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An Act To Authorize the Department of Health and Human Services To Investigate Suspicious Deaths of Children

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

Sec. 1. 22 MRSA §4002, sub-§12 is enacted to read:

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.

Sec. 2. 22 MRSA §4004, sub-§1, ¶D, as amended by PL 1993, c. 294, §1, is further amended to read:

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; **and**

Sec. 3. 22 MRSA §4004, sub-§1, ¶E, as enacted by PL 1993, c. 294, §2, is amended to read:

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

Sec. 4. 22 MRSA §4004, sub-§1, ¶F is enacted to read:

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.

Sec. 5. 22 MRSA §4004, sub-§2, ¶A, as enacted by PL 1979, c. 733, §18, is amended to read:

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

Sec. 6. 22 MRSA §4004, sub-§2, ¶B, as amended by PL 1991, c. 824, Pt. A, §45, is further amended to read:

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 ~~XI-A~~11-A;

Sec. 7. 22 MRSA §4004, sub-§2, ¶E, as enacted by PL 2001, c. 559, Pt. CC, §1, is amended to read:

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; and

Sec. 8. 22 MRSA §4004, sub-§2, ¶F, as enacted by PL 2001, c. 559, Pt. CC, §1, is amended to read:

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

Sec. 9. 22 MRSA §4004, sub-§2, ¶G is enacted to read:

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.

Sec. 10. 22 MRSA §4011-A, sub-§1, as amended by PL 2003, c. 599, §8 and affected by §§9 and 14, is further amended to read:

1. Required report to department. The following adult persons shall immediately report or cause a report to be made to the department when the person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred:

A. When acting in a professional capacity:

- (1) An allopathic or osteopathic physician, resident or intern;
- (2) An emergency medical services person;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist;
- (6) A dental hygienist;
- (7) A dental assistant;
- (8) A chiropractor;
- (9) A podiatrist;
- (10) A registered or licensed practical nurse;
- (11) A teacher;
- (12) A guidance counselor;
- (13) A school official;
- (14) A children's summer camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;

(17) A homemaker;

(18) A home health aide;

(19) A medical or social service worker;

(20) A psychologist;

(21) Child care personnel;

(22) A mental health professional;

(23) A law enforcement official;

(24) A state or municipal fire inspector;

(25) A municipal code enforcement official;

(26) A commercial film and photographic print processor;

(27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;

(28) A chair of a professional licensing board that has jurisdiction over mandated reporters; and

(29) A humane agent employed by the Department of Agriculture, Food and Rural Resources;

B. Any person who has assumed full, intermittent or occasional responsibility for the care or custody of the child, regardless of whether the person receives compensation; and

C. Any person affiliated with a church or religious institution who serves in an administrative capacity or has otherwise assumed a position of trust or responsibility to the members of that church or religious institution, while acting in that capacity, regardless of whether the person receives compensation.

Whenever a person is required to report in a capacity as a member of the staff of a medical or public or private institution, agency or facility, that person immediately shall notify either the person in charge of the institution, agency or facility or a designated agent who then shall cause a report to be made. The staff also may make a report directly to the department.

Sec. 11. 22 MRSA §4011-A, sub-§2, as enacted by PL 2001, c. 345, §5, is amended to read:

2. Required report to district attorney. When, while acting in a professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child or that a suspicious child death has been caused by a person not responsible for the child, the person immediately shall report or cause a report to be made to the appropriate district attorney's office.

Sec. 12. 22 MRSA §4011-A, sub-§3, as enacted by PL 2001, c. 345, §5, is amended to read:

3. Optional report. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected or that there has been a suspicious child death.

Sec. 13. 22 MRSA §4011-A, sub-§4, as enacted by PL 2001, c. 345, §5, is amended to read:

4. Mental health treatment. When a licensed mental health professional is required to report under subsection 1 and the knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected or that a suspicious child death has occurred comes from treatment of a person responsible for the abuse or, neglect or death, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the mental health professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B.

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and when the department plans to initiate or has initiated a jeopardy order under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely.

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse or, neglect or death. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment

of the effects of the abuse or neglect and the willingness of the person responsible for the abuse or neglect or death to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion.

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment and, at the same time, provide any necessary protection and treatment for the child and other family members.

Sec. 14. 22 MRSA §4021, sub-§1, ¶A, as amended by PL 1993, c. 294, §5, is further amended to read:

A. Issue subpoenas requiring persons to disclose or provide to the department information or records in their possession that are necessary and relevant to an investigation of a report of suspected abuse or neglect or suspicious child death, to a subsequent child protection proceeding or to a panel appointed by the department to review child deaths and serious injuries.

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

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

Sec. 15. 22 MRSA §4021, sub-§1, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

B. Obtain nonconviction data and other criminal history record information under Title 16, ~~section 611, et seq., which he deems~~ chapter 3, subchapter 8 that the commissioner, the commissioner's delegate or the legal counsel for the department considers relevant to an abuse or neglect case or the investigation of a suspicious child death.

Effective July 18, 2008