

Department of Health and Human Services  
Commissioner's Office  
221 State Street  
11 State House Station  
Augusta, Maine 04333-0011  
Tel.: (207) 287-3707; Fax (207) 287-3005  
TTY Users: Dial 711 (Maine Relay)

December 3, 2014

Members, Joint Standing Committee on Health and Human Services  
100 State House Station  
Augusta, Maine 04333-0100

Members, Joint Standing Committee on Education and Cultural Affairs  
100 State House Station  
Augusta, Maine 04333-0100

**Re: Resolve 2013, Chapter 99 – Resolve, to Strengthen the Protection of Children from Abuse and Neglect**

Dear Members of the Joint Standing Committee on Health and Human Services and Committee on Education and Cultural Affairs:

Attached please find the report from the Workgroup to Strengthen the Protection of Children from Abuse and Neglect mandated by the passage of LD 1685, Resolve 2013, Chapter 99 to improve the safety of Maine's children. A 14-member workgroup was convened and comprised of representatives from the Department of Health and Human Services – Office of Child and Family Services and the Division of Licensing and Regulatory Services, the Department of Education, the Office of the Attorney General, the Disability Rights Center, the Department of Public Safety, the Maine Principals' Association and the Maine Developmental Disabilities Council. The Workgroup met during the spring and fall to develop this report and the final recommendations.

If you have questions please contact Nick Adolphsen, Director, Government Relations and Policy at [nick.adolphsen@maine.gov](mailto:nick.adolphsen@maine.gov) or 207-287-5270.

Sincerely,

Mary C. Mayhew  
Commissioner

MCM/klv

Attachment

**State of Maine**  
**126<sup>th</sup> Legislature**  
**Second Regular Session**

**Report from Workgroup to Strengthen the Protection of  
Children from Abuse and Neglect**

**November 2014**

**Submitted by:**

**Maine Department of Health and Human Services**

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## I. Introduction

*The Workgroup to Strengthen the Protection of Children from Abuse and Neglect* was established during the second regular session of the 126<sup>th</sup> Legislature Chapter 99 Resolve. A copy of the Resolve establishing and guiding this workgroup is in appendix A. The 14-member workgroup was comprised of representatives from the Department of Health and Human Services (DHHS) Office of Child and Family Services and the Division of Licensing and Regulatory Services, the Department of Education (DOE), the Office of the Attorney General, the Disability Rights Center, the Department of Public Safety, Maine Principals' Association and the Maine Developmental Disabilities Council. A membership list is in appendix B.

This workgroup was convened to provide recommendations to the Joint Standing Committee on Education and Cultural Affairs and the Joint Standing Committee on Health and Human Services to strengthen the authority of the DHHS and the DOE to respond to situations wherein child abuse or neglect is alleged and to prevent further abuse of children. Specifically, the workgroup had the following duties:

1. Review of State's laws for scope of authority within each department to investigate and respond to allegations; scope of remedial authority; and any gaps in the safety net;
2. Propose recommendations for the scope of authority of DHHS and DOE to investigate allegations and take appropriate action and prevent perpetrators from gainful employment with children;
3. Identify areas for enhanced collaboration between DHHS, DOE and law enforcement when investigating allegations of child abuse and neglect.

Three meetings of the workgroup were held between June and September 2014. Members also completed workflow documents and recommendations outside of meetings. These documents were shared with the group electronically and available for review by all members. Additional information about the workgroup meetings and documents can be obtained from the DHHS.

## II. Discussion and Findings

The workgroup began by organizing the issue of investigating child abuse or neglect allegations based on the category of settings in which abuse of children might occur. Based upon the participating stakeholders, the identified settings were:

- In the home
- In school
- In community setting (like a park)
- In a child care program or any program subject to licensure

Upon establishing common understanding of the various settings in which abuse or neglect can occur, the group drafted summary documents to clarify how an allegation goes through the reporting process. The summaries are included in appendix C.

The responsibility for investigating allegations is defined by the relationship of the alleged abuser to the alleged victim, specifically identifying the caregiver role to the child, in the setting in which the alleged abuse was claimed to take place. The Revised Maine statues that define responsibility are in appendix D. The statutory authorities were matched as follows:

*Department of Health and Human Services*

**Office of Child and Family Services:**

- Investigate and determine findings for children who have been allegedly abused by persons responsible for the child.
- Maintain the child welfare reporting system and making appropriate referrals according to State law.

**Division of Licensing and Regulatory Services:**

- Conduct a single investigation sufficient to determine if abuse or neglect has occurred and also whether licensing violations have occurred in order to protect children from further harm and establish a basis upon which to take licensing action.

*Department of Education*

Provide, maintain, or revoke certification of school personnel.

*Law Enforcement*

**Maine State Police-Major Crimes Unit:**

- Investigate referrals from the District Attorney's Office of physical and sexual abuse of children while using criminal statutes to hold abusers

accountable for their actions in instances where a case can be proven beyond a reasonable doubt.

**State, County, City Police:**

- Protection of citizens

Review of the summaries that follow an allegation of abuse from the citizen's perspective revealed the following potential gaps in the scope of authority for each department, its ability to respond to allegations, its scope of remedial authority, and in ensuring a safety net for children.

**Potential Gaps at the Department of Health and Human Services:**

- There is no standard communication protocol for DHHS when making a referral to the District Attorney's office.
- DHHS does not have authority to investigate non-licensed professionals who work with children such as Behavioral Health Professionals working under Section 28 in MaineCare and staff providing transportation services.
- While the DLRS has statutory authority to investigate alleged abuse that occurs in some settings not subject to licensure such as a school, there is no formal protocol or memorandum of understanding to outline the appropriate collaboration between the DHHS and the DOE. If greater collaboration results in a significant increase in referrals, the Out of Home Investigation Unit will need to look at staffing resources and its capability to accommodate that increase.
- The DHHS needs to ensure staff understands fully what is allowed to be disclosed to family members and employers regarding alleged abusers.

**Potential Gaps at the Department of Education:**

- There is no centralized database for findings/substantiations about employees or prospective employees with DOE. This gap limits the ability to ensure that people whose actions against children were substantiated by the DHHS are not hired to work with children in the future. The Department of Health and Human Services is developing broad background check reforms that will enable DOE to receive more timely and thorough information on potential employees.
- Because the information is not centralized and school personnel self-report on the loss of another professional license, there is no way to verify whether or not the information is accurate;

- Individuals who apply for DOE credentials are not checked to see if there is a record of substantiated child abuse/neglect in the Child Protective Services database.

**Potential Gaps in the Safety Net/System as a Whole:**

- Statutory authority to investigate non-licensed entities in the community lies only with law enforcement.
- Resources within the District Attorney's Offices across the State are limited
- Law enforcement, teachers and many child welfare investigators do not possess adequate expertise in interviewing children with developmental disabilities/delays and communication skills deficits.
- Alleged abuse and neglect is often reported to local law enforcement authorities. Complaints could come in to the State Police, County Sherriff's Offices and local municipal police offices. While the law enforcement community works collaboratively, having separated jurisdiction can create inconsistencies.

### III. Recommendations

The recommendations from the task force are related to three distinct categories, including: potential changes at the Department of Health and Human Services; potential changes at the Department of Education; and opportunities for enhanced systemic collaboration across State government. The workgroup makes the following recommendations:

**Potential Changes for the Department of Health and Human Services:**

- Clarify the Out of Home Investigation Unit's statutory authority and process to notify caregivers when there is an allegation of abuse or neglect on a minor child for whom they are responsible. This change would require legislation.
- Collect data on allegations of abuse and neglect in out of home settings (i.e.: schools and non-licensed community entities) to determine necessary resources to ensure all allegations are investigated appropriately.
- Establish a formal memorandum of understanding between DHHS and DOE to identify methods of cooperation related to allegations of abuse/neglect that occur in the school setting. Statutory authority allows the Department of Health and Human Services to assist with DOE investigations but does not mandate that it do so. This recommendation also applies to the DOE.

**Department of Education:**

- Identify an efficient and cost-effective process to cross-check applicants for DOE credentials (initial and renewal) against the DHHS child protective services database. Specify in statute that a conviction of a crime involving abuse/neglect within five years of application is grounds for denial of application.
- Modify the credential application for individuals wishing to be approved to work in a school setting to require applicants to self-report if they have been substantiated of child abuse/neglect. Misinformation on the application can be grounds for denial or revocation of license.
- Current law requires “any person paid to work in a school in a position that does not require certification or authorization” to obtain “approval,” which requires fingerprinting and background check. This requirement is extremely broad, especially as it relates to individuals who enter a school infrequently, like a repairman for example. The workgroup recommends the Legislature clarify the definitions or require the DOE to clarify it by rule.
- Establish a formal memorandum of understanding between the DHHS and the DOE to identify methods of cooperation related to allegations of abuse/neglect that occur in the school setting. Statutory authority allows the Department of Health and Human Services to assist with DOE investigations but does not mandate that it do so.

**Enhanced collaboration within the system:**

- Coordinate training opportunities for all parties that conduct investigation interviews so they can enhance their interviewing skills to be more mindful of the developmental needs of abuse victims with developmental disabilities/delays and communication skills deficits.

## **IV. Implications**

The implementation of the recommendations of the workgroup to fully ensure that incidents of alleged abuse are properly investigated will likely have both regulatory and fiscal implications for State agencies. However, the no-cost action that can be taken right now is to establish regular, agenda-guided meetings and monitor active participation of all entities involved in the investigation of crimes against children. Robust communication and collaboration, as evidenced by meeting minutes and development of a workplan in the next 12 months, will ensure an appropriate assessment of resource needs before regulatory or fiscal changes are put into place.

## **V. Conclusion**

This report represents the thoughtful efforts of the members of the *Workgroup to Strengthen the Protection of Children from Abuse*. It identifies several potential gaps in a system that is designed to protect children from abuse and neglect and reduce perpetrator access to gainful employment with children.

The members of this workgroup look forward to working with the Legislature and other stakeholders on continued efforts to ensure the greatest possible protection for Maine's children.

## Appendix A

GOVERNOR'S VETO OVERRIDDEN		CHAPTER
		99
APRIL 2, 2014		RESOLVES

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD

TWO THOUSAND AND FOURTEEN

—  
H.P. 1208 - L.D. 1685

### Resolve, To Strengthen the Protection of Children from Abuse and Neglect

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is imperative for the protection of children from abuse and neglect that the Department of Health and Human Services convene a working group to study the issue and make recommendations to strengthen the authority of the department and the Department of Education to respond to situations in which child abuse or neglect is alleged and to prevent further abuse of children; and

Whereas, the working group must begin its work before the 90-day period expires in order that the working group may complete its work and submit a report by November 5, 2014; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Working group established. Resolved:** That the Department of Health and Human Services, referred to in this resolve as "the department," shall convene a working group, referred to in this resolve as "the working group," to review current laws and the scope of departmental authority with respect to the abuse and neglect of children, to identify gaps in the safety net to protect children from abuse and neglect and to make recommendations to strengthen the protection of children from abuse and neglect; and be it further

**Sec. 2. Working group membership. Resolved:** That the department shall invite the participation on the working group of representatives of the Office of Child and Family Services and the department's division of licensing and regulatory services, the Department of Education, the Office of the Attorney General, the Disability Rights Center and the Maine Developmental Disabilities Council established in the Maine Revised Statutes, Title 34-B, section 17001, subsection 1. The working group is

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authorized to invite the participation of other persons with expertise in the field of child abuse and protection to assist the working group; and be it further

**Sec. 3. Duties. Resolved:** That the working group shall perform the following duties.

1. **Review of laws.** The working group shall review the State's laws on protection of children from abuse and neglect and identify:

- A. The scope of authority of the department and the Department of Education to investigate and respond to allegations of child abuse and neglect;
- B. The scope of remedial authority of the department and the Department of Education in the event that there is a finding of child abuse or neglect; and
- C. Any gaps in the safety net to protect children from abuse and neglect.

2. **Recommendations.** The working group shall make recommendations, as determined by the working group to be appropriate, that identify:

- A. The proper scope of authority for the department to investigate and take appropriate action regarding allegations of child abuse and neglect to protect children and prevent a perpetrator of abuse or neglect from obtaining gainful employment with children;
- B. The proper scope of authority for the Department of Education to investigate and take appropriate action regarding allegations of child abuse and neglect to protect children and prevent a perpetrator of abuse or neglect from obtaining gainful employment with children; and
- C. Opportunities for enhanced collaboration between the department, law enforcement entities and the Department of Education in the process of investigating allegations of child abuse and neglect and in preventing perpetrators of abuse and neglect from continuing to abuse or neglect children; and be it further

**Sec. 4. Report. Resolved:** That, no later than November 5, 2014, the department, on behalf of the working group, shall submit a report that includes its findings and recommendations to the Joint Standing Committee on Education and Cultural Affairs and the Joint Standing Committee on Health and Human Services.

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

## **Appendix B**

### **Workgroup To Strengthen the Protection of Children from Abuse and Neglect**

#### **Membership List**

Adolphsen, Nicholas	Department of Health and Human Services, Commissioner's Office
Bellefleur, Angie	Department of Health and Human Services, Office of Child and Family
Cronin, Nancy	Developmental Disabilities Council
Dalton, Mark	Department of Health and Human Services, Office of Child and Family
Durost, Dick	Maine Principal's Association
Forster, Sarah	Office of the Maine Attorney General
Friedman, Deborah	Department of Education
Guignard, Renee	Office of the Maine Attorney General
Holmquist, Mark	Department of Public Safety
O'Donnell, Bernadette	Disability Rights Center
Sacre, Nicole	Office of the Maine Attorney General

Smyrski, Joan	Department of Health and Human Services, Division of Licensing and Regulatory Services
Sosnoff, Nora	Office of the Maine Attorney General
Whitten, Janet	Department of Health and Human Services, Division of Licensing and Regulatory Services

## Appendix C

### Strengthen the Protection of Children from Abuse Workgroup

#### Flow Chart following allegations of abuse

**Discipline:** Department of Education; Certification Office

Determines whether to grant, renew and/or revoke or suspend credentials for people who work in schools:

Teachers, administrators and educational specialists such as literacy coaches and librarians must be “certified.”

Educational technicians (paraprofessionals) must be “authorized.”

All other persons who are paid to work in a school must obtain “approval.”

#### **Statutory Authority:**

- Certification, generally: Title 20-A, chapter 502; DOE Rules Chapter 115 and 119
- Revocation, Suspension, Denial, Nonrenewal – Title 20-A, section 13020; Rule Chapter 115, section 14; Rule Chapter 119 (Adjudicatory proceedings)

**Goal(s):** To ensure that persons credentialed to work in schools meet the criteria in law and rule, including requiring that a person show evidence of “good moral character.” Evidence that a person has “injured the health or welfare of a child through physical or sexual abuse or exploitation” is grounds for denial of a certificate; and for suspension or revocation of a

certificate, authorization or approval. Gross incompetence is also grounds for revocation or suspension and includes “negligent disregard for the mental or physical health, safety or welfare of children.”

**Resources:**

**Staffing:** The entire Certification Office consists of 8 staff members. Only one of the staff members, the Legal Consultant, is responsible for all complaint investigations and recommendations for credential denials, revocations or suspensions based on child abuse and any other grounds for denial, revocation or suspension.

**Financial:**

**Data:** We do not have historical data on the total number of complaints, or the portion of complaints related to child abuse. We have recently initiated tracking processes that will provide this information in the future. However, the Office serves over 26,000 persons each year who are either obtaining initial credentials or renewing existing credentials. There are more than 67,000 credential holders.

**Referral to the Legal Consultant (LC)**

(An allegation of abuse may come from DOE staff processing an application, DHHS, a parent, school staff or the public)

1. Screening Questions:

- Is this a person credentialed by DOE?
- Does the alleged conduct potentially violate rule and constitute grounds for revocation, suspension, or denial of credential?

If either answer is NO, the matter is not investigated by the Legal Consultant. It may be referred to the Department’s Student Assistance Coordinator (e.g., in cases of student-to-student bullying)

2. Investigations

If the matter passes through screening, an initial investigation occurs based on information available to the Legal Consultant; a full investigation is conducted if warranted based on the initial investigation, or may be deferred if law enforcement or other investigations are also occurring. (An investigation is not required, and a credential may be revoked immediately,

if the person has been convicted of a crime involving physical or sexual harm or exploitation involving a child.)

### 3. Enforcement

A credential can only be revoked or suspended by bringing an action, through the Attorney General, in District Court. In many cases, the credential holder surrenders the credential, with or without a consent agreement with the Department.

## Strengthen the Protection of Children from Abuse Workgroup

Flow Chart following allegations of abuse

**Discipline:** DHHS; Office of Child and Family Services

Investigates allegations of abuse and neglect by persons responsible for the child

### **Statutory Authority:**

Maine § 22(3) 3 1071 1-4002 (Definitions)

<http://www.mainelegislature.org/legis/statutes/22/title22sec4002.html>

Maine § 22(3) 3 1071 1-4004 (Authorizations)

<http://www.mainelegislature.org/legis/statutes/22/title22sec4004.html>

### **Goal(s):**

To 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 wherever possible

### **Resources:**

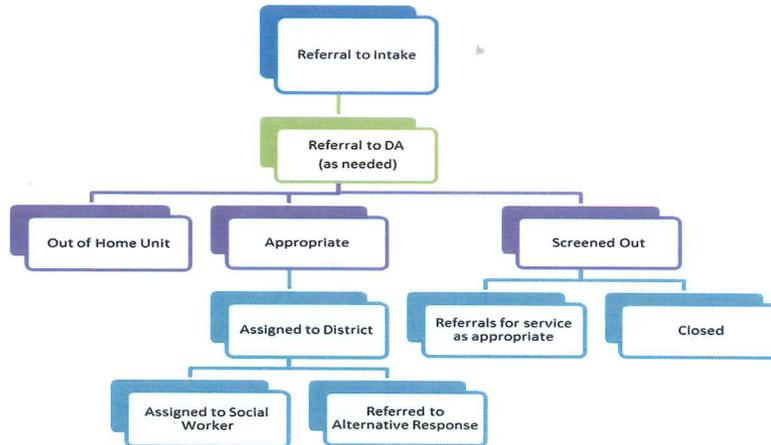
Staffing: Assessment Social Workers: 143  
Clerical staff

Supervisors, Administrative &

**Financial:** 9.7 M annually

**Data:** Referrals in 2013: 20,289 Screened Appropriate: 10,574 Screened Out: 9,721

Average of 712 Assessments assigned per month, 5 per staff member



Strengthen the Protection of Children from Abuse Workgroup

Flow Chart following allegations of abuse

**Discipline:** DPS; Maine State Police-Major Crimes Unit (MCU)

Investigates referrals from the District Attorney's Office of physical and sexual abuse of children while utilizing criminal statutes to hold abusers accountable for their actions in instances where a case can be proven beyond a reasonable doubt.

**Statutory Authority:** Maine Criminal Statutes Title 17A, Subsection 201: Murder; 203: Manslaughter; 207: Assault (Class C felony for children under 6)

208: Aggravated Assault; 208-B: Elevated Aggravated Assault

253: Gross Sexual Assault; 254: Sexual Abuse of a Minor;

255: Unlawful Sexual Contact

256: Visual Sexual Aggression Against a Child; 260: Unlawful Sexual Touching

Chapter 9: Offenses Against the Person

<http://www.mainelegislature.org/legis/statutes/17-A/title17-Ach9sec0.html>

Chapter 11: Sexual Assaults

<http://www.mainelegislature.org/legis/statutes/17-A/title17-Ach11sec0.html>

**Goal(s):** To protect abused and neglected children and to prevent further abuse and neglect by investigating these crimes in accordance with Maine State Law.

**Resources:**

**Financial:** Resources provided by the General Fund allocations in the State Police budget.

**Staffing:** MCU Detectives Assigned: 28                      MCU Supervisors Assigned: 6

                    MCU Commanding Officers: 2                      MCU Admin Staff: 3

**Data:** In 2013, there were a total of 151 referrals assigned to MCU Detectives Statewide. A small percentage of referrals are assigned to Troopers in a given geographic location depending on severity of the allegation.

Strengthen the Protection of Children from Abuse Workgroup

**Discipline:** DHHS; Division of Licensing and Regulatory Services

The out-of home abuse and neglect team is established to investigate reports of suspected abuse and neglect of children by persons or in facilities subject to licensure. The team is also authorized to assist other persons or agencies to investigate suspected abuse and neglect by persons or in facilities providing services to children that are subject to licensure pursuant to other Titles and to assist in investigations of suspected abuse and neglect in state –operated facilities providing services for children.

**Statutory Authority:**

Maine 22 (3) 1071 – 4008 Out –of –Home abuse and neglect investigating team

**Goal:** Conduct a single investigation sufficient to determine if abuse or neglect has occurred and also whether licensing violations have occurred in order to protect children from further harm and establish a basis upon which to take licensing action.

**Resources:**

**Staffing:** Social Service Program Specialist I (Licensed Social Workers): 5 Program Manager: 1

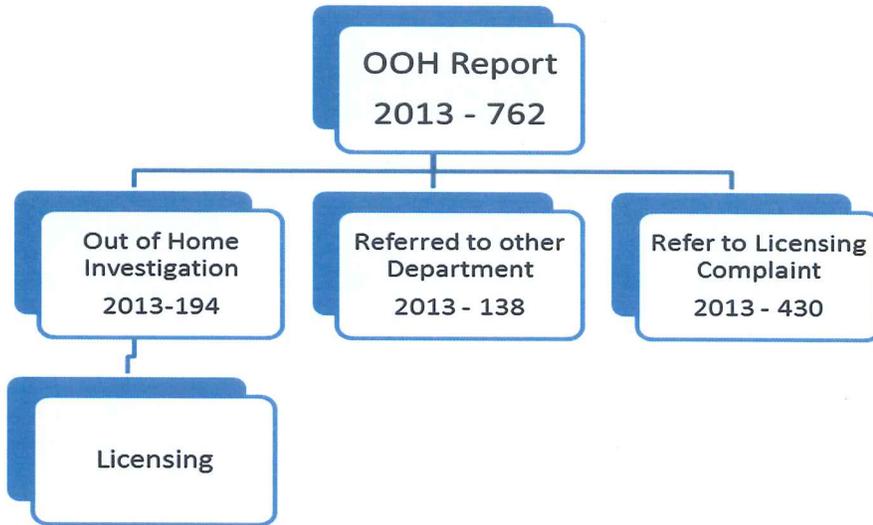
**Financial:** 65% Other Special Revenue, 35% General Fund

**Data:** Total Out -of -Home Investigation Reports 2013: 762

Referrals assigned to the out of home investigation team: 194 (Child Care, Children’s Residential, Foster Care)

Referrals assigned to licensing: 430 (Child Care, Children’s Residential, Foster Care)

Referrals referred to another Department or program within DLRS: 138 (example DOE, CDC)



## Appendix D

**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**

**Chapter 1071: 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. [1979, c. 733, §18 (NEW).]

**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 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.

[ 2007, c. 304, §10 (AMD) .]

**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; [1995, c. 481, §1 (AMD).]

B. Failure, for a period of at least 6 months, to maintain regular visitation with the child; [1995, c. 481, §1 (AMD).]

C. Failure to participate in any plan or program designed to reunite the parent with the child; [1983, c. 184, §1 (NEW).]

D. Deserting the child without affording means of identifying the child and his parent or custodian; [1983, c. 184, §1 (NEW).]

E. Failure to respond to notice of child protective proceedings; or [1983, c. 184, §1 (NEW).]

F. Any other conduct indicating an intent to forego parental duties or relinquish parental claims. [1983, c. 184, §1 (NEW).]

[ 1995, c. 481, §1 (AMD) .]

**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, abandonment, torture, chronic abuse or any other treatment that is heinous or abhorrent to society. [2001, c. 696, §10 (AMD).]

A-1. The parent refused for 6 months to comply with treatment required in a reunification plan with regard to the child. [2001, c. 696, §11 (NEW).]

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. [1997, c. 715, Pt. B, §1 (NEW).]

C. The parental rights of the parent to a sibling have been terminated involuntarily. [1997, c. 715, Pt. B, §1 (NEW).]

D. The parent has abandoned the child. [1997, c. 715, Pt. B, §1 (NEW).]

[ 2001, c. 696, §§10, 11 (AMD) .]

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

[ 1979, c. 733, §18 (NEW) .]

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.

[ 1979, c. 733, §18 (NEW) .]

3-A. **Child Welfare Services Ombudsman.**

[ 2001, c. 439, Pt. X, §1 (RP) .]

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

[ 1979, c. 733, §18 (NEW) .]

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

[ 1979, c. 733, §18 (NEW) .]

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.

[ 1997, c. 715, Pt. B, §2 (NEW) .]

5-B. **Fetal alcohol spectrum disorders.** "Fetal alcohol spectrum disorders" means conditions 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.

[ 2013, c. 192, §1 (NEW) .]

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; [1979, c. 733, §18 (NEW).]

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; [2007, c. 304, §11 (AMD).]

**B-1. Deprivation of necessary health care** when the deprivation places the child in danger of serious harm; [2005, c. 373, §5 (NEW) .]

**C. Abandonment of the child or absence of any person responsible for the child**, which creates a threat of serious harm; or [1983, c. 184, §2 (AMD) .]

**D. The end of voluntary placement**, when the imminent return of the child to his custodian causes a threat of serious harm. [1979, c. 733, §18 (NEW) .]

[ 2007, c. 304, §11 (AMD) .]

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

[ 1985, c. 495, §16 (NEW) .]

**7. Parent.** "Parent" means a natural or adoptive parent, unless parental rights have been terminated.

[ 1979, c. 733, §18 (NEW) .]

**7-A. Permanent plan.**

[ 2005, c. 372, §2 (RP) .]

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

[ 1979, c. 733, §18 (NEW) .]

**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.

[ 1979, c. 733, §18 (NEW) .]

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

[ 1997, c. 715, Pt. B, §3 (NEW) .]

**9-B. Relative.** "Relative" means the biological or adoptive parent of the child's biological or adoptive parent, or the biological or adoptive sister, brother, aunt, uncle or cousin of the child.

[ 2007, c. 371, §1 (AMD) .]

**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.

[ 1997, c. 715, Pt. B, §3 (NEW) .]

**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.

[ 2011, c. 402, §1 (NEW) .]

**10. Serious harm.** "Serious harm" means:

A. Serious injury; [1979, c. 733, §18 (NEW) .]

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 [1985, c. 739, §3 (AMD) .]

C. Sexual abuse or exploitation. [1979, c. 733, §18 (NEW) .]

[ 1985, c. 739, §3 (AMD) .]

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

[ 1979, c. 733, §18 (NEW) .]

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.

[ 2007, c. 586, §1 (NEW) .]

#### SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 184, §§1,2 (AMD). 1985, c. 495, §16 (AMD). 1985, c. 739, §§1-3 (AMD). 1987, c. 511, §A2 (AMD). 1987, c. 769, §A77 (AMD). 1995, c. 481, §1 (AMD). 1997, c. 715, §§B1-3 (AMD). 2001, c. 439, §X1 (AMD). 2001, c. 696, §§10,11 (AMD). 2005, c. 372, §2 (AMD). 2005, c. 373, §§4,5 (AMD). 2007, c. 304, §§10, 11 (AMD). 2007, c. 371, §1 (AMD). 2007, c. 586, §1 (AMD). 2011, c. 402, §1 (AMD). 2013, c. 192, §1 (AMD).

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**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**

**Chapter 1071: CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT**

**§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; [1979, c. 733, §18 (NEW).]

B. Encouraging the voluntary use of these and other services by families and children who may need them; [1979, c. 733, §18 (NEW).]

C. Cooperating and coordinating with other agencies, facilities or persons providing related services to families and children; [1993, c. 294, §1 (AMD).]

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; [2007, c. 586, §2 (AMD).]

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; and [2007, c. 586, §3 (AMD).]

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. [2007, c. 586, §4 (NEW).]

[ 2007, c. 586, §§2-4 (AMD) .]

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; [2007, c. 586, §5 (AMD).]

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; [2007, c. 586, §6 (AMD).]

C. [2009, c. 558, §1 (RP).]

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; [2009, c. 558, §2 (NEW).]

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; [2007, c. 586, §7 (AMD).]

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 [2007, c. 586, §8 (AMD).]

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. [2007, c. 586, §9 (NEW).]

[ 2009, c. 558, §§1, 2 (AMD) .]

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.

[ 1979, c. 733, §18 (NEW) .]

#### SECTION HISTORY

1979, c. 733, §18 (NEW). 1987, c. 744, §§1,2 (AMD). 1991, c. 824, §§A44,45 (AMD). 1993, c. 294, §§1,2 (AMD). 2001, c. 11, §4 (AMD). 2001, c. 559, §CC1 (AMD). 2007, c. 586, §§2-9 (AMD). 2009, c. 558, §§1, 2 (AMD).

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**Maine Revised Statutes**  
**Title 22: HEALTH AND WELFARE**

**Chapter 1071: CHILD AND FAMILY SERVICES AND CHILD PROTECTION ACT**

**§4088. OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM**

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

A. [2013, c. 368, Pt. CCCC, §3 (RP).]

B. "Department" means the Department of Health and Human Services. [1989, c. 400, §9 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

C. "License" has the same meaning as in Title 5, section 8002 and includes approval and registration. With respect to persons licensed by the Department of Education, "license" means certify, authorize or approve. [2001, c. 265, §1 (AMD).]

D. "Out-of-home abuse and neglect" means abuse and neglect of a child 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. [2003, c. 2, §79 (COR).]

D-1. [2007, c. 539, Pt. N, §33 (RP).]

E. "Team" means the out-of-home abuse and neglect investigating team. [1989, c. 400, §9 (NEW).]

[ 2013, c. 368, Pt. CCCC, §3 (AMD) .]

**1-A. Applicability of other definitions.** Any terms defined or used in section 4002 have the same meaning when used in this subchapter.

[ 1991, c. 824, Pt. A, §46 (AMD) .]

**2. Team established.** The out-of-home abuse and neglect investigating team is established to investigate reports of suspected abuse and neglect of children by persons or in facilities subject to licensure pursuant to this Title. The team is also authorized to assist other persons or agencies to investigate suspected abuse and neglect by persons or in facilities providing services to children that are subject to licensure pursuant to other Titles and to assist in investigations of suspected abuse and neglect in state-operated facilities providing services for children.

[ 1989, c. 400, §9 (NEW) .]

**3. Authority and responsibility.** The team has the following authority and responsibilities regarding investigation of out-of-home abuse and neglect. The team:

A. Receives all reports of out-of-home abuse and neglect. When a report of out-of-home abuse and neglect alleges jeopardy, as defined in section 4002, to a child in a residential care facility, the team shall initiate an investigation within 72 hours or request a safety plan from the facility. When a report of alleged out-of-home abuse and neglect in a residential care facility is received, the team shall use the facility's name as the identifier. [2003, c. 399, §3 (AMD).]

B. Shall investigate all reports received by the department regarding alleged out-of-home abuse and neglect occurring in facilities or by persons subject to licensure pursuant to this Title; [2007, c. 539, Pt. N, §34 (AMD).]

C. Shall conduct a single investigation sufficient to determine not only if abuse or neglect has occurred but also to determine whether a licensing violation has occurred in order to protect children from further harm and establish a basis upon which to take licensing action. This procedure minimizes duplicative or redundant investigations to the extent possible in response to the same or related allegations of out-of-home abuse or neglect in facilities or by persons subject to licensure pursuant to this Title; [2001, c. 265, §3 (AMD).]

D. Shall coordinate and consult with the department performing general licensing functions to eliminate duplicative or redundant investigations to the extent possible and to prevent, correct or eliminate the abuse or neglect or threat of abuse or neglect in out-of-home settings; [2007, c. 539, Pt. N, §35 (AMD).]

E. Shall provide the results of the investigation to the department or another department for appropriate action. The team shall complete the investigation within a time frame not to exceed 6 months from the date of the initiation of the investigation, except in circumstances when the information necessary to complete the investigation is unavailable to the team; [2007, c. 539, Pt. N, §36 (AMD).]

F. Shall include relevant professionals outside the department or service center as members of the team for all investigations of residential treatment centers, group homes or day care centers mandated by this subchapter and for other child care facilities as warranted; [2001, c. 265, §3 (AMD).]

G. When a report alleges out-of-home abuse and neglect in facilities or by persons not subject to licensure by the department, shall immediately refer the report to the agency or department charged with the responsibility to investigate such a report or, if applicable, to the state department operating the facility; [2007, c. 539, Pt. N, §37 (AMD).]

H. With respect to reports described in paragraph G, may, on its own initiative or upon request of another department or agency charged with the responsibility to investigate, participate in the out-of-home abuse and neglect investigation of persons or facilities subject to licensure or operated by the Department of Education, the Department of Corrections or the Department of Health and Human Services; [1989, c. 700, Pt. A, §91 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

I. Shall refer to the office of the district attorney or office of the Attorney General, when appropriate, any case in which criminal activity is alleged and shall coordinate its investigation with that office to minimize the trauma to the children involved; [2003, c. 399, §3 (AMD).]

J. Shall consult and train law enforcement personnel, advocates and others in the identification, reporting, prevention and investigation of out-of-home abuse and neglect as time allows; and [2003, c. 399, §3 (AMD).]

K. Shall state in the investigative report whether the allegations of out-of-home abuse or neglect have been substantiated. If the investigative report has substantiated out-of-home abuse or neglect, the report must identify the individual, facility or individual and facility responsible. [2003, c. 399, §3 (NEW).]

[ 2007, c. 539, Pt. N, §§34-37 (AMD) .]

**4. Training.** The team shall be trained in techniques of investigating out-of-home abuse and neglect of children, as well as child development; identification of abuse and neglect; interview techniques; treatment alternatives for perpetrators, victims and their families; licensing regulations applicable to facilities or persons licensed pursuant to Subtitle 6; and other statutory and regulatory remedies available to prevent, correct or eliminate abuse and neglect in out-of-home settings.

[ 1989, c. 400, §9 (NEW) .]

**5. Records; confidentiality; disclosure.** Records created pursuant to this subchapter shall be maintained in accordance with section 4008 and shall not be disclosed except as provided by that section or by section 7703, subsections 2 to 4.

[ 1989, c. 400, §9 (NEW) .]

**6. Assistance.** Staff performing general licensing functions may assist the team in conducting out-of-home investigations upon the request of the department, as long as the licensing staff member has neither currently licensed nor monitored for compliance the subject of the investigation.

[ 2007, c. 539, Pt. N, §38 (AMD) .]

**7. Access to records related to Maine Educational Center for the Deaf and Hard of Hearing and the Governor Baxter School for the Deaf.** Notwithstanding Title 20-A, section 6101, subsection 2, when the 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 to the team records related to:

A. Background checks related to the person; [2001, c. 265, §4 (NEW).]

B. The person's credentials; [2001, c. 265, §4 (NEW).]

C. Any conduct on the part of the person related to the allegation; and [2001, c. 265, §4 (NEW).]

D. 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. [2005, c. 279, §14 (AMD).]

[ 2005, c. 279, §14 (AMD) .]

**8. Due process.** Any finding of out-of-home abuse or neglect made under this section is subject to the due process requirements of the Maine Administrative Procedure Act.

[ 2003, c. 399, §4 (NEW) .]

#### SECTION HISTORY

1989, c. 400, §§9,14 (NEW). 1989, c. 700, §§A90,91 (AMD). 1991, c. 824, §A46 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 265, §§1-4 (AMD). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §79 (COR). 2003, c. 399, §§1-4 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 279, §14 (AMD). 2007, c. 539, Pt. N, §§33-38 (AMD). 2013, c. 368, Pt. CCCC, §3 (AMD).

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