

**TITLE 17-A
MAINE CRIMINAL CODE**

**CHAPTER 12
SEXUAL EXPLOITATION OF MINORS**

§281. Definitions

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

1. "Disseminate" means to manufacture, publish, send, promulgate, distribute, exhibit, issue, furnish, sell or transfer or to offer or agree to do any of these acts.

2. "Minor" means a person who has not attained 18 years of age.

3. "Photograph" means to make, capture, generate or save a print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material.

4. "Sexually explicit conduct" means any of the following acts:

A. A sexual act;

B. Bestiality;

C. Masturbation;

D. Sadomasochistic abuse for the purpose of sexual stimulation;

E. Lewd exhibition of the genitals, anus or pubic area of a person. An exhibition is considered lewd if the exhibition is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or

F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.

§282. Sexual exploitation of minor

1. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades or uses another person, not that person's spouse, who has not in fact attained 16 years of age, to engage in sexually explicit conduct, except that it is not a violation of this paragraph if the other person is 14 or 15 years of age and the person is less than 5 years older than the other person. Violation of this paragraph is a Class B crime;

A-1. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly compels or induces by any threat another person, not that person's spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;

B. The person violates paragraph A or A-1 and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;

C. The person violates paragraph A or A-1 and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;

D. Being a parent, legal guardian or other person having care or custody of another person who has not in fact attained 16 years of age, that person knowingly or intentionally permits that person who has not in fact attained 16 years of age to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed. Violation of this paragraph is a Class B crime;

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or

F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

2. The following mandatory minimum terms of imprisonment apply to sexual exploitation of a minor.

A. A court shall impose upon a person convicted under subsection 1, paragraph A, A-1 or D a sentencing alternative involving a term of imprisonment of at least 5 years.

B. A court shall impose upon a person convicted under subsection 1, paragraph B or E a sentencing alternative involving a term of imprisonment of at least 10 years.

The court may not suspend a minimum term of imprisonment imposed under this section unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor and the history and character of the defendant and may only suspend the minimum term if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence. Section 9-A governs the use of prior convictions when determining a sentence.

3. Aggravating sentencing factor of victim under 12 years of age. If the State pleads and proves that a crime under this section was committed against an individual who had not attained 12 years of age, the court, in determining the appropriate sentence, shall treat the age of the victim as an aggravating sentencing factor.

§283. Dissemination of sexually explicit material

1. A person is guilty of dissemination of sexually explicit material if:

A. The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any person who has not in fact attained 16 years of age who the person knows or has reason to know is a person under 16 years of age engaging in sexually explicit conduct, except that it is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted. Violation of this paragraph is a Class C crime;

B. The person violates paragraph A and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime;

C. The person intentionally or knowingly disseminates or possesses with intent to disseminate any book, magazine, newspaper, print, negative, slide, motion picture, videotape, computer data file or other mechanically, electronically or chemically reproduced visual image or material that depicts any minor who is less than 12 years of age who the person knows or has reason to know is a minor less than 12 years of age engaging in sexually explicit conduct. Violation of this paragraph is a Class B crime; or

D. The person violates paragraph C and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime.

Section 9-A governs the use of prior convictions when determining a sentence.

2. For the purposes of this section, possession of 10 or more copies of any of the materials as described in subsection 1 gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person possesses those items with intent to disseminate.

3. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of dissemination or possession of the sexually explicit visual image or material.

§284. Possession of sexually explicit material

1. A person is guilty of possession of sexually explicit material if that person:

A. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

(1) The other person has not in fact attained 16 years of age; or

(2) The person knows or has reason to know that the other person has not attained 16 years of age.

It is not a violation of this paragraph if the person depicted is 14 or 15 years of age and the person is less than 5 years older than the person depicted.

Violation of this paragraph is a Class D crime;

B. Violates paragraph A and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class C crime;

C. Intentionally or knowingly transports, exhibits, purchases, possesses or accesses with intent to view any book, magazine, newspaper, print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material that the person knows or should know depicts another person engaging in sexually explicit conduct, and:

(1) The other person has not in fact attained 12 years of age; or

(2) The person knows or has reason to know that the other person has not attained 12 years of age.

Violation of this paragraph is a Class C crime; or

D. Violates paragraph C and, at the time of the offense, has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class B crime.

Section 9-A governs the use of prior convictions when determining a sentence.

2. It is a defense to a prosecution under this section that the person depicted was the spouse of the person possessing the sexually explicit material at the time the material was produced.

3. The age of the person depicted and that the person depicted is an actual person may be reasonably inferred from the depiction. Competent medical evidence or other expert testimony may be used to establish the age and authenticity of the person depicted.

4. Any material that depicts a person who has not attained 16 years of age engaging in sexually explicit conduct is declared to be contraband and may be seized by the State.

5. For purposes of this section, any element of age of the person depicted means the age of the person at the time the sexually explicit conduct occurred, not the age of the person depicted at the time of the transporting, exhibiting, purchasing, possession or accessing of the sexually explicit visual image or material.

§285. Forfeiture of equipment used to facilitate violations

1. Upon a finding of guilt of any violation of this chapter, but prior to sentencing, an attorney for the State may, in writing, move the court for an order requiring the forfeiture to the State of any equipment, including computers, that may have facilitated the commission of the offense. Notice of the motion must be made by the State to the defendant and any party of interest; this notice must be done by registered mail.

2. If contesting the forfeiture, the defendant or other party-in-interest in the in rem civil forfeiture proceeding may request a jury trial. Absent that request, the proceeding must be before the court.

3. At the jury trial or court hearing, the State has the burden of proving to the fact finder by a preponderance of the evidence that the equipment was used in violation of this chapter.

4. Upon a finding by a preponderance of the evidence that the equipment was used to facilitate the commission of a violation of this chapter, the court shall order the equipment forfeited and may, upon the written recommendation of the attorney for the State, provide in its order for the disposition or use of the equipment by any state, county or municipal law enforcement agency that made a substantial contribution to the investigation or prosecution of the case. Any equipment forfeited that is not transferred to an investigating or prosecuting agency must be sold and the proceeds deposited in the General Fund.

5. The Attorney General may adopt by rule guidelines regulating the disposition and use of property forfeited or sought for forfeiture under this section. Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

CHAPTER 35
SEX TRAFFICKING, PROSTITUTION AND PUBLIC INDECENCY

§851. Definitions

As used in this chapter:

1. "Prostitution" means engaging in, or agreeing to engage in, or offering to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person engaging in prostitution or a 3rd person;

1-A. "Engages a prostitute" means providing or agreeing to provide, either to the person whose prostitution is sought or to a 3rd person, pecuniary benefit in return for a sexual act or sexual contact as those terms are defined in section 251;

2. "Promotes prostitution" means:

- A. Causing or aiding another to commit or engage in prostitution, other than as a patron;
- B. Publicly soliciting patrons for prostitution. Publicly soliciting patrons for prostitution includes, but is not limited to, an offer, made in a public place, to engage in a sexual act or sexual contact, as those terms are defined in section 251, in return for a pecuniary benefit to be received by the person making the offer or a 3rd person;
- C. Providing persons for purposes of prostitution;
- D. Leasing or otherwise permitting a place controlled by the defendant, alone or in association with others, to be regularly used for prostitution;
- E. Owning, controlling, managing, supervising or otherwise operating, in association with others, a house of prostitution or a prostitution business;
- F. Transporting a person into or within the State with the intent that such other person engage in prostitution; or
- G. Accepting or receiving, or agreeing to accept or receive, a pecuniary benefit pursuant to an agreement or understanding with any person, other than with a patron, whereby the person participates or the person is to participate in the proceeds of prostitution.

§852. Aggravated sex trafficking

1. A person is guilty of aggravated sex trafficking if the person knowingly:

- A. Promotes prostitution by compelling a person to enter into, engage in or remain in prostitution;
- B. Promotes prostitution of a person less than 18 years old; or
- C. Promotes prostitution of a person who suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct involved.

2. As used in this section, "compelling" includes but is not limited to:

- A. The use of a drug or intoxicating substance to render a person incapable of controlling that person's conduct or appreciating its nature;
- B. Withholding or threatening to withhold a scheduled drug or alcohol from a drug or alcohol-dependent person. A "drug or alcohol-dependent person" is one who is using scheduled drugs or alcohol and who is in a state of psychic or physical dependence or both, arising from the use of the drug or alcohol on a continuing basis;

- C. Making material false statements, misstatements or omissions;
 - D. Withholding, destroying or confiscating an actual or purported passport or other immigration document or other actual or purported government identification document with the intent to impair a person's freedom of movement;
 - E. Requiring prostitution to be performed to retire, repay or service an actual or purported debt; and
 - F. Using force or engaging in any scheme, plan or pattern to instill in a person a fear that, if the person does not engage or continue to engage in prostitution, the actor or another person will:
 - (1) Cause physical injury or death to a person;
 - (2) Cause damage to property, other than property of the actor;
 - (3) Engage in other conduct constituting a Class A, B or C crime or criminal restraint;
 - (4) Accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;
 - (5) Expose a secret or publicize an asserted fact, regardless of veracity, tending to subject some person, except the actor, to hatred, contempt or ridicule;
 - (6) Testify or provide information or withhold testimony or information regarding another person's legal claim or defense;
 - (7) Use a position as a public servant to perform some act related to that person's official duties or fail or refuse to perform an official duty in a manner that adversely affects some other person; or
 - (8) Perform any other act that would not in itself materially benefit the actor but that is calculated to harm the person being compelled with respect to that person's health, safety or immigration status.
3. Aggravated sex trafficking is a Class B crime.

§853. Sex Trafficking

- 1. A person is guilty of sex trafficking if:
 - A. The person knowingly promotes prostitution. Violation of this paragraph is a Class D crime; or
 - B. The person violates paragraph A and has 2 or more prior convictions in this State for any combination of the Maine offenses listed in this paragraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this paragraph in another jurisdiction. The Maine offenses are any violation of this section or section 852, 853-A, 853-B or 855 or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class C crime.
- 2.
- 3. It is an affirmative defense to prosecution under this section that the person engaged in sex trafficking because the person was compelled to do so as described in section 852, subsection 2.

§853-A. Engaging in prostitution

1. A person who has in fact attained 18 years of age is guilty of engaging in prostitution if:

A. The person engages in prostitution as defined in section 851. Violation of this paragraph is a Class E crime, except that the sentencing alternative may include only the penalties provided in section 1704, subsection 5 and section 1705, subsection 5; or

B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of the prior conviction may not precede the commission of the offense by more than 2 years. Violation of this paragraph is a Class E crime.

2.

3.

4. It is an affirmative defense to prosecution under this section that the person engaged in prostitution because the person was compelled to do so as described in section 852, subsection 2.

§853-B. Engaging a prostitute

1. A person is guilty of engaging a prostitute if:

A. The person engages a prostitute within the meaning of section 851, subsection 1-A. Violation of this paragraph is a Class E crime; or

B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of the prior conviction may not precede the commission of the offense by more than 2 years. Violation of this paragraph is a Class D crime.

2.

3.

§854. Indecent conduct

1. A person is guilty of indecent conduct if:

A. In a public place:

(1) The actor engages in a sexual act, as defined in section 251. Violation of this subparagraph is a Class E crime;

(2) The actor knowingly exposes the actor's genitals under circumstances that in fact are likely to cause affront or alarm. Violation of this subparagraph is a Class E crime;

(3) The actor violates subparagraph (1) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime; or

(4) The actor violates subparagraph (2) and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class D crime;

B. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen from a public place or from another private place. Violation of this paragraph is a Class E crime;

C. In a private place, the actor exposes the actor's genitals with the intent that the actor be seen by another person in that private place under circumstances that the actor knows are likely to cause affront or alarm. Violation of this paragraph is a Class E crime;

D. The actor violates paragraph B and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime; or

E. The actor violates paragraph C and the actor has 2 or more prior convictions for any combination of the following: violating this section or section 256 or for engaging in substantially similar conduct to that of the Maine offenses listed in this paragraph in another jurisdiction. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this paragraph is a Class D crime.

2. For purposes of this section "public place" includes, but is not limited to, motor vehicles that are on a public way.

2-A. It is a defense to prosecution under subsection 1, paragraph C, that the other person previously lived or currently is living in the same household as the actor.

3.

§855. Patronizing prostitution of minor or person with mental disability

1. A person is guilty of patronizing prostitution of a minor if:

A. The person, in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought has not in fact attained 18 years of age. Violation of this paragraph is a Class D crime; or

B. The person violates paragraph A and that person knows that the person whose prostitution is sought has not yet attained 18 years of age. Violation of this paragraph is a Class C crime.

2.

3. A person is guilty of patronizing prostitution of a mentally disabled person if:

A. The person, in return for another's prostitution, gives or agrees to give a pecuniary benefit either to the person whose prostitution is sought or to a 3rd person and the person whose prostitution is sought suffers from a mental disability that is reasonably apparent or known to the actor and that in fact renders the other person substantially incapable of appraising the nature of the conduct or conduct involved. Violation of this paragraph is a Class C crime.

**TITLE 22
HEALTH AND WELFARE**

**CHAPTER 1071
CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT**

**SUBCHAPTER 1
GENERAL PROVISIONS**

§4001. Title

This chapter may be cited as the "Child and Family Services and Child Protection Act."

§4002. Definitions

As used in this chapter, unless the context indicates otherwise, 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 including under Title 17-A, sections 282, 852, 853 and 855, deprivation of essential needs or lack of protection from these or failure to ensure compliance with school attendance requirements under Title 20-A, section 3272, subsection 2, paragraph B or section 5051-A, subsection 1, paragraph C, by a person responsible for the child.

1-A. Abandonment. "Abandonment" means any conduct on the part of the parent showing an intent to forego parental duties or relinquish parental claims. The intent may be evidenced by:

- A. Failure, for a period of at least 6 months, to communicate meaningfully with the child;
- B. Failure, for a period of at least 6 months, to maintain regular visitation with the child;
- C. Failure to participate in any plan or program designed to reunite the parent with the child;
- D. Deserting the child without affording means of identifying the child and his parent or custodian;
- E. Failure to respond to notice of child protective proceedings; or
- F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims.

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

- A. The parent has subjected any child for whom the parent was responsible 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, sexual exploitation of a minor, sex trafficking or aggravated sex trafficking, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society.

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child.

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.

1-C. Best interest of the child. "Best interest of the child," "best interests of the child," "child's best interest" and "child's best interests" mean the standard of the best interest of the child according to the factors set forth in Title 19-A, section 1653, subsection 3.

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

3. Child protection proceeding. "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, or a proceeding on a medical treatment petition under subchapter VIII.

3-A. Child Welfare Services Ombudsman.

4. Custodial parent. "Custodial parent" means a parent with custody.

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

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.

5-B. Fetal alcohol spectrum disorder. "Fetal alcohol spectrum disorder" means a condition whose effects include having facial characteristics, growth restriction, central nervous system abnormalities or other characteristics consistent with prenatal alcohol exposure identified in a child from birth to 12 months of age.

5-C. Grandparent. "Grandparent" means the parent of a child's parent.

6. Jeopardy to health or welfare or jeopardy. "Jeopardy to health or welfare" or "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;
- B-1. Deprivation of necessary health care when the deprivation places the child in danger of serious harm;

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

D. The end of voluntary placement, when the imminent return of the child to his custodian causes a threat of serious harm.

6-A. Licensed mental health professional. "Licensed mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

7. Parent. "Parent" means a natural or adoptive parent or a parent established under Title 19-A, chapter 61, unless parental rights have been terminated.

7-A. Permanent plan.

8. Person. "Person" means an individual, corporation, facility, institution or agency, public or private.

9. Person responsible for the child. "Person responsible for the child" means a person with responsibility for a child's health or welfare, whether in the child's home or another home or a facility which, as part of its function, provides for care of the child. It includes the child's custodian.

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. "Relative" means a family member related to the child within the 3rd degree through parentage established under Title 19-A, chapter 61 or any spouse of that family member. "Relative" also includes the adoptive parent of the child's siblings. "Relative" includes, for an Indian child as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903, Subsection 4, an extended family member as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, an extended family member as defined by the Indian Child Welfare Act of 1978, 25 United States Code, Section 1903, Subsection 2.

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.

9-D. Resource family. "Resource family" means a person or persons who provide care to a child in the child welfare system and who are foster parents, permanency guardians, adoptive parents or members of the child's extended birth family.

10. Serious harm. "Serious harm" means:

A. Serious injury;

B. Serious mental or emotional injury or impairment which 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.

11. Serious injury. "Serious injury" means serious physical injury or impairment.

12. 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.

§4003. Purposes

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:

1. Authorization. Authorize the department to protect and assist abused and neglected children, children in circumstances which present a substantial risk of abuse and neglect, and their families;

2. Removal from parental custody. Provide that children will be removed from the custody of their parents only where failure to do so would jeopardize their health or welfare;

3. Rehabilitation and reunification. Require that reasonable efforts be made to rehabilitate and reunify families as a means for protecting the welfare of children, but prevent needless delay for permanent plans for children when rehabilitation and reunification is not possible;

3-A. Kinship placement. Consistent with sections 4005-G and 4005-H, place children who are removed from the custody of their parents with an adult relative when possible;

3-B. Sibling placement. Consistent with sections 4005-G and 4005-H, place children who are removed from the custody of their parents with as many of those children's siblings as possible;

4. Permanent plans for care and custody. Promote the early establishment of permanent plans for the care and custody of children who cannot be returned to their family. It is the intent of the Legislature that the department reduce the number of children receiving assistance under the United States Social Security Act, Title IV-E, who have been in foster care more than 24 months, by 10% each year beginning with the federal fiscal year that starts on October 1, 1983; and

5. Report. Require the department to report monthly to the joint standing committees of the Legislature having jurisdiction over appropriations and financial affairs and health and human services matters, beginning in July 2000, on the status of children served by the Office of Child and Family Services. The report must include, at a minimum, information on the department's caseload, the location of the children in the department's custody and the number of cases of abuse and neglect that were not opened for assessment. This information must be identified by program and funding source.

§4004. Authorizations

1. General. The department may take appropriate action, consistent with available funding, that will help prevent child abuse and neglect and achieve the goals of section 4003 and subchapter XI-A, including:

A. Developing and providing services which:

- (1) Support and reinforce parental care of children;
- (2) Supplement that care; and
- (3) When necessary, substitute for parental care of children;

B. Encouraging the voluntary use of these and other services by families and children who may need them;

C. Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children;

D. Establishing and maintaining a Child Protective Services Contingency Fund to provide temporary assistance to families to help them provide proper care for their children;

E. Establishing a child death and serious injury review panel for reviewing deaths and serious injuries to children. The panel consists of the following members: the Chief Medical Examiner, a pediatrician, a public health nurse, forensic and community mental health clinicians, law enforcement officers, departmental child welfare staff, district attorneys and criminal or civil assistant attorneys general.

The purpose of the panel is to recommend to state and local agencies methods of improving the child protection system, including modifications of statutes, rules, policies and procedures;

F. Investigating suspicious child deaths. An investigation under this paragraph is subject to and may not interfere with the authority and responsibility of the Attorney General to investigate and prosecute homicides pursuant to Title 5, section 200-A; and

G. Requesting and receiving confidential criminal history record information, as defined by Title 16, section 703, subsection 2, from the Department of Public Safety and public criminal history record information, as defined by Title 16, section 703, subsection 8.

2. Duties. The department shall act to protect abused and neglected children and children in circumstances that present a substantial risk of abuse and neglect, to prevent further abuse and neglect, to enhance the welfare of these children and their families and to preserve family life wherever possible. The department shall:

A. Receive reports of abuse and neglect and suspicious child deaths;

B. Promptly investigate all abuse and neglect cases and suspicious child deaths coming to its attention or, in the case of out-of-home abuse and neglect investigations, the department shall act in accordance with subchapter 11-A;

C.

C-1. Determine in each case investigated under paragraph B whether or not a child has been harmed and the degree of harm or threatened harm by a person responsible for the care of that child by deciding whether allegations are unsubstantiated, indicated or substantiated. Each allegation must be considered separately and may result in a combination of findings.

The department shall adopt rules that define "unsubstantiated," "indicated" and "substantiated" findings for the purposes of this paragraph and that specify an individual's rights to appeal the department's findings. Rules adopted pursuant to this paragraph are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A;

D.

E. If, after investigation, the department does not file a petition under section 4032 but does open a case to provide services to the family to alleviate child abuse and neglect in the home, assign a caseworker, who shall:

(1) Provide information about rehabilitation and other services that may be available to assist the family; and

(2) Develop with the family a written child and family plan.

The child and family plan must identify the problems in the family and the services needed to address those problems; must describe responsibilities for completing the services, including, but not limited to, payment for services, transportation and child care services and responsibilities for seeking out and participating in services; and must state the names, addresses and telephone numbers of any relatives or family friends known to the department or parent to be available as resources to the family.

The child and family plan must be reviewed every 6 months, or sooner if requested by the family or the department;

F. File a petition under section 4032 if, after investigation, the department determines that a child is in immediate risk of serious harm or in jeopardy as defined in this chapter ; and

G. In the case of a suspicious child death, 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.

3. Objection of parent. Except as specifically authorized by law, no person may take charge of a child over the objection of his parent or custodian.

§4010-A. Child abuse policies

1. Policy development. Every public or private agency or program that is administered, licensed or funded by the Department of Health and Human Services or the Department of Corrections and hires staff or selects volunteers and provides care or services for children shall develop a written policy regarding child abuse and neglect.

The policy must include:

- A. A description of how the program and children are managed to prevent abuse or neglect;
- B. The reporting of suspected abuse or neglect or other violations to the appropriate designated authorities;
- C. The agency's course of action if allegations of abuse or neglect are made against the agency or its staff; and
- D. The agency's grievance procedures for staff and for children and their parents or guardians regarding alleged abuse or neglect.

2. Filing. The agency shall file the policy as part of its application for licensure or renewal with the state entity that regulates the agency within one year of the effective date of this subsection or of the date the agency comes into existence.

3. Availability of policy. The agency shall make the policy available to its staff, clients and the public.

§4010-B. Written policies

1. Written policies. By February 1, 2003, the department shall put in writing all policies that direct or guide procedural and substantive decision making by caseworkers, supervisors and other department personnel concerning child protective cases.

2. Publicly available. By February 1, 2003, the department shall make available to the public all policies that direct or guide procedural and substantive decision making by

caseworkers, supervisors and other department personnel concerning child protective cases. The department shall post and maintain the policies on a publicly accessible site on the Internet.

3. Kinship care policies. By September 1, 2002, the department shall make kinship care policies available in writing to the public.

4. Rules. This section does not affect the department's responsibility to adopt rules as otherwise required by law.

SUBCHAPTER 2 REPORTING OF ABUSE OR NEGLECT

§4019. Child advocacy centers

This section governs the establishment, organization and duties of child advocacy centers to coordinate the investigation and prosecution of child sexual abuse and other child abuse and neglect and the referral of victims of child sexual abuse and other child abuse and neglect for treatment.

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

- A. "Board" means a child advocacy advisory board established pursuant to subsection 2.
- B. "Child advocacy center" or "center" means a community-based center that provides multidisciplinary services for children and families affected by child sexual abuse and other child abuse and neglect.
- C. "District" means one of the 9 public health districts as defined in section 411, subsection 5.

2. Center; child advocacy advisory board. A district may establish one center within the district. A district that establishes a center shall establish a child advocacy advisory board to govern the center.

- A. Each of the following officers or agencies shall designate one representative from within the district to serve on the board: a county sheriff; the Bureau of Child and Family Services; the district attorney; the State Police; a municipal police department; a sexual assault support center; and a county mental health organization; or a comparable representative for each who carries out these duties.
- B. The board shall organize itself and elect from among its members a chair. Until a chair is elected, the district attorney representative or comparable representative who carries out the duty of prosecuting serves as interim chair.
- C. The chair of the board may appoint additional members of the board as necessary to accomplish the purposes of this section. Additional members may include but are not limited to representatives of law enforcement agencies, the judicial branch and tribal courts.
- D. The board shall adopt by a majority vote of its members a written protocol on child sexual abuse and other child abuse and neglect. The purpose of the protocol is to ensure coordination and cooperation of all agencies involved in child sexual abuse cases and other child abuse and neglect cases to increase efficiency and effectiveness of those agencies and to minimize stress created for the child and the child's family by the investigation and criminal justice process and to ensure that more effective treatment is provided for the child and the child's family.

E. In preparing its written protocol under paragraph D, the board shall consider the following:

- (1) An interdisciplinary, coordinated approach to the investigation of child sexual abuse and other child abuse and neglect, which must at a minimum include:
 - (a) An interagency notification procedure;
 - (b) A dispute resolution process for the involved agencies when a conflict arises in how to proceed with the investigation of a case;
 - (c) A policy on interagency decision making; and
 - (d) A description of the role each agency has in the investigation of a case;
- (2) A safe, separate space, with assigned personnel, designated for the investigation and coordination of child sexual abuse cases and other child abuse and neglect cases;
- (3) An interdisciplinary case review process for purposes of decision making, problem solving, systems coordination and information sharing;
- (4) A comprehensive tracking system to receive and coordinate information concerning child sexual abuse cases and other child abuse and neglect cases from each participating agency;
- (5) Interdisciplinary specialized training for all professionals involved with the cases of victims and families of child sexual abuse and other child abuse and neglect; and
- (6) A process for evaluating the implementation and effectiveness of the protocol.

F. The board shall annually evaluate the implementation and effectiveness of the protocol required under paragraph D and shall amend the protocol as necessary to maximize its effectiveness.

G. The board shall file the written protocol under paragraph D and each amendment to it with the Bureau of Child and Family Services and shall provide copies of the protocol and each amendment to it to each agency participating in the district.

3. Child advocacy centers; memorandum of understanding; participants. On the execution of a memorandum of understanding, a center may be established. A memorandum of understanding regarding participation in the operation of the center must be executed among the following:

- A. The Bureau of Child and Family Services;
- B. Representatives of state, county and municipal law enforcement agencies that investigate child sexual abuse and other child abuse and neglect in the district;
- C. The district attorney who prosecutes child sexual abuse cases and other child abuse and neglect cases in the district;
- D. Representatives of a sexual assault support center; and
- E. Representatives of any other governmental entity that participates in child sexual abuse or other child abuse and neglect investigations or offers services to victims of child sexual abuse and other child abuse and neglect in the district and that wants to participate in the operation of the center.

4. Elements of memorandum of understanding. A memorandum of understanding under this section must include the agreement of each participant to cooperate in:

- A. Developing a cooperative team approach to investigating child sexual abuse and other child abuse and neglect;

B. Reducing to the greatest extent possible the number of interviews required of a victim of child sexual abuse or other child abuse or neglect to minimize the negative impact of an investigation on the child; and

C. Developing, maintaining and supporting an environment that emphasizes the best interest of children and provides investigatory and rehabilitative services.

5. Office space and administrative services. A memorandum of understanding under this section may include the agreement of one or more participants to provide office space and administrative services necessary for the center's operation.

6. Child advocacy center duties. A center shall:

A. Assess victims of child sexual abuse and other child abuse and neglect and their families referred to the center by the department, a law enforcement agency or a district attorney to determine their needs for services relating to the investigation of child sexual abuse and other child abuse and neglect and provide those services;

B. Provide a facility at which a multidisciplinary team appointed under subsection 7 can meet to facilitate the efficient and appropriate disposition of child sexual abuse cases and other child abuse and neglect cases through the civil and criminal justice systems; and

C. Coordinate the activities of governmental entities relating to child sexual abuse and other child abuse and neglect investigations and delivery of services to victims of child sexual abuse and other child abuse and neglect and their families.

7. Multidisciplinary team. A center shall appoint a multidisciplinary team.

A. A multidisciplinary team must include employees of the participating agencies who are professionals involved in the investigation or prosecution of child sexual abuse cases and other child abuse and neglect cases. A multidisciplinary team may also include representatives of sexual assault support centers and professionals involved in the delivery of services, including medical and mental health services, to victims of child sexual abuse and other child abuse and neglect and the victims' families.

B. A multidisciplinary team shall meet at regularly scheduled intervals to:

(1) Review child sexual abuse and other child abuse and neglect cases determined to be appropriate for review by the multidisciplinary team. A multidisciplinary team may review a child sexual abuse case or other child abuse or neglect case in which the alleged abuser does not have custodial control or supervision of the child or is not responsible for the child's welfare or care; and

(2) Coordinate the actions of the entities involved in the investigation and prosecution of the cases and the delivery of services to the victims of child sexual abuse and other child abuse and neglect and the victims' families.

C. When acting in the member's official capacity, a multidisciplinary team member is authorized to receive confidential information for the purpose of carrying out the member's duties under this section. For purposes of this paragraph, "confidential information" includes confidential records regarding the investigation of reports of child sexual abuse and other child abuse and neglect, including videotaped interviews, and records, papers, files and communications regarding a person receiving services from or being investigated by the department.

8. Immunity from liability. A person is immune from civil liability for a recommendation or an opinion given in good faith while acting in the official scope of the person's duties as a member of a center's multidisciplinary team or as a staff member or volunteer of a center.

9. Confidential records. The files, reports, records, communications and working papers used or developed in providing services under this section are confidential and are not public records for purposes of Title 1, chapter 13, subchapter 1. Information may be disclosed only to the following in order for them to carry out their duties:

- A. The department, department employees, law enforcement agencies, prosecuting attorneys, medical professionals and other state agencies that provide services to children and families;
- B. The attorney for a child who is the subject of confidential records; and
- C. A guardian ad litem appointed under section 4005 for a child who is the subject of confidential records.

10. Reports. Beginning January 2015, the department shall annually report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the centers. The report must include the number of centers and an overview of the protocols adopted by the centers and the effectiveness of the centers in coordinating the investigation and prosecution of child sexual abuse and other child abuse and neglect and referral of victims of child sexual abuse and other child abuse and neglect for treatment. The committee may submit legislation related to the report.

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