

MAINE STATE LEGISLATURE

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MAINE JANUARY 1977

ALERT

CRIMINAL DIVISION

FROM THE OFFICE OF
THE ATTORNEY GENERAL
OF THE STATE OF MAINE



MESSAGE FROM THE ATTORNEY GENERAL JOSEPH E. BRENNAN

Several recent criminal cases have drawn attention to the severity and pervasiveness of child abuse and neglect. I hope that all law enforcement officers will read this month's and next month's ALERT articles in order to familiarize themselves with the laws and procedures which apply to child abuse and neglect cases. Furthermore, I encourage law enforcement personnel to cooperate fully with the Department of Human Services and with local social service agencies, using every available community resource to attack this major social problem head-on.

Future issues of ALERT will cover such topics as search warrants, enforcement of civil violations, Maine medical examiners system, and new legislation affecting law enforcement. If law enforcement officers have ideas about specific areas they would like to see treated in ALERT, they should write to the Law Enforcement Education Section, Department of the Attorney General, Room 507, State Office Building, Augusta, Maine 04333.

A handwritten signature in cursive script that reads "Joseph E. Brennan". The signature is written in dark ink and is positioned above the printed name and title.

JOSEPH E. BRENNAN
Attorney General

CHILD ABUSE AND NEGLECT - I

This month's and next month's ALERTs are devoted to a discussion of child abuse and neglect. Because of the serious nature of the problem, the public's growing concern with this area of law, the number of cases involving abuse of children, and the difficulty of discovering and dealing with these cases, law enforcement officers should become thoroughly familiar with the laws and with the proper procedure to follow when child abuse or neglect is suspected. Officers should also become familiar with all the signs of abuse and neglect so as to be able to recognize these cases when they first come to the officer's attention. Being able to identify these signs is especially important since law enforcement officers are on duty 24 hours a day and are often the first persons to come into contact with children who are abused or neglected. They are therefore in a position to take early action to prevent further injuries to victims of abuse.

Child abuse is the leading cause of death of children under five years of age. It is estimated that

more children under the age of five die of injuries inflicted by parents or guardians than from tuberculosis, whooping cough, polio, measles, diabetes, rheumatic fever and appendicitis combined. The National Center on Child Abuse has stated that public agencies receive over 300,000 reports of child abuse a year and that over 2,000 children die each year as a result of maltreatment. Since many cases go unreported and undetected, the actual incidence of child abuse is far greater than the figures based on reports alone, and these known cases are merely a small part of a much greater problem. Even according to conservative estimates, however, at least 10,000 children every year are so severely mistreated as to require hospitalization, and there may be as many as a million children a year subjected to excessive abuse. In Maine alone in 1975 the Department of Human Services dealt with 6,641 children for reasons of parental neglect, abuse or other unsuitable family environment factors.

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This issue of ALERT will discuss what child abuse and neglect are and will examine Maine laws which deal with the subject. The February issue of ALERT will deal specifically with what things officers should look for in suspected child abuse or neglect situations and how officers should deal with all the persons involved. The social and psychological problems deserve a great deal of attention because of the hostility, shame and fright which an officer will frequently encounter from persons involved in such a situation. Also, because a child will often have difficulty in talking about his or her injuries or will not be aware of those injuries, and because the adults involved will often deny that an injury has occurred, the officer must be especially alert to the symptoms of physical injury and neglect.

The law enforcement officer should realize that, more so than in other areas, dealing with child abuse and neglect requires a great deal of cooperation with other agencies, in particular, the Department of Human Services, local community service agencies, and the prosecutors' offices. The law enforcement officer is in a unique position as a case finder in situations of child abuse since he must deal competently with the public, social service agencies, medical and legal professionals as well as with the courts. Many abused and neglected children, pre-delinquent and delinquent children, inadequate parents, and families with domestic difficulties come to the attention of the police first since the police department is the only agency with a 24-hour field service. The officer not only can perform a service for the child by protecting him or her against further abuse but also can assist the parents and family in learning better ways of handling their emotions by making appropriate referrals to agencies who specialize in working with child abusers.

WHAT CONSTITUTES CHILD ABUSE OR NEGLECT

22 M.R.S.A. §3852, enacted in 1975, defines child abuse and neglect as "the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of 18 years of age by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby." The occurrence of physical abuse is fairly easy to determine because it is usually indicated by observable or measurable injuries. Abuse includes most injuries inflicted on a child by other than accidental means. The injuries need not have been inflicted by the parents or guardians themselves for them to be found legally responsible, as long as the parents or guardians in some manner allowed the child to be injured by someone else or contributed to the injury or failed to have the child treated. Abuse may be physical, verbal, emotional or sexual mistreatment which threatens the child's welfare. Determining when a child's health or welfare is actually threatened or harmed is, of course, a question of fact which must be dealt with on a case by case basis.

Neglect is more difficult to define or detect. While abuse is usually characterized by an affirmative act on the part of the adult responsible, neglect is more often made out by the failure to act by a person under a duty to act. Neglect includes the failure by a parent or other adult responsible for the child to provide the essentials of life, such as food, clothing, shelter, medical care, normal supervision or protection from assault. Abandonment is an obvious and extreme example of neglect. However, what constitutes the failure to exercise a minimum degree of proper parental care or supervision is often a question of fact based on the nature, duration,

and consistency of the adult's failure to provide essentials.

Although most reported child abuse victims are young children and infants, officers should be aware that the law is also concerned with mistreatment of teenagers under the age of eighteen. It should also be noted that the statutory definition of child abuse and neglect specifically precludes a finding of abuse or neglect based solely on a parent's or guardian's failure for religious reasons to provide particular medical services for a child. More will be said about what constitutes abuse or neglect in Part II of this article dealing with detecting symptoms, investigating, and gathering evidence in child abuse cases.

MAINE LAWS DEALING WITH CHILD ABUSE AND NEGLECT

The Maine statutes deal with the mistreatment of children in several ways. Various provisions of the criminal law apply to child abuse and neglect cases. In addition, the law requires certain persons, including law enforcement officials, to report suspected cases of abuse or neglect and imposes penalties for failure to do so. Other statutes authorize civil proceedings for protective custody of the child when the situation is so severe as to require that the child be removed from the home. These laws have different purposes and goals and will be discussed individually in terms of their practical effect and application.

The Mandatory Reporting Law

22 M.R.S.A. §3853 provides that anyone *may* report an incident of suspected child abuse or neglect to the Department of Human Services. However, §3853 further *requires* that certain professional people, including law enforcement

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officers, because they often come into contact with children, report immediately any suspected child abuse or neglect. All reports, whether mandatory or voluntary, are deemed confidential. 22 M.R.S.A. §3859. The mandatory reporting law presently covers the following persons: Medical Physicians, Residents, Interns, Medical Examiners, Dentists, Osteopathic Physicians, Chiropractors, Podiatrists, Nurses, Christian Science Practitioners, Social Workers, School Officials, Teachers, Psychologists, Child Care Personnel, Mental Health Professionals, and *Law Enforcement Officials*.

The goal of the reporting law is the protection of the child, not the punishment of the parents or guardians. Early reporting can help the Department of Human Services investigate and evaluate the total situation and offer families help to eliminate further danger to the child and to preserve the home. Supportive services available through the Department can often keep the family together. Parents may need help in childrearing and homemaking activities, and troubled families may need counseling in order to cope with stress. A report therefore can be the first step in rehabilitative services to preserve families and save children's lives.

Making the Report

Reports must be made immediately by telephone to the Department of Human Services and must be followed up by a written report within 48 hours if requested by the Department of Human Services. A list of the Regional Offices of the Department of Human Services with their addresses and telephone numbers is included at the end of next month's ALERT. Under the law, however, a person who acts as a member of the staff of a public agency can simply report to his or her superior officer, who is then

responsible for reporting to the Department of Human Services. Therefore a law enforcement officer may report to the chief of his or her department. However, the officer is not precluded from making a report directly to the Department of Human Services as well as reporting to a superior officer. In any event, the officer should relay any observations and suspicions of child abuse and neglect immediately so as to facilitate early intervention and prevent further harm to the child.

A question often asked is "what kinds of things is an officer required to report?" The law states that a person required to report must relay information whenever he or she "knows or has reasonable cause to suspect that a child has been subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which would reasonably result in abuse . . ." It is not necessary that an officer actually see an incident of abuse; it is sufficient to require a report if information has come to the officer's attention which would make the officer *suspect* abuse or neglect.

The following information, when known to the officer, must be included in a report of suspected child abuse or neglect:

- names and addresses of the child and its parents or other persons responsible for its care and custody;
- child's age, sex and race;
- nature and extent of any physical injuries;
- description of any neglect or sexual abuse, including any evidence of previous injuries, neglect or sexual molestation either to the child or to its siblings;
- family composition (a listing of all members of the child's family);

- the source of the report, the person making the report (if different from the source of the information), reporter's occupation and place where he or she can be contacted;
- the actions taken by the reporting source, including a description of photographs or x-rays taken, and any other information which may be helpful in investigating the situation.

Persons required to make reports to the Department of Human Services are also required to report to the medical examiner the death of a child when the reporter knows or has reasonable cause to suspect that the child died as a result of abuse or neglect. The medical examiner can then investigate the case, determine the exact cause of death, and report his findings to the appropriate authorities. The immunity, penalty, and confidentiality provisions discussed previously also apply to these reports to the medical examiner. The Chief Medical Examiner for the State of Maine may be contacted at the State Office Building in Augusta, Tel. 289-2993.

Immunity from Liability

The law specifically states that persons making reports in good faith are immune from any civil or criminal liability which might otherwise result from relaying such information. 22 M.R.S.A. §3856 further creates a "rebuttable presumption" that persons making reports do so in good faith, that is, not maliciously. The obvious purpose of this immunity provision is to encourage prompt reporting to the fullest extent; therefore, if an officer has any doubts as to whether to report, those doubts should be resolved in favor of reporting.

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Penalties; Confidentiality

The law presently provides a criminal penalty, consisting of a maximum \$500 fine, for failure to report when required to do so, when a child has actually been subjected to abuse or neglect and when someone is found criminally responsible for that abuse or neglect. 22 M.R.S.A. §3857. The law also provides that all records and reports concerning child abuse or neglect are confidential except when access is requested by certain parties for investigative or treatment purposes. 22 M.R.S.A. §§3859, 3860. The penalty for permitting or encouraging the unauthorized dissemination of the contents of a report is a fine of up to \$1,000 or imprisonment for 6 months, or both.

The Role of the Department of Human Services

Chapter 1055 (§§3791-3860) of 22 M.R.S.A. authorizes and governs proceedings for investigating and litigating protective custody cases. Although the law enforcement officer is less involved in this aspect of the law than in the discovery and early investigation of child abuse, it is worthwhile for the officer to become familiar with these laws and procedures. Thus, for instance, an officer called upon to testify in a custody proceeding will know what to expect from such a proceeding. A thorough knowledge of the law is also helpful in gathering physical evidence for possible later use in court.

22 M.R.S.A. §3791 states that the Department of Human Services "and its agents, so far as funds are available, shall investigate all cases of cruel or injurious treatment of children coming to their knowledge, and shall cause offenders against any law for the protection of children or prevention of cruelty to the same to be prosecuted." This statute and

§3792 set out the two roles of the Department of Human Services: that of investigator and that of initiator of protective custody suits.

Investigation

In its investigative capacity, the Department of Human Services responds to reported instances of child abuse or neglect and attempts to diagnose the family situation to determine whether the child is in jeopardy and what services are needed. Department personnel will talk with family members and with the person reporting the incident to determine initially whether the family conditions are such as to require intervention or whether the parents or caretakers already recognize existing problems and have the potential for solving them and are actively seeking services of a preventive nature. An isolated incident of abuse or neglect may or may not be indicative of long-range problems requiring extensive counseling and/or a petition for protective custody. This determination is for the case worker to make based on the case worker's experience, the severity of the harm already inflicted on the child, and as many consultations with the persons involved as time and resources will allow. Presently case workers are unable to spend as much time as desired investigating individual cases because of understaffing and resultant heavy case-loads. To some extent law enforcement officers can provide similar emergency help by spending time talking with all persons involved in a family crisis situation and by having at their disposal a list of community services available in their particular region.

A major goal of the Department of Human Services at this preliminary stage of the investigation is to provide supportive services geared to mobilizing community resources and ultimately to strengthening the family unit. The Department is authorized to

provide necessary services at the request of the family without court order by 22 M.R.S.A. §3794. Among the services to which family members may be referred and which may alleviate a temporary crisis situation are the following:

- community mental health programs
- child care services
- transportation
- food and clothing services
- homemaker services
- long-term housing
- emergency foster care and temporary group shelters
- alcoholism treatment centers
- drug treatment centers
- family planning
- visiting nurse and other health care programs
- employment counseling
- financial aid through general assistance or AFDC.

The Department of Human Services hopes to be able to provide in the near future a statewide 24-hour child abuse hotline to deal with emergency situations occurring after normal working hours. When this service is initiated it will require a great deal of cooperation between law enforcement officers and Human Services personnel. For instance, a law enforcement officer on duty at night or on a weekend may be called upon to accompany a Human Services investigator to a home where child abuse has occurred. In extreme circumstances an officer may be required to make an arrest or to help take custody of a child in enforcing a protective custody order. The officer may be a potential witness in later civil or criminal proceedings and should be alert to observe all signs of abuse or neglect. More will be said about specific things to look for in the physical surroundings of the home in Part II of this article.

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Protective Custody

If an abuse or neglect situation is severe enough, taking custody of the child may be considered. 22 M.R.S.A. §3792 governs the standards and procedure for taking custody of a child. Protective custody proceedings may be initiated by an agent of the Department of Human Services, by a sheriff or police officer, or by 3 or more citizens of a municipality. Proceedings are begun by filing a petition in either the District Court or the probate court in the area where the child resides, stating that a certain child is living in circumstances which are seriously jeopardizing the health, welfare or morals of the child and that the child is in need of protective custody. The petition asks that suitable and proper provision be made for the care, custody, support and education of the child.

After the petition is filed, the court sets a hearing date and orders that the child's parents or guardian be notified by proper service. If the person filing the petition is not an agent of the Department of Human Services, then the Department is also notified. The hearing date is set for at least 10 days after the parties are served with notice of the proceeding, or sooner if the parties waive notice in writing.

Pending the full hearing the court may make a temporary "order of care pending hearing." Ordinarily a hearing is held on the temporary custody question at least 3 days after the parents or guardian have been served with notice, or sooner if the parents or guardian waive notice in writing. In an emergency situation, however, the court may issue an order of care pending hearing without any notice to the parents or guardian. The standard for issuing such an order without notice is whether or not the child is living in circumstances which "present serious, immediate and urgent danger to the child's safety or life." Because of the

severity of this action and the greater immediate imposition on the parents' rights, the standard for a court order removing the child without notice is much stricter than the standard for determining the ultimate custody of the child. Thus, only if there is serious, immediate and urgent danger to the child's life or safety can the child be taken from the parents without notice.

Once the petition is filed the court appoints a "guardian ad litem" for the child. 22 M.R.S.A. §3858. The guardian ad litem is an attorney who, unlike the other parties who represent the parents and the State, represents solely the interests of the child at this proceeding. The guardian ad litem is given access to all relevant reports and is charged with investigating the facts. He or she may review any psychiatric, psychological and physical examinations of the child and its parents, interview witnesses, and make recommendations to the court. The guardian ad litem actively participates in the litigation, examining and cross-examining witnesses in the courtroom. The Department of Human Services is represented at the proceeding by an attorney from the Attorney General's office assigned to the Department or, if requested, by the District Attorney's office.

The court may order examination of the child, its parents or other person having custody of the child by a physician, psychologist or psychiatrist. From the reports of such persons and from the testimony at the hearing, the court determines whether or not the child is living in circumstances which are seriously jeopardizing his or her health, welfare or morals, so as to require protective custody. If the court decides that protective custody is necessary, it may order the child committed to the custody of the Department of Human Services or to the custody of any suitable person who is willing to

take responsibility for the child. The effect of such an order is to divest the parents of all legal rights with respect to the child and to make the person or institution taking custody the guardian of the child. However, the parents may still be ordered to contribute to the support of the child.

Either party may appeal the order determining custody to the Superior Court, and the lower court may order protective custody pending appeal. Protective custody orders may remain in effect only until the child reaches the age of eighteen. However, on petition by the parent, guardian, Department of Human Services, or person having custody of the child, the court can reexamine the child's circumstances at any time. The court can then make further orders regarding the child's care, custody, support and education, discharge the child from custody, or restore custody to the parents.

Miscellaneous Relevant Criminal Provisions

The following provisions of the criminal law may apply to suspected cases of child abuse or neglect. The officer should keep these statutes in mind when investigating cases and when gathering evidence for later use in court. However, criminal prosecution under any of these provisions should not be hastily undertaken. Criminal prosecution tends to disrupt rather than enhance family stability, and maintaining the family unit is a stated goal of the law. Therefore officers should consult at length with the district attorney and with the legal staff of the Department of Human Services (Tel. 289-2226) before considering any criminal action.

19 M.R.S.A. §218. Cruelty to children.

"Any parent, guardian or other person having the care and custody

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of any child, who cruelly treats such child by abuse, neglect, overwork or extreme punishment, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months."

19 M.R.S.A. §481. Criminal failure to support dependents; penalties; conditions.

19 M.R.S.A. §487. Abandonment of child under 6 years. Punishable by \$500 fine or imprisonment for not more than 5 years.

17-A M.R.S.A. §106. Physical force by persons with special responsibilities. §106 (1) allows a "parent, foster parent, guardian or other similar person responsible for the long term general care and welfare of a person" to use a *reasonable* degree of force against such person "when and to the extent that he reasonably believes it necessary to prevent or punish such person's misconduct. This section, however does not constitute or a justification for cruelty, abuse or neglect. §106(4) further specifically states that §106(1) "does not apply to the purposeful or reckless use of force that creates a substantial risk of death, serious bodily injury, or extraordinary pain.

17-A M.R.S.A. §201. Criminal homicide in the first degree. A person responsible for the death of a child might be charged with first degree homicide if, for instance, the person knowingly inflicted great physical suffering on the child.

17-A M.R.S.A. §202. Criminal homicide in the 2nd degree. A person may be charged with this if he or she caused the death of a child, intending to cause the child's death or knowing that death would almost certainly result from his or her conduct.

17-A M.R.S.A. §204. Criminal homicide in the 4th degree. Class B. A person may be charged with 4th degree homicide if he or she recklessly caused the death of a

17-A M.R.S.A. §205. Criminal homicide in the 5th degree. Class D. A person may be charged with this offense if he or she caused the death of a child through criminal negligence.

17-A M.R.S.A. §207. Assault. Class D. Requires intentionally, knowingly or recklessly causing bodily injury or offensive physical contact to another.

17-A M.R.S.A. §208. Aggravated assault. Class B. A person might be charged with this if serious bodily injury has been inflicted on the child or if, from the number, location or nature of the child's injuries, the actor exhibited extreme indifference to the value of human life.

17-A M.R.S.A. §211. Reckless conduct. Class D. Requires recklessly causing a substantial risk of serious bodily injury to another.

17-A M.R.S.A. §252. Rape. Class A. §252 (1) (A) prohibits sexual intercourse with a person under the age of fourteen.

17-A M.R.S.A. §253. Gross sexual misconduct. Class A. §253 (1)(B) prohibits engaging in a sexual act with a person under the age of fourteen.

17-A M.R.S.A. §254. Sexual abuse of minors. Class D. Prohibits sexual intercourse or a sexual act by a person at least nineteen years of age with another person between the ages of fourteen and sixteen who is 5 years younger than the other person.

17-A M.R.S.A. §255. Unlawful sexual contact. Class C. §255 (1)(C) prohibits unlawful sexual contact with a person under fourteen when the actor is at least 3 years older.

17-A M.R.S.A. §302. Criminal restraint. Class D. Several provisions prohibit the restraining, taking, retaining, or enticing of children.

17-A M.R.S.A. §552. Nonsupport of dependents. Class E.

17-A M.R.S.A. §553. Abandonment of child. Class D. Applies to children under the age of fourteen.

17-A M.R.S.A. §554. Endangering the welfare of a child. Class D. Applies if a person knowingly permits a child under sixteen to enter or remain in a house of prostitution, or furnishes or offers to furnish to such a child liquor, cigarettes, tobacco, air rifles, firearms or ammunition, or "otherwise knowingly endangers the child's health, safety or mental welfare by violating a duty of care or protection." Note also that certain defenses are provided in this section and in §557.

17-A M.R.S.A. §556. Incest. Class D. Applies when the actor-defendant is at least eighteen years old.

Part II of this article will appear in the February 1977 issue of ALERT.

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Comments directed toward the improvement of this bulletin are welcome. Please contact the Law Enforcement Education Section, Criminal Division, Department of the Attorney General, Room 507 - State Office Building, Augusta, Maine 04333.

ALERT

The matter contained in this bulletin is intended for the use and information of all those involved in the criminal justice system. Nothing contained herein is to be construed as an official opinion or expression of policy by the Attorney General or any other law enforcement official of the State of Maine unless expressly so indicated.

Any change in personnel or change in address of present personnel should be reported to this office immediately.

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