

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND FIFTEEN

—
H.P. 977 - L.D. 1432

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

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

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

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

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

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

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

- (a) Requiring that certain persons be present during the interview;
- (b) Prohibiting certain persons from being present during the interview; and
- (c) Requiring notice to or consent from a parent or guardian.

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

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

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

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

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

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

CHAPTER 1674

INVESTIGATION OF OUT-OF-HOME CHILD ABUSE AND NEGLECT

§8351. Short title

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

§8352. Definitions

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

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

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

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

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

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

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

A. Serious harm or threat of serious harm;

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

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

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

E. Other situations of serious abuse or neglect.

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

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

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

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

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

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

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

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

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

A. Serious injury;

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

C. Sexual abuse or exploitation.

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

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

§8353. Investigation team

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

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

3. Addition of relevant professionals. The investigation team shall include, as appropriate, relevant professionals to participate as members of the investigation team for investigations of residential treatment centers, group homes, certified family child care providers or child care facilities.

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

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

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

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

A. Child development;

B. Identification of abuse and neglect;

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

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

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

§8354. Duties of the investigation team

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Background checks related to the person;

(2) The person's credentials;

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

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

3. Investigative powers of commissioner. The following are investigative powers of the commissioner.

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

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

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

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

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

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

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

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

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

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

A. The factors supporting an indicated or substantiated decision;

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

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

§8355. Right to hearing; appeal

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

§8356. Entities subject to investigation

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

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

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

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

C. A nursery school licensed pursuant to section 8402;

- D. A children's residential care facility licensed pursuant to chapter 1669;
- E. An emergency children's shelter licensed pursuant to chapter 1669;
- F. A shelter for homeless children licensed pursuant to chapter 1669;
- G. A licensed family foster home as defined in section 8101, subsection 3, including, but not limited to, the home of a resource family that provides foster care, kinship care or adoption or permanency guardianship services;
- H. An unlicensed relative's home approved by the department as meeting licensing standards; and
- I. An unlicensed provider for children with cognitive impairments and functional limitations that is funded by the department pursuant to rules adopted by the department.

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

§8357. Records; confidentiality; disclosure

Except as otherwise provided by law and the provisions of this chapter, records that are made, acquired or retained by the department in connection with its responsibilities under this chapter are subject to the provisions set out in section 7703.

1. Disclosure; report of abuse or neglect. Notwithstanding section 7703, subsection 2, paragraph B, the department may disclose a statement indicating whether or not a report of out-of-home child abuse or neglect has been received, the nature of the alleged abuse or neglect and the conclusion reached by the investigation team, upon the conclusion of the investigation.

2. Notification of parent, guardian or custodian of child reported to be abused. When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team may notify the child's parent, guardian or custodian that it has been reported that the child has been allegedly abused or neglected, whether an investigation is being conducted and, upon conclusion of the investigation, whether the investigation team determined that the allegations are supported or not supported.

3. Notification of parents, guardians or custodians of children in facility. When a report is received of child abuse or neglect in a facility or program described in section 8356, the investigation team, upon conclusion of the investigation, may notify a parent, guardian or custodian who has a child in the program or facility for whom there is no report of abuse or neglect whether the investigation team determined that a violation of law or rules adopted by the department has occurred.

4. Disclosure to facility or program. The investigation team shall notify a facility or program described in section 8356 when there is an indicated or substantiated finding of abuse or neglect against an employee of the facility or program.

5. Disclosure of investigation. The department may publish information regarding an investigation conducted pursuant to this chapter on the department's publicly

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

§8358. Rules

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