

# MAINE STATE LEGISLATURE

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# 131st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2023

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Legislative Document

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H.P. 312

House of Representatives, February 7, 2023

### **An Act Regarding Investigations of Out-of-home Child Abuse and Neglect**

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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 MEYER of Eliot.

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

2 **Sec. 1. 22 MRSA §4002, sub-§9**, as enacted by PL 1979, c. 733, §18, is amended  
3 to read:

4 **9. Person responsible for the child.** "Person responsible for the child" means a  
5 person with responsibility for a child's health or welfare, whether in the child's home or  
6 another home or; a facility ~~which~~ licensed or subject to licensure that, as part of its function,  
7 provides for care of the child; ~~or a person licensed or subject to licensure that, as part of its~~  
8 function, provides for care of the child. ~~It~~ "Person responsible for the child" includes the  
9 child's custodian.

10 **Sec. 2. 22 MRSA §4004, sub-§2, ¶B**, as corrected by RR 2021, c. 2, Pt. A, §64, is  
11 amended to read:

12 B. Promptly investigate all abuse and neglect cases and suspicious child deaths coming  
13 to its attention or, in the case of out-of-home abuse and neglect investigations, the  
14 department shall act in accordance with ~~chapter 1674~~ subchapter 18;

15 **Sec. 3. 22 MRSA §4021, sub-§3, ¶C**, as amended by PL 2015, c. 283, §1, is further  
16 amended by amending the last blocked paragraph to read:

17 Violation of this paragraph subjects any person involved in the violation, including  
18 individual school personnel, to the penalty provided in section 4009. This section does  
19 not apply to out-of-home abuse and neglect allegations as covered under ~~chapter 1674~~  
20 subchapter 18.

21 **Sec. 4. 22 MRSA c. 1071, sub-c. 18** is enacted to read:

## 22 SUBCHAPTER 18

### 23 INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT

#### 24 §4099-J. Definitions

25 **1. Investigation team.** "Investigation team" means individuals employed by the  
26 department to investigate allegations of out-of-home abuse or neglect pursuant to this  
27 subchapter.

28 **2. Licensed.** "Licensed" means holding a license as defined in Title 5, section 8002,  
29 subsection 5 or, with respect to the Department of Education, any other form of approval  
30 or authorization required by law.

31 **3. Out-of-home abuse or neglect.** "Out-of-home abuse or neglect" means abuse or  
32 neglect or a suspicious child death:

33 A. That occurs in a facility or in the care of a person licensed or subject to inspection  
34 by the department, the Department of Education or the Department of Corrections;

35 B. That occurs in a facility operated by the department, the Department of Education  
36 or the Department of Corrections; or

37 C. That occurs in the care of an unlicensed provider that is funded by the department.

#### 38 §4099-K. Investigation team

1           **1. Investigation team established.** The investigation team is established within the  
2 department to investigate reports of suspected out-of-home abuse or neglect of children in  
3 accordance with this subchapter.

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

8           **3. Addition of relevant professionals.** The investigation team must include, as  
9 appropriate, relevant professionals to participate in the investigations of out-of-home abuse  
10 or neglect.

11           **4. Assistance by licensing staff.** Department staff that perform general licensing  
12 functions may assist the investigation team in conducting out-of-home abuse or neglect  
13 investigations.

14           **5. Consultation with law enforcement and others.** The investigation team may  
15 consult with law enforcement personnel, advocates and others in the investigation of out-  
16 of-home abuse or neglect.

17           **6. Results.** The investigation team shall provide the results of its investigation to the  
18 department or other applicable licensing agency or department for appropriate action.

19 **§4099-L. Duties of the investigation team**

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

21           **1. Receive reports of alleged abuse or neglect.** The investigation team shall receive  
22 reports of alleged out-of-home abuse or neglect under circumstances set out in this  
23 subchapter. When the investigation team receives a report that alleges abuse or neglect in  
24 facilities or by persons not licensed or subject to inspection by the department, the  
25 investigation team shall immediately refer the report to the agency or department charged  
26 with the responsibility to investigate the report.

27           **2. Investigate.** The investigation team shall investigate reported out-of-home abuse  
28 or neglect.

29           **A.** The investigation team shall complete an investigation within 90 days from the date  
30 on which the investigation was initiated, except in circumstances when the information  
31 necessary to complete the investigation is unavailable to the investigation team.

32           **B.** To minimize redundant department investigations in response to the same or related  
33 allegations of out-of-home abuse or neglect, the investigation team shall conduct a  
34 single investigation sufficient to determine whether abuse or neglect occurred and  
35 whether a licensing violation has occurred. The investigation team shall coordinate and  
36 consult with the department entity that performs general licensing functions.

37           **C.** The investigation team shall refer allegations of criminal activity to the office of  
38 the district attorney or the Office of the Attorney General when appropriate and shall  
39 coordinate its investigation with the office to which allegations are referred to minimize  
40 trauma to the child or children involved.

1 D. The investigation team's investigation of a suspicious child death is subject to and  
2 may not interfere with the authority and responsibility of the Office of the Attorney  
3 General to investigate and prosecute homicides pursuant to Title 5, section 200-A.

4 E. The investigation team shall conduct interviews as needed to investigate allegations  
5 and determine if abuse or neglect has occurred.

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

8 (2) The investigation team shall notify the parent, guardian or custodian of a child  
9 prior to initiating an interview of the child except under circumstances in which  
10 prior notification is not in the child's best interest.

11 (3) The investigation team shall conduct an interview of a child without prior  
12 notification in accordance with section 4021, subsection 3 and rules adopted  
13 pursuant to this subchapter.

14 F. The investigation team, to the extent possible, shall record interviews in accordance  
15 with applicable rules adopted by the department and pursuant to section 4021.

16 (1) Information collected in an interview that was not recorded may not be  
17 excluded from use in court proceedings solely because the interview was not  
18 recorded.

19 (2) A person being questioned or interviewed under this subchapter may not be  
20 prohibited from recording the questioning or interview.

21 G. Notwithstanding Title 20-A, section 6101, subsection 2, when the investigation  
22 team is conducting an investigation of a person at the Maine Educational Center for the  
23 Deaf and Hard of Hearing and the Governor Baxter School for the Deaf who is subject  
24 to licensure by the Department of Education, the Maine Educational Center for the  
25 Deaf and Hard of Hearing and the Governor Baxter School for the Deaf and the  
26 Department of Education shall disclose the following information to the investigation  
27 team:

28 (1) Background checks related to the person;

29 (2) The person's credentials;

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

31 (4) Any action taken by the Maine Educational Center for the Deaf and Hard of  
32 Hearing and the Governor Baxter School for the Deaf or the Department of  
33 Education in response to conduct of any person at the Maine Educational Center  
34 for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf that  
35 is similar to the allegation.

36 **3. Investigative powers of commissioner.** The following are investigative powers of  
37 the commissioner.

38 A. The commissioner or the commissioner's designee may issue a subpoena requiring  
39 a person to disclose or provide to the department information or records in that person's  
40 possession that are necessary and relevant to an investigation of a report of suspected  
41 out-of-home abuse or neglect.

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

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

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

6                   B. The commissioner may obtain confidential criminal history record information and  
7                   other criminal history record information under Title 16, chapter 7 that the  
8                   commissioner considers relevant to an investigation of out-of-home abuse or neglect.

9                   **4. Determination of harm.** The investigation team shall determine whether or not a  
10                  child has been harmed, in which case the investigation team shall determine the degree of  
11                  harm or threatened harm by a person responsible for the child. In the case of a suspicious  
12                  child death, the investigation team shall determine:

13                  A. Whether abuse or neglect was a cause or factor contributing to the child's death;  
14                  and

15                  B. The degree of threatened harm to any other child for whom the person or persons  
16                  responsible for the deceased child may be responsible now or in the future.

17                  **5. Issue a decision.** The investigation team shall issue a written decision that an  
18                  allegation of abuse or neglect is unsubstantiated, indicated or substantiated. Each  
19                  allegation of abuse or neglect must be considered separately. The written decision must  
20                  include at least the following:

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

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

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

26                  **§4099-M. Right to a hearing; appeal**

27                  A person who is the subject of the decision in section 4099-L, subsection 5 has the  
28                  right to a hearing to appeal an indicated or substantiated finding of out-of-home abuse or  
29                  neglect in accordance with the provisions of the Maine Administrative Procedure Act.

30                  **§4099-N. Entities subject to investigation**

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

33                  **1. Facility or person licensed by department; facility operated or funded by**  
34                  **department.** Out-of-home abuse or neglect is subject to investigation by the investigation  
35                  team, including, but not limited to, abuse or neglect that occurs in the following:

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

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

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

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

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

- 1           F. A shelter for homeless children licensed pursuant to chapter 1669;
- 2           G. A transitional living program licensed pursuant to section 4099-E, subsection 3;
- 3           H. A licensed family foster home as defined in section 8101, subsection 3, including,
- 4           but not limited to, the home of a resource family that provides foster care, kinship care
- 5           or adoption or permanency guardianship services;
- 6           I. An unlicensed relative's home approved by the department as meeting licensing
- 7           standards; and
- 8           J. An unlicensed provider for children with cognitive impairments and functional
- 9           limitations that is funded by the department pursuant to rules adopted by the
- 10           department.

11           **2. Unlicensed person or facilities.** The investigation team may investigate a person

12           or facility described in subsection 1 if the person or facility is not licensed.

13           **3. School personnel.** The investigation team may investigate an individual licensed

14           by the Department of Education and employed by a school organized under Title 20-A,

15           Part 2.

16           **§4099-O. Records; confidentiality; disclosure**

17           Notwithstanding section 4008, records that are made, acquired or retained by the

18           department in connection with its responsibilities under this subchapter are subject to the

19           provisions set out in section 7703 and the following provisions.

20           **1. Disclosure; reports of abuse or neglect.** The department may disclose, upon the

21           conclusion of an investigation under this subchapter, a statement indicating whether or not

22           a report of out-of-home abuse or neglect has been received, the nature of the alleged abuse

23           or neglect and the conclusion reached by the investigation team.

24           **2. Notification of parent, guardian or custodian of child reported to be abused.**

25           When a report is received of out-of-home abuse or neglect in a facility or program described

26           in section 4099-N, the investigation team may notify the child's parent, guardian or

27           custodian that it has been reported that the child has been allegedly abused or neglected,

28           whether an investigation is being conducted and, upon conclusion of the investigation,

29           whether the investigation team determined that the allegations are supported or not

30           supported.

31           **3. Notification of parents, guardians or custodians of other children in facility.**

32           When a report is received of out-of-home abuse or neglect in a facility or program described

33           in section 4099-N, the investigation team, upon conclusion of the investigation, may notify

34           a parent, guardian or custodian who has a child in the program or facility for whom there

35           is no report of abuse or neglect whether the investigation team determined that a violation

36           of law or rules adopted by the department has occurred.

37           **4. Disclosure to facility or program.** The investigation team shall notify a facility or

38           program described in section 4099-N when there is an indicated or substantiated finding of

39           out-of-home abuse or neglect against an employee of the facility or program.

40           **5. Disclosure of investigation.** The department may publish information regarding

41           an investigation conducted pursuant to this subchapter on the department's publicly

1 accessible website upon the conclusion of an investigation in accordance with rules adopted  
2 by the department.

3 **§4099-P. Rules**

4 The department may adopt rules to carry out the purposes of this subchapter. Rules  
5 adopted pursuant to this section are routine technical rules as defined by Title 5, chapter  
6 375, subchapter 2-A. Rules may include but are not limited to establishing the factors that  
7 support unsubstantiated, indicated and substantiated findings.

8 **Sec. 5. 22 MRSA c. 1674**, as amended, is repealed.

9 **SUMMARY**

10 This bill:

11 1. Reallocates the provisions of law regarding investigations of out-of-home child  
12 abuse or neglect from the laws administered by the division of licensing and regulatory  
13 services within the Department of Health and Human Services to the Child and Family  
14 Services and Child Protection Act;

15 2. Clarifies the authority of the investigation team to investigate an individual licensed  
16 by the Department of Education;

17 3. Authorizes the investigation team to investigate abuse or neglect that occurs in a  
18 transitional living program;

19 4. Repeals the provisions of law prescribing required training for the investigation  
20 team;

21 5. Removes certain requirements for identification and disclosure of information  
22 related to a residential home facility;

23 6. Removes the requirement for the investigation team to initiate, within 3 business  
24 days, an investigation of a report that alleges jeopardy to a child in a residential care facility;  
25 and

26 7. Makes other clarifying and technical changes.