powers of commissioner.** The following are investigative powers
14 of the commissioner.

15 A. The commissioner may issue a subpoena requiring a person to disclose or provide
16 to the department information or records in that person's possession that are necessary
17 and relevant to an investigation of a report of suspected out-of-home child abuse or
18 neglect or suspicious child death.

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

20 (2) A person who complies with a subpoena is immune from civil or criminal
21 liability that might otherwise result from the act of turning over or providing
22 information or records to the department.

23 (3) Information or records obtained by subpoena must be treated in accordance
24 with section 7703.

25 B. The commissioner may obtain confidential criminal history record information
26 and other criminal history record information under Title 16, chapter 7 that the
27 commissioner considers relevant to an investigation of out-of-home child abuse or
28 neglect or a suspicious child death.

29 **4. Determination of harm.** The investigation team shall determine whether or not a
30 child has been harmed, in which case the investigation team shall determine the degree of
31 harm or threatened harm by a person responsible for the care of that child.

32 A. In the case of a suspicious child death, the investigation team shall determine:

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

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

38 **5. Issue a decision.** The investigation team shall issue a written decision that an
39 allegation of abuse or neglect is unsubstantiated, indicated or substantiated. Each

1 allegation of abuse or neglect must be considered separately. The written decision must
2 include at least the following:

3 A. The factors supporting an indicated or substantiated decision;

4 B. The identity of the person or persons responsible in the case of an indicated or
5 substantiated decision; and

6 C. The person's right to appeal the department's indicated or substantiated decision
7 pursuant to paragraph B.

8 **§8355. Right to hearing; appeal**

9 A person who is the subject of the decision in section 8354, subsection 4 has the right
10 to a hearing to appeal an indicated or substantiated finding of out-of-home child abuse or
11 neglect in accordance with the provisions of the Maine Administrative Procedure Act.

12 **§8356. Entities subject to investigation**

13 Reported child abuse or neglect that occurs in the following out-of- home entities is
14 subject to investigation by the investigation team.

15 **1. Facility or person licensed by department; facility operated or funded by**
16 **department.** Abuse or neglect that occurs in a facility or by a person licensed by the
17 department or in a facility operated or funded by the department is subject to
18 investigation by the investigation team, including, but not limited to, abuse or neglect that
19 occurs in the following:

20 A. A child care facility licensed pursuant to section 8301-A, subsection 2;

21 B. A family child care provider certified pursuant to section 8301-A, subsection 3;

22 C. A nursery school licensed pursuant to section 8402;

23 D. A children's residential care facility licensed pursuant to chapter 1669;

24 E. An emergency children's shelter licensed pursuant to chapter 1669;

25 F. A shelter for homeless children licensed pursuant to chapter 1669;

26 G. A licensed family foster home as defined in section 8101, subsection 3, including,
27 but not limited to, the home of a resource family that provides foster care, kinship
28 care or adoption or permanency guardianship services;

29 H. An unlicensed relative's home approved by the department as meeting licensing
30 standards; and

31 I. An unlicensed provider for children with cognitive impairments and functional
32 limitations that is funded by the department pursuant to rules adopted by the
33 department.

34 **2. Unlicensed person or facilities.** The investigation team may investigate a person
35 or facility described in subsection 1 if the person or facility is not licensed or certified.

1 2. It consolidates and clarifies the role of the team that investigates out-of-home
2 child abuse or neglect.

3 3. It eliminates duplication of department investigations of the same or related
4 allegations of out-of-home child abuse or neglect.

5 4. It authorizes the investigation team to assist other departments that are charged
6 with the responsibility to investigate out-of-home child abuse or neglect, including the
7 Department of Education and Department of Corrections.

8 5. It clarifies the requirement that the investigation team's findings of abuse or
9 neglect be supported by identified factors as set out in the team's written decision.
10 Factors that support indicated and substantiated findings are established in rules adopted
11 by the department.

12 6. It clarifies the right of a person to have a hearing on and to appeal an indicated or
13 substantiated finding of out-of-home child abuse or neglect.

14 7. It requires the investigation team to provide notification of a report of abuse or
15 neglect to the parent, guardian or custodian of a child who is the alleged victim and
16 information regarding the conclusions reached upon closure of the investigation.

17 8. It authorizes the investigation team to notify the parents, guardians or custodians
18 of children who attend a licensed children's facility or program when there is a report that
19 alleges the occurrence of abuse or neglect in the licensed children's facility or program
20 upon conclusion of the investigation whether the investigation team determined that a
21 violation of law or rules has occurred.