

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

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NON-EMERGENCY LAWS IS
JULY 9, 1998

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated, or a victim's request for notice of release, may, and must upon request, be disclosed:

Sec. 3. 34-A MRSA §3003, sub-§2, as enacted by PL 1983, c. 459, §6, is repealed and the following enacted in its place:

2. Civil violation. A person who discloses information in violation of this section commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged.

Sec. 4. 34-A MRSA §3035, sub-§6 is enacted to read:

6. Notification of law enforcement agencies. A prisoner may not participate in a furlough under subsection 2 unless, in advance of the chief administrative officer's consideration of the request for that furlough, the department notifies:

A. The district attorney for the district in which the prisoner will reside;

B. The sheriff for the county in which the prisoner will reside;

C. The chief of police of any municipality in which the prisoner will reside;

D. The Department of Public Safety; and

E. The district attorney for the district where the prisoner's underlying commitment to the department originated.

If the department grants a prisoner furlough request, the department shall again notify those listed in paragraphs A to E.

A furlough may be granted in an emergency without any prior notification as long as notification is given as soon as practicable.

Sec. 5. 34-A MRSA §9801-A is enacted to read:

§9801-A. Notification of law enforcement agencies

The department, in advance of its consideration of a request under this subchapter, shall notify the district attorney for the district in which the person will reside; the sheriff for the county in which the person will reside; the chief of police of any municipality in which the person will reside; and the Department of Public Safety.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 3, 1998.

CHAPTER 715

S.P. 838 - L.D. 2246

An Act to Require Expeditious Action in Child Protection Cases

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

PART A

Sec. A-1. 22 MRSA §4005, sub-§1, ¶B, as amended by PL 1995, c. 405, §19, is further amended to read:

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on the behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the

guardian ad litem believes it is in the child's best interest.

Sec. A-2. 22 MRSA §4005, sub-§1, ¶D, as enacted by PL 1983, c. 183, is amended to read:

D. The guardian ad litem shall make a written report of ~~his~~ the investigation, findings and recommendations, and shall provide a copy of ~~his~~ the report to each of the parties reasonably in advance of the hearing, and to the court ~~on consent of all parties~~, except that ~~he~~ the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order.

Sec. A-3. 22 MRSA §4006, as amended by PL 1983, c. 772, §3, is repealed and the following enacted in its place:

§4006. Appeals

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, chapter 9.

Appeals from any order under section 4035, 4054 or 4071 must be expedited. Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court.

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable.

Sec. A-4. 22 MRSA §4034, sub-§4, as amended by PL 1983, c. 184, §4, is further amended to read:

4. Summary preliminary hearing. If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing, then the court shall hold a summary preliminary hearing on that order within 10 days of its issuance or request, unless all parties agree to a later date. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner shall bear bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence. If, after the hearing, the court finds, by a preponderance of the evidence, that returning the child to his the child's

custodian would place him the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case a permanency planning hearing must commence within 30 days of entry of the preliminary order.

Sec. A-5. 22 MRSA §4034, sub-§5, as enacted by PL 1979, c. 733, §18, is amended to read:

5. Contents of order. The order ~~shall~~ must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G, and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition.

Sec. A-6. 22 MRSA §4035, as amended by PL 1997, c. 475, §1, is further amended by repealing and replacing the headnote to read:

§4035. Hearing on jeopardy order petition

Sec. A-7. 22 MRSA §4035, sub-§1, as enacted by PL 1979, c. 733, §18, is amended to read:

1. Hearing required. The court shall hold a hearing prior to making a ~~final protection~~ jeopardy order.

Sec. A-8. 22 MRSA §4035, sub-§4, as amended by PL 1997, c. 475, §1, is repealed.

Sec. A-9. 22 MRSA §4035, sub-§4-A is enacted to read:

4-A. Jeopardy order. The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

Sec. A-10. 22 MRSA §4036, sub-§1, ¶G-1, as amended by PL 1995, c. 405, §21, is repealed.

Sec. A-11. 22 MRSA §4036, sub-§1, ¶G-2 is enacted to read:

G-2. If the court's jeopardy order includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must

commence within 30 days of the order to cease reunification.

Sec. A-12. 22 MRSA §4055, sub-§3, as amended by PL 1993, c. 198, §2, is further amended to read:

3. Wishes of child. ~~The court may not order termination if the child is at least 14 years old and objects to the termination.~~ The court shall consider, but is not bound by, the wishes of a child 12 years of age or older in making an order under this section.

PART B

Sec. B-1. 22 MRSA §4002, sub-§1-B is enacted to read:

1-B. Aggravating factor. "Aggravating factor" means any of the following circumstances with regard to the parent.

A. The parent has subjected the child to aggravated circumstances including, but not limited to, the following:

(1) Rape, gross sexual misconduct, gross sexual assault, sexual abuse, incest, aggravated assault, kidnapping, promotion of prostitution, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society; or

(2) Refusal for 6 months to comply with treatment required in a reunification plan.

B. The parent has been convicted of any of the following crimes and the victim of the crime was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent:

(1) Murder;

(2) Felony murder;

(3) Manslaughter;

(4) Aiding, conspiring or soliciting murder or manslaughter;

(5) Felony assault that results in serious bodily injury; or

(6) Any comparable crime in another jurisdiction.

C. The parental rights of the parent to a sibling have been terminated involuntarily.

D. The parent has abandoned the child.

Sec. B-2. 22 MRSA §4002, sub-§5-A is enacted to read:

5-A. Foster parent. "Foster parent" means a person whose home is licensed by the department as a family foster home as defined in section 8101, subsection 3 and with whom the child lives pursuant to a court order or agreement with the department.

Sec. B-3. 22 MRSA §4002, sub-§§9-A, 9-B and 9-C are enacted to read:

9-A. Preadoptive parent. "Preadoptive parent" means a person who has entered into a preadoption agreement with the department with respect to the child.

9-B. Relative providing care. "Relative providing care" means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child with whom the child lives and who has taken responsibility for the child.

9-C. Removal of the child from home. "Removal of the child from home" means that the department or a court has taken a child out of the home of the parent, legal guardian or custodian without the permission of the parent or legal guardian.

Sec. B-4. 22 MRSA §4003, first ¶, as enacted by PL 1979, c. 733, §18, is amended to read:

Recognizing that the health and safety of children must be of paramount concern and that the right to family integrity is limited by the right of children to be protected from abuse and neglect and recognizing also that uncertainty and instability are possible in extended foster home or institutional living, it is the intent of the Legislature that this chapter:

Sec. B-5. 22 MRSA §4005-C is enacted to read:

§4005-C. Rights of persons who are not parties

The foster parent of a child, if any, and any pre-adoptive parent or relative providing care for the child must be provided notice of and an opportunity to be heard in any review or hearing to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records. This section may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the review or hearing solely on the basis of the notice and opportunity to be heard.

Sec. B-6. 22 MRSA §4033, sub-§5 is enacted to read:

5. Notice to foster parents, preadoptive parents and relatives providing care. The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

Sec. B-7. 22 MRSA §4038, sub-§1, as amended by PL 1997, c. 475, §2, is further amended to read:

1. Mandated review. ~~If a court has made a final protection jeopardy order, it shall review the case at least once within 12 months of the final protection order and at least every 2 years thereafter every 6 months, unless the child has been emancipated or adopted.~~

Sec. B-8. 22 MRSA §4038, sub-§3, as repealed and replaced by PL 1983, c. 185, is amended to read:

3. Notice of review. ~~Notice of the reviews shall must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice shall may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:~~

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

Sec. B-9. 22 MRSA §4038, sub-§7, as amended by PL 1997, c. 475, §§5 and 6, is repealed.

Sec. B-10. 22 MRSA §4038, sub-§7-A is enacted to read:

7-A. Permanency planning hearing. The court shall conduct a permanency planning hearing and shall determine a permanency plan within 12 months of the time a child is considered to have entered foster care and every 12 months thereafter. If the court's jeopardy ruling includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification.

A. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first.

B. The permanency plan for the child must contain determinations on the following issues.

(1) The permanency plan must determine whether and when, if applicable, the child will be:

(a) Returned to the parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection 1, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for and protect the child from jeopardy; and that the parent can protect the child from jeopardy;

(b) Placed for adoption, in which case the department shall file a petition for termination of parental rights;

(c) Referred for legal guardianship; or

(d) Placed in another planned permanent living arrangement when the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home.

be referred for termination of parental rights or be placed for adoption, be placed with a fit and willing relative, or be placed with a legal guardian.

(2) In the case of a child placed in foster care outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child.

(3) In the case of a child who is 16 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living.

C. The court shall consider, but is not bound by, the wishes of the child in making a determination under this subsection if the child is 12 years of age or older.

Sec. B-11. 22 MRSA §4041, as amended by PL 1995, c. 694, Pt. D, §46 and affected by Pt. E, §2, is further amended to read:

§4041. Departmental responsibilities

1. Rehabilitation and reunification. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after the child is removed from the home, whichever occurs first. ~~When a child has been ordered into the custody of the department under this chapter or under Title 19-A, section 1653 is considered to have entered foster care,~~ the responsibility for reunification and rehabilitation of the family must be shared as follows.

A. The department shall:

(1) Develop a rehabilitation and reunification plan, which must include the following:

- (a) The reasons for the ~~child's~~ removal of the child from home;
- (b) Any changes that must occur for the child to return home;
- (c) Rehabilitation services that must be completed satisfactorily prior to the return home;
- (d) Services available to assist the parents in rehabilitating and reunifying with the child, including reasonable transportation within the area in which the child is located for

visits if the parents are unable to afford that transportation;

(e) A schedule of visits between the child and the parents when visits are not detrimental to the child's best interests, including any special conditions under which the visits must take place;

(f) A reasonable time schedule for proposed reunification, which is reasonably calculated to meet the child's needs; and

(g) A delineation of the financial responsibilities of the parents and the department during the reunification process;

(2) Provide the parents with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith efforts to cooperate with the parents in the development and pursuit of the plan;

(4) Periodically review with the parents the progress of the reunification plan and make any appropriate changes in that plan;

(5) Petition for judicial review and return of custody of the child to the parents at the earliest appropriate time; and

(6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child;

B. Parents are responsible for rectifying and resolving problems that prevent the return of the child to the home and shall take part in a reasonable rehabilitation and reunification plan and shall:

(1) Maintain meaningful contact with the child pursuant to the reunification plan. When a parent has left the area where the

child has been placed, this must include making arrangements to visit the child at or near the child's placement;

(2) Seek and utilize appropriate services to assist in rehabilitating and reunifying with the child;

(3) Pay reasonable sums toward the support of the child within the limits of their ability to pay;

(4) Maintain contact with the department, including prompt written notification to the department of any change of address; and

(5) Make good faith efforts to cooperate with the department in developing and pursuing the plan; and

~~C. When the parties can not agree as to contents of a reasonable rehabilitation and reunification plan, any party may file a motion for judicial review pursuant to section 4038. At the review, the court shall review the proposed plans of either party and shall order reasonable reunification plans as it determines necessary.~~

C-1. Unless excused for good cause shown, at any hearing held under section 4034, subsection 4 or within 10 days of the filing of the petition if no hearing under section 4034, subsection 4 is held, the department shall present to the court for review a reunification plan, a plan to avoid removal of the child from home or decision not to commence reunification. In the presentation to the court, the department shall include information about other parents or relatives with whom the child could be placed. Prior to review by the court, the department shall provide a copy of its proposal to counsel for the parents, or to the parents if they have no counsel, and to the guardian ad litem. The court may review the proposal in a hearing that does not allow testimonial evidence with all parties and counsel present or may hold a summary hearing at which the court may limit testimony to the testimony of the caseworker, parent, guardian ad litem, person to whom trial placement was given, foster parents, preadoptive parents or relatives providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence; and

E. The department may make reasonable efforts to place a child for adoption or with a legal guardian concurrently with reunification efforts.

2. Determination of need to commence or discontinue rehabilitation and reunification efforts. The following provisions shall determine when

rehabilitation and reunification efforts are not necessary or may be discontinued.

~~A. The department may either decide to not commence or to discontinue rehabilitation and reunification efforts with either parent or the court may order that rehabilitation and reunification efforts need not commence or that the department has no further responsibilities for rehabilitation and reunification with either parent when:~~

~~(1) The parent is willing to consent to termination of parental rights;~~

~~(2) The parent cannot be located;~~

~~(3) The parent is unwilling or unable to rehabilitate and reunify with the child within a time which is reasonably calculated to meet the child's needs;~~

~~(4) The parent has abandoned the child;~~

~~(5) The parent has acted toward a child in a manner which is heinous or abhorrent to society or has failed to protect a child in a manner which is heinous or abhorrent to society, without regard to the intent of the parent; or~~

~~(6) The victim of any of the following crimes was a child for whom the parent was responsible or the victim was a child who was a member of a household lived in or frequented by the parent and the parent has been convicted of:~~

~~(a) Murder;~~

~~(b) Felony murder;~~

~~(c) Manslaughter;~~

~~(d) Aiding or soliciting suicide;~~

~~(e) Aggravated assault;~~

~~(f) Rape;~~

~~(g) Gross sexual misconduct;~~

~~(h) Sexual abuse of minors;~~

~~(i) Incest;~~

~~(j) Kidnapping;~~

~~(k) Promotion of prostitution; or~~

~~(l) A comparable crime in another jurisdiction.~~

~~B. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at his last known address. This notice shall include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. This notice requirement must precede service of a copy of a petition to terminate parental rights under subchapter VI.~~

A-1. The court may order that the department need not commence or may cease reunification efforts only if the court finds the existence of an aggravating factor or that continuation of reunification efforts is inconsistent with the permanency plan for the child. When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.

B-1. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at the parent's last known address. This notice must include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. The department shall seek an order authorizing it to discontinue reunification efforts. Within 10 days of sending written notice of the decision to discontinue reunification efforts, the department shall file a motion for approval of discontinuance of reunification efforts with supporting affidavits. If the parents file a responsive pleading within 21 days, the court shall conduct a summary proceeding in accordance with the provisions of section 4034, subsection 4. If no responsive pleading is filed, the court may hold a summary hearing in accordance with the provisions of section 4034, subsection 4 or may decide the matter without a hearing.

C. If the department discontinues efforts to return the child to a parent, but does not seek termination of parental rights, then subsection 1, paragraph A, subparagraph (1), division (e) and subsection 1, paragraph A, subparagraph (2), shall still apply.

3. Notice to guardian ad litem. The department shall notify the guardian ad litem, as described in section 4005, of any substantial change in circumstances that may have an impact on the best interests of the child. A substantial change in circumstances includes but is not limited to any change in the child's residence.

Sec. B-12. 22 MRSA §4052, sub-§1, as enacted by PL 1979, c. 733, §18, is amended to read:

1. Petitioner. A termination petition may be brought by the custodian of the child or by the department.

Sec. B-13. 22 MRSA §4052, sub-§2, as amended by PL 1997, c. 475, §§7 and 8 and affected by §11, is repealed.

Sec. B-14. 22 MRSA §4052, sub-§2-A is enacted to read:

2-A. Department as petitioner or as party. The department shall file a termination petition or seek to be joined as a party to any pending petition in the following circumstances:

A. A child has been in foster care for 15 of the most recent 22 months. This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the department determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan; or

B. A court order includes a finding of an aggravating factor and an order to cease reunification.

The department is not required to file a termination petition if the department has chosen to have the child cared for by a relative or the department has documented to the court a compelling reason for determining that filing such a petition would not be in the best interests of the child.

Sec. B-15. 22 MRSA §4053, as enacted by PL 1979, c. 733, §18, is amended to read:

§4053. Service and notice

The petition and the notice of hearing ~~shall~~ must be served on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date. Service ~~shall~~ must be made in accordance with the District Court Civil Rules. The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives

providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing. The department shall mail a copy of the petition to all attorneys of record when the petition is filed in court.

PART C

Sec. C-1. 18-A MRSA §9-302, sub-§(c) is enacted to read:

(c) When the department consents to the adoption of a child in its custody, the department shall immediately notify:

- (1) The District Court in which the action under Title 22, chapter 1071 is pending; and
- (2) The guardian ad litem for the child.

See title page for effective date.

CHAPTER 716

H.P. 1602 - L.D. 2228

An Act to Implement the Recommendations of the Task Force on Registration of In-home Personal Care and Support Workers

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

Sec. 1. 22 MRSA §1717 is enacted to read:

§1717. Registration of personal care agencies

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

A. "Activities of daily living" means tasks that are routinely performed by an individual to maintain bodily function, including, but not limited to, mobility; transfers in position among sitting, standing and prone positions; dressing; eating; toileting; bathing; and personal hygiene assistance.

B. "Hires and employs" means recruits, selects, trains, declares competent, schedules, directs, defines the scope of the positions of, supervises or terminates individuals who provide personal care.

C. "Personal care agency" means a business entity or subsidiary of a business entity that is not otherwise licensed by the Division of Licensing and Certification and that hires and employs unlicensed assistive personnel to provide assistance with activities of daily living to individuals in the places in which they reside, either permanently or temporarily. An individual who hires and employs unlicensed assistive personnel to provide care for that individual is not a personal care agency.

D. "Unlicensed assistive personnel" means individuals employed to provide hands-on assistance with activities of daily living to individuals in homes, assisted living centers, residential care facilities, hospitals and other health care settings. Unlicensed assistive personnel does not include certified nursing assistants employed in their capacity as certified nursing assistants.

2. Registration of personal care agencies. Beginning August 1, 1998, a personal care agency not otherwise licensed by the department shall register with the department. The annual registration fee is \$25.

3. Prohibited contracting and employment. A personal care agency may not hire under a long-term contract or employ permanently as unlicensed assistive personnel an individual who has worked as a certified nursing assistant and has been the subject of an annotation by the state survey agency for a substantiated complaint or conviction of abuse, neglect or misappropriation of funds in a health care setting.

4. Penalty. A person who operates a personal care agency without registering with the department commits a civil violation for which a forfeiture may be adjudged of \$500 per day of operations.

Sec. 2. Report required. The Commissioner of Human Services shall report to the joint standing committee of the Legislature having jurisdiction over health and human services matters on or before January 1, 1999 on the feasibility of establishing a statewide system for checking the criminal histories of unlicensed assistive personnel and a registry for maintaining records of criminal convictions and substantiated complaints of abuse, neglect or misappropriation of funds in a health care setting by the year 2000. The following characteristics must be considered: the system for checking for criminal convictions should be nationwide; the registry should be