

**Maine Revised Statute Title 22, Chapter 1071: CHILD
AND FAMILY SERVICES AND CHILD PROTECTION ACT**

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Subchapter 1: GENERAL PROVISIONS

22 §4001. TITLE

This chapter may be cited as the "Child and Family Services and Child Protection Act." [1979, c. 733, §18 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §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) .]

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) .]

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).

22 §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: [1997, c. 715, Pt. B, §4 (AMD).]

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;

[1979, c. 733, §18 (NEW) .]

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

[1979, c. 733, §18 (NEW) .]

3. Reunification as a priority. Give family rehabilitation and reunification priority 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;

[1999, c. 731, Pt. AA, §3 (AMD) .]

3-A. Kinship placement. Place children who are taken from the custody of their parents with an adult relative when possible;

[2005, c. 374, §1 (NEW) .]

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

[1999, c. 731, Pt. AA, §4 (AMD) .]

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 Bureau 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.

[1999, c. 731, Pt. AA, §5 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §9 (AMD). 1981, c. 698, §96 (AMD). 1985, c. 739, §4 (AMD). 1997, c. 715, §B4 (AMD). 1999, c. 731, §§AA3-5 (AMD). 2005, c. 374, §1 (AMD).

22 §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. Determine the degree of harm or threatened harm to each child in each case; [2001, c. 559, Pt. CC, §1 (AMD).]
- D. [2001, c. 559, Pt. CC, §1 (RP).]
- 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).]

[2007, c. 586, §§5-9 (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).

22 §4004-A. VOLUNTARY AGREEMENTS

1. Agreement authorized. If the following conditions are met, the department and a custodian may enter into a mutual agreement in which the custodian retains custody of the child and the department agrees to provide services to the child.

A. The department finds that staying in the custodian's home would be detrimental to the welfare of the child. [1993, c. 724, §1 (NEW).]

B. The department finds that, absent a mutual agreement, the child is at risk of entering the child protection system or the juvenile justice system. [1993, c. 724, §1 (NEW).]

[1993, c. 724, §1 (NEW) .]

2. Agreement requirements. An agreement entered into pursuant to subsection 1 must meet the following requirements.

A. The agreement may not exceed 180 days unless, within the 180 days, the District Court has found that returning to the custodian's home would be detrimental to the welfare of the child. If the court has made that determination, the agreement may continue but must be reviewed by the court no more than 18 months after commencement of the agreement and at least every 2 years following the 18-month review. [1993, c. 724, §1 (NEW).]

B. The agreement must specify the legal status of the child and the rights and obligations of the custodian, the child, the department and any other parties to the agreement. [1993, c. 724, §1 (NEW).]

C. If the custodian is able to contribute resources to the care of the child, that contribution must be specified in the agreement. Resources include, but are not limited to, insurance coverage and disposable income. [1993, c. 724, §1 (NEW).]

D. The agreement must be approved by the commissioner or the commissioner's designee. [1993, c. 724, §1 (NEW).]

[1993, c. 724, §1 (NEW) .]

3. Additional parties. The Department of Corrections, the Department of Education, the Office of Substance Abuse and any other appropriate state agency may be additional parties to the agreement.

[2003, c. 2, §77 (COR) .]

4. Section 4022 not affected. This section does not apply to agreements entered into under section 4022.

[1993, c. 724, §1 (NEW) .]

5. Rules. The department may adopt rules to implement this section.

[1993, c. 724, §1 (NEW) .]

SECTION HISTORY

1993, c. 724, §1 (NEW). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §77 (COR).

22 §4004-B. INFANTS BORN AFFECTED BY SUBSTANCE ABUSE OR AFTER PRENATAL EXPOSURE TO DRUGS

The department shall act to protect infants born identified as being affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, regardless of whether or not the infant is abused or neglected. The department shall: [2003, c. 673, Pt. Z, §1 (NEW).]

1. Receive reports. Receive reports of infants who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure;

[2003, c. 673, Pt. Z, §1 (NEW) .]

2. Investigate. Promptly investigate all reports received of infants born who may be affected by illegal substance abuse or suffering from withdrawal symptoms resulting from prenatal drug exposure;

[2003, c. 673, Pt. Z, §1 (NEW) .]

3. Determine if infant is affected. Determine whether or not each infant reported is affected by illegal substance abuse or suffers from withdrawal symptoms resulting from prenatal drug exposure;

[2003, c. 673, Pt. Z, §1 (NEW) .]

4. Determine if infant is abused or neglected. Determine whether or not the infant is abused or neglected and, if so, determine the degree of harm or threatened harm in each case;

[2003, c. 673, Pt. Z, §1 (NEW) .]

5. Develop plan for safe care. For each infant whom the department determines to be affected by illegal substance abuse or to be suffering from withdrawal symptoms resulting from prenatal drug exposure, develop, with the assistance of any health care provider involved in the mother's or the child's medical or mental health care, a plan for the safe care of the infant and, in appropriate cases, refer the child or mother or both to a social service agency or voluntary substance abuse prevention service; and

[2003, c. 673, Pt. Z, §1 (NEW) .]

6. Comply with section 4004. For each infant whom the department determines to be abused or neglected, comply with section 4004, subsection 2, paragraphs E and F.

[2003, c. 673, Pt. Z, §1 (NEW) .]

SECTION HISTORY

2003, c. 673, §Z1 (NEW).

22 §4005. PARTIES' RIGHTS TO REPRESENTATION; LEGAL COUNSEL

1. Child; guardian ad litem. The following provisions shall govern guardians ad litem. The term guardian ad litem is inclusive of lay court appointed special advocates under Title 4, chapter 31.

A. The court, in every child protection proceeding except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders, shall appoint a guardian ad litem for the child. The guardian ad litem's reasonable costs and expenses must be paid by the District Court. The appointment must be made as soon as possible after the proceeding is initiated. Guardians ad litem appointed on or after March 1, 2000 must meet the qualifications established by the Supreme Judicial Court. [1999, c. 251, §2 (AMD).]

B. The guardian ad litem shall act in pursuit of the best interests of the child. The guardian ad litem must be given access to all reports and records relevant to the case and investigate to ascertain the facts. The investigation must include, when possible and appropriate, the following:

- (1) Review of relevant mental health records and materials;
- (2) Review of relevant medical records;
- (3) Review of relevant school records and other pertinent materials;
- (4) Interviews with the child with or without other persons present; and
- (5) Interviews with parents, foster parents, teachers, caseworkers and other persons who have been involved in caring for or treating the child.

The guardian ad litem shall have face-to-face contact with the child in the child's home or foster home within 7 days of appointment by the court and at least once every 3 months thereafter or on a schedule established by the court for reasons specific to the child and family. The guardian ad litem shall report to the court and all parties in writing at 6-month intervals, or as is otherwise ordered by the court, regarding the guardian ad litem's activities on behalf of the child and recommendations concerning the manner in which the court should proceed in the best interest of the child. The court may provide an opportunity for the child to address the court personally if the child requests to do so or if the guardian ad litem believes it is in the child's best interest. [1997, c. 715, Pt. A, §1 (AMD).]

C. The guardian ad litem may subpoena, examine and cross-examine witnesses and shall make a recommendation to the court. [1983, c. 183, (NEW).]

D. The guardian ad litem shall make a written report of the investigation, findings and recommendations and shall provide a copy of the report to each of the parties reasonably in advance of the hearing and to the court, except that the guardian ad litem need not provide a written report prior to a hearing on a preliminary protection order. The court may admit the written report into evidence. [2001, c. 696, §12 (AMD).]

E. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed his wishes, regardless of the recommendation of the guardian ad litem. [1983, c. 183, (NEW).]

F. The guardian ad litem or the child may request the court to appoint legal counsel for the child. The District Court shall pay reasonable costs and expenses of the child's legal counsel. [1995, c. 405, §20 (AMD).]

G. A person serving as a guardian ad litem under this section acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem. [2001, c. 253, §4 (NEW).]

[2001, c. 696, §12 (AMD) .]

2. Parents. Parents and custodians are entitled to legal counsel in child protection proceedings, except a request for a preliminary protection order under section 4034 or a petition for a medical treatment order under section 4071, but including hearings on those orders. They may request the court to appoint legal counsel for them. The court, if it finds them indigent, shall appoint and pay the reasonable costs and expenses of their legal counsel.

[1983, c. 783, §2 (AMD) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 183, (AMD). 1983, c. 783, §§1,2 (AMD). 1985, c. 581, §2 (AMD). 1995, c. 405, §§18-20 (AMD). 1997, c. 257, §5 (AMD). 1997, c. 715, §§A1,2 (AMD). 1999, c. 251, §2 (AMD). 2001, c. 253, §4 (AMD). 2001, c. 696, §12 (AMD).

22 §4005-A. FOSTER PARENTS RIGHT TO STANDING AND INTERVENOR STATUS IN CHILD PROTECTION PROCEEDINGS

(REPEALED)

SECTION HISTORY

1985, c. 424, (NEW). 1991, c. 176, §1 (AMD). 1997, c. 343, §1 (AMD). 2001, c. 696, §13 (RP).

22 §4005-B. GRANDPARENT'S RIGHT TO STANDING AND INTERVENOR STATUS IN CHILD PROTECTION PROCEEDINGS

(REPEALED)

SECTION HISTORY

1993, c. 697, §1 (NEW). 1995, c. 290, §§3,4 (AMD). 1995, c. 694, §D36 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 58, §1 (AMD). 2001, c. 696, §14 (RP).

22 §4005-C. RIGHTS OF PERSONS WHO ARE NOT PARTIES

(REPEALED)

SECTION HISTORY

1997, c. 715, §B5 (NEW). 1999, c. 189, §1 (AMD). 1999, c. 675, §1 (AMD). 2001, c. 696, §15 (RP).

22 §4005-D. ACCESS TO AND PARTICIPATING IN PROCEEDINGS

1. Definitions. For the purposes of this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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 a child lives pursuant to a court order or agreement of the department. [2007, c. 255, §2 (AMD).]

B. "Grandparent" means the biological or adoptive parent of a child's biological or adoptive parent. "Grandparent" includes the parent of a child's parent whose parental rights have been terminated, but only until the child is placed for adoption. [2001, c. 696, §16 (NEW).]

C. "Interested person" means a person the court has determined as having a substantial relationship with a child or a substantial interest in the child's well-being, based on the type, strength and duration of the relationship or interest. A person may request interested person status in a child protection proceeding either orally or in writing. [2001, c. 696, §16 (NEW).]

D. "Intervenor" means a person who is granted intervenor status in a child protective proceeding pursuant to the Maine Rules of Civil Procedure, Rule 24, as long as intervention is consistent with section 4003. [2001, c. 696, §16 (NEW).]

E. "Participant" means a person who is designated as an interested person under paragraph C and who demonstrates to the court that designation as a participant is in the best interests of the child and consistent with section 4003. A person may request participant status in a child protection proceeding either orally or in writing. [2001, c. 696, §16 (NEW).]

[2007, c. 255, §2 (AMD) .]

2. Interested persons. Upon request, the court shall designate a foster parent, grandparent, preadoptive parent or a relative of a child by blood or marriage as an interested person unless the court finds good cause not to do so. The court may also grant interested person status to other individuals who have a significant relationship to the child, including, but not limited to, teachers, coaches, counselors or a person who has provided or is providing care for the child.

[2001, c. 696, §16 (NEW) .]

3. Access to proceedings. An interested person, participant or intervenor may attend and observe all court proceedings under this chapter unless the court finds good cause to exclude the person. The opportunity to attend court proceedings does not include the right to be heard or the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[2001, c. 696, §16 (NEW) .]

4. Right to be heard. A participant or an intervenor has the right to be heard in any court proceeding under this chapter. The right to be heard does not include the right to present or cross-examine witnesses, present evidence or have access to pleadings or records.

[2001, c. 696, §16 (NEW) .]

5. Intervention. An intervenor may participate in any court proceeding under this chapter as a party as provided by the court when granting intervenor status under Maine Rules of Civil Procedure, Rule 24. An intervenor has the rights of a party as ordered by the court in granting intervenor status, including the right to present or cross-examine witnesses, present evidence and have access to pleadings and records.

[2001, c. 696, §16 (NEW) .]

6. Foster parents, preadoptive parents and relatives providing care. The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child must be provided notice of and the right to be heard in any proceeding to be held with respect to the child. The right to be heard includes the right to testify but does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records. This subsection may not be construed to require that any foster parent, preadoptive parent or relative providing care for the child be made a party to the proceeding solely on the basis of the notice and right to be heard.

The foster parent of a child, if any, and any preadoptive parent or relative providing care for the child may attend a proceeding in its entirety under this subsection unless specifically excluded by decision of the presiding judge.

[2007, c. 255, §3 (AMD) .]

7. Confidentiality and disclosure limitations. Interested persons, participants and intervenors are subject to the confidentiality and disclosure limitations of section 4008.

[2001, c. 696, §16 (NEW) .]

SECTION HISTORY

2001, c. 696, §16 (NEW). 2007, c. 255, §§2, 3 (AMD).

22 §4005-E. RELATIVES; VISITATION AND ACCESS; PLACEMENT

1. Grandparent visitation and access. A grandparent who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to grant reasonable rights of visitation or access. When a

child is placed in a prospective adoptive home and the prospective adoptive parents have signed an adoptive placement agreement, a grandparent's right to contact or have access to the child that was granted pursuant to this chapter is suspended. If the adoption is not final within 18 months of adoptive placement, then the grandparent whose rights of contact or access were suspended pursuant to this subsection may resume, as a matter of right and without further court order, contact with the child in accordance with the order granting that contact or access, unless the court determines after a hearing that the contact is not in the child's best interests. A grandparent's rights of visitation or access terminate when the adoption is finalized pursuant to Title 18-A, section 9-308. Nothing in this section prohibits prospective adoptive parents from independently facilitating or permitting contact between a child and a grandparent, especially when a court has previously ordered rights of contact.

[2007, c. 371, §2 (AMD) .]

2. Placement. A relative who is designated as an interested person or a participant under section 4005-D or who has been granted intervenor status under the Maine Rules of Civil Procedure, Rule 24 may request the court to order that the child be placed with the relative. A relative who has not been designated as a participant under section 4005-D may make the request for placement in writing. In making a decision on the request, the court shall make placement with a relative a priority for consideration for placement if that placement is in the best interests of the child and consistent with section 4003.

[2007, c. 371, §2 (AMD) .]

3. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption that the relative would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the relative:

A. Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the relative was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the relative and the minor victim at the time of the offense; or [2007, c. 513, §5 (AMD).]

B. Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse. [2005, c. 366, §6 (NEW).]

The relative seeking visitation with or access to the child may produce evidence to rebut the presumption.

[2007, c. 513, §5 (AMD) .]

SECTION HISTORY

2007, c. 371, §2 (AMD). 2007, c. 513, §5 (AMD).

22 §4005-F. DETERMINATIONS OF PARENTAGE

As part of a child protection proceeding, the District Court may determine parentage of the child. Title 19-A, sections 1558 to 1564 apply to determinations of parentage in a child protection proceeding. [2007, c. 257, §1 (NEW).]

This section may not be construed to limit the right of a person to file an action pursuant to Title 19-A, chapter 53, subchapter 1 to enforce a father's obligations pursuant to that subchapter. [2007, c. 257, §1 (NEW).]

SECTION HISTORY

2007, c. 257, §1 (NEW).

22 §4006. APPEALS

A party aggrieved by an order of a court entered pursuant to section 4035, 4054 or 4071 may appeal directly to the Supreme Judicial Court sitting as the Law Court and such appeals are governed by the Maine Rules of Civil Procedure, chapter 9. [1997, c. 715, Pt. A, §3 (RPR).]

Appeals from any order under section 4035, 4054 or 4071 must be expedited. Any attorney appointed to represent a party in a District Court proceeding under this chapter shall continue to represent that client in any appeal unless otherwise ordered by the court. [1997, c. 715, Pt. A, §3 (RPR).]

Orders entered under this chapter under sections other than section 4035, 4054 or 4071 are interlocutory and are not appealable. [1997, c. 715, Pt. A, §3 (RPR).]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 772, §3 (AMD). 1997, c. 715, §A3 (RPR).

22 §4007. CONDUCTING PROCEEDINGS

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

[1985, c. 495, §17 (AMD) .]

1-A. Nondisclosure of certain identifying information. This subsection governs the disclosure of certain identifying information.

A. At each proceeding, the court shall inquire whether there are any court orders in effect at the time of the proceeding that prohibit contact between the parties and participants. If such an order is in effect at the time of the proceeding, the court shall keep records that pertain to the protected person's current or intended address or location confidential, subject to disclosure only as authorized in this section. Any records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the protected person and determines that the disclosure is in the interests of justice. [2007, c. 351, §2 (NEW).]

B. If, at any stage of the proceedings, a party or a participant alleges in an affidavit or a pleading under oath that the health, safety or liberty of the person would be jeopardized by disclosure of information pertaining to the person's current or intended address or location, the court shall keep records that contain the information confidential, subject to disclosure only as authorized in this section. Upon receipt of the affidavit or pleading, the records in the file that contain such information must be sealed by the clerk and not disclosed to other parties or participants or their attorneys or authorized agents unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the person seeking protection and determines that the disclosure is in the interests of justice. [2007, c. 351, §2 (NEW).]

C. If the current or intended address or location of a party or participant is required to be kept confidential under paragraph A or B, and the current or intended address or location of that person is a material fact necessary to the proceeding, the court shall hear the evidence outside of the presence of the person and the person's attorney from whom the information is being kept confidential unless the court determines after a hearing that takes into consideration the health, safety or liberty of the protected person that the exclusion of the party or participant is not in the interests of justice. If such evidence is taken outside the presence of a party or participant, the court shall take measures to prevent the excluded person and the person's attorney from accessing the recorded information and the information must be redacted in printed transcripts. [2007, c. 351, §2 (NEW).]

D. Records that are required to be maintained by the court as confidential under this subsection may be disclosed to:

- (1) A state agency if necessary to carry out the statutory function of that agency;
- (2) A guardian ad litem appointed to the case; or
- (3) A criminal justice agency, as defined by Title 16, section 611, if necessary to carry out the administration of criminal justice or the administration of juvenile justice, and such disclosure is otherwise permitted pursuant to section 4008.

In making such disclosure, the court shall order the party receiving the information to maintain the information as confidential. [2007, c. 351, §2 (NEW) .]

[2007, c. 351, §2 (NEW) .]

2. Interviewing children. The court may interview a child witness in chambers, with only the guardian ad litem and counsel present, provided that the statements made are a matter of record. The court may admit and consider oral or written evidence of out-of-court statements made by a child, and may rely on that evidence to the extent of its probative value.

[1979, c. 733, §18 (NEW) .]

3. Motion for examination. At any time during the proceeding, the court may order that a child, parent, alleged parent, person frequenting the household or having custody at the time of the alleged abuse or neglect, any other party to the action or person seeking care or custody of the child be examined pursuant to the Maine Rules of Civil Procedure, Rule 35.

[1989, c. 270, §1 (AMD) .]

3-A. Report of licensed mental health professional. In any hearing held in connection with a child protection proceeding under this chapter, the written report of a licensed mental health professional who has treated or evaluated the child shall be admitted as evidence, provided that the party seeking admission of the written report has furnished a copy of the report to all parties at least 21 days prior to the hearing. The report shall not be admitted as evidence without the testimony of the mental health professional if a party objects at least 7 days prior to the hearing. This subsection does not apply to the caseworker assigned to the child.

[1989, c. 226, (NEW) .]

4. Interstate compact. The provisions of the Interstate Compact for the Placement of Children, sections 4251 to 4269, if in effect and ratified by the other state involved, apply to proceedings under this chapter; otherwise, the provisions of the Interstate Compact on Placement of Children, sections 4191 to 4247, apply to proceedings under this chapter. Any report submitted pursuant to the compact is admissible in evidence for purposes of indicating compliance with the compact and the court may rely on evidence to the extent of its probative value.

[2007, c. 255, §4 (AMD) .]

5. Records.

[2005, c. 300, §1 (RP) .]

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19-A, chapter 55, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19-A, sections 2002 and 2004 unless current information is already on file with the court. If a child is placed in the custody of the department, the court shall order child support from each parent according to the guidelines pursuant to Title 19-A, chapter 63, designate each parent as a nonprimary care provider and apportion the obligation accordingly.

Income affidavits and instructions must be provided to each parent by the department at the time of service of the petition or motion. The court may order a deviation pursuant to Title 19-A, section 2007. Support ordered pursuant to this section must be paid directly to the department pursuant to Title 19-A, chapter 65, subchapter IV. The failure of a parent to file an affidavit does not prevent the entry of a protection order. A parent may be subject to Title 19-A, section 2004, subsection 1, paragraph D for failure to complete and file income affidavits.

[1995, c. 694, Pt. D, §37 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 772, §4 (AMD). 1983, c. 783, §3 (AMD). 1985, c. 495, §17 (AMD). 1985, c. 506, §§A41,42 (AMD). 1989, c. 226, (AMD). 1989, c. 270, §1 (AMD). 1991, c. 840, §6 (AMD). 1993, c. 248, §1 (AMD). 1995, c. 694, §D37 (AMD). 1995, c. 694, §E2 (AFF). 2005, c. 300, §1 (AMD). 2007, c. 255, §4 (AMD). 2007, c. 351, §2 (AMD).

22 §4008. RECORDS; CONFIDENTIALITY; DISCLOSURE

1. Confidentiality of records and information. All department records that contain personally identifying information and are created or obtained in connection with the department's child protective activities and activities related to a child while in the care or custody of the department, and all information contained in those records, are confidential and subject to release only under the conditions of subsections 2 and 3.

Within the department, the records are available only to and may be used only by appropriate departmental personnel and legal counsel for the department in carrying out their functions.

Any person who receives department records or information from the department may use the records or information only for the purposes for which that release was intended.

[2007, c. 485, §1 (AMD); 2007, c. 485, §2 (AFF) .]

2. Optional disclosure of records. The department may disclose relevant information in the records to the following persons:

A. An agency or person investigating or participating on a team investigating a report of child abuse or neglect when the investigation or participation is authorized by law or by an agreement with the department; [1987, c. 511, Pt. B, §1 (RPR).]

A-1. A law enforcement agency, to the extent necessary for reporting, investigating and prosecuting an alleged crime, the victim of which is a department employee, an employee of the Attorney General's Office, an employee of any court or court system, a person mandated to report suspected abuse or neglect, a person who has made a report to the department, a person who has provided information to the department or an attorney, guardian ad litem, party, participant, witness or prospective witness in a child protection proceeding; [2005, c. 300, §3 (NEW).]

B. [1983, c. 327, §3 (RP).]

C. A physician treating a child whom he reasonably suspects may be abused or neglected; [1979, c. 733, §18 (NEW).]

D. A child named in a record who is reported to be abused or neglected, or the child's parent or custodian, or the subject of the report, with protection for identity of reporters and other persons when appropriate; [1987, c. 744, §3 (AMD).]

D-1. A parent, custodian or caretaker of a child when the department believes the child may be at risk of harm from the person who is the subject of the records or information, with protection for identity of reporters and other persons when appropriate; [2005, c. 300, §4 (NEW).]

D-2. A party to a child protection proceeding, when the records or information is relevant to the proceeding, with protection for identity of reporters and other persons when appropriate; [2005, c. 300, §4 (NEW).]

E. A person having the legal responsibility or authorization to evaluate, treat, educate, care for or supervise a child, parent or custodian who is the subject of a record, or a member of a panel appointed by the department to review child deaths and serious injuries, or a member of the Domestic Abuse Homicide Review Panel established under Title 19-A, section 4013, subsection 4. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record. This may also include a member of a support team for foster parents, if that team has been reviewed and approved by the department; [2005, c. 300, §5 (AMD).]

E-1. [2007, c. 371, §3 (RP).]

F. Any person engaged in bona fide research, provided that no personally identifying information is made available, unless it is essential to the researcher and the commissioner or the commissioner's designee gives prior approval. If the researcher desires to contact a subject of a record, the subject's consent shall be obtained by the department prior to the contact; [1989, c. 270, §2 (RPR).]

G. Any agency or department involved in licensing or approving homes for, or the placement of, children or dependent adults, with protection for identity of reporters and other persons when appropriate; [1989, c. 270, §3 (RPR).]

H. Persons and organizations pursuant to Title 5, section 9057, subsection 6, and pursuant to chapter 857; [1989, c. 270, §4 (RPR); 1989, c. 502, Pt. A, §76 (RPR); 1989, c. 878, Pt. A, §62 (RPR).]

I. The representative designated to provide child welfare services by the tribe of an Indian child as defined by the federal Indian Child Welfare Act, 25 United States Code, Section 1903, or a representative designated to provide child welfare services by an Indian tribe of Canada; [2007, c. 140, §5 (AMD).]

J. A person making a report of suspected abuse or neglect. The department may only disclose that it has not accepted the report for investigation, unless other disclosure provisions of this section apply; and [2007, c. 140, §6 (AMD).]

K. The local animal control officer or the animal welfare program of the Department of Agriculture, Food and Rural Resources established pursuant to Title 7, section 3902 when there is a reasonable suspicion of animal cruelty, abuse or neglect. For purposes of this paragraph, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. [2007, c. 140, §7 (NEW).]

[2007, c. 140, §§5-7 (AMD); 2007, c. 371, §3 (AMD).]

3. Mandatory disclosure of records. The department shall disclose relevant information in the records to the following persons:

A. The guardian ad litem of a child, appointed pursuant to section 4005, subsection 1; [2005, c. 300, §8 (AMD).]

A-1. The court-appointed guardian ad litem or attorney of a child who is the subject of a court proceeding involving parental rights and responsibilities, grandparent visitation, custody, guardianship or involuntary commitment. The access of the guardian ad litem or attorney to the records or information

under this paragraph is limited to reviewing the records in the offices of the department. Any other use of the information or records during the proceeding in which the guardian ad litem or attorney is appointed is governed by paragraph B; [2009, c. 38, §1 (AMD).]

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a home study from the department pursuant to Title 18-A, section 9-304 or Title 19-A, section 905. Access to such a report or record is limited to counsel of record unless otherwise ordered by the court. Access to actual reports or records is limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before the court; [1995, c. 694, Pt. D, §38 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

C. A grand jury on its determination that access to those records is necessary in the conduct of its official business; [1983, c. 327, §4 (AMD); 1983, c. 470, §12 (AMD).]

D. An appropriate state executive or legislative official with responsibility for child protection services, provided that no personally identifying information may be made available unless necessary to that official's functions; [2001, c. 439, Pt. X, §2 (AMD).]

E. The protection and advocacy agency for persons with disabilities, as designated pursuant to Title 5, section 19502, in connection with investigations conducted in accordance with Title 5, chapter 511. The determination of what information and records are relevant to the investigation must be made by agreement between the department and the agency; [1991, c. 630, §2 (AMD).]

F. The Commissioner of Education when the information concerns teachers and other professional personnel issued certificates under Title 20-A, persons employed by schools approved pursuant to Title 20-A or any employees of schools operated by the Department of Education; [2001, c. 696, §18 (AMD).]

G. The prospective adoptive parents. Prior to a child being placed for the purpose of adoption, the department shall comply with the requirements of Title 18-A, section 9-304, subsection (b) and section 8205; [2003, c. 673, Pt. Z, §2 (AMD).]

H. Upon written request, a person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record. This includes a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; [2003, c. 673, Pt. Z, §3 (AMD).]

I. Any government entity that needs such information in order to carry out its responsibilities under law to protect children from abuse and neglect. For purposes of this paragraph, "government entity" means a federal entity, a state entity of any state, a local government entity of any state or locality or an agent of a federal, state or local government entity; [2007, c. 371, §4 (AMD).]

J. To a juvenile court when the child who is the subject of the records has been brought before the court pursuant to Title 15, Part 6; and [2007, c. 371, §5 (AMD).]

K. A relative or other person whom the department is investigating for possible custody or placement of the child. [2007, c. 371, §6 (NEW).]

[2009, c. 38, §1 (AMD) .]

3-A. Confidentiality. The proceedings and records of the child death and serious injury review panel created in accordance with section 4004, subsection 1, paragraph E are confidential and are not subject to subpoena, discovery or introduction into evidence in a civil or criminal action. The commissioner shall disclose conclusions of the review panel upon request, but may not disclose data that is otherwise classified as confidential.

[1993, c. 294, §4 (NEW) .]

4. Unlawful dissemination; penalty. A person is guilty of unlawful dissemination if he knowingly disseminates records which are determined confidential by this section, in violation of the mandatory or optional disclosure provisions of this section. Unlawful dissemination is a Class E crime, which, notwithstanding Title 17-A, section 1252, subsection 2, paragraph E, is punishable by a fine of not more than \$500 or by imprisonment for not more than 30 days.

[1989, c. 502, Pt. D, §18 (AMD) .]

5. Retention of unsubstantiated child protection services records. Except as provided in this subsection, the department shall retain unsubstantiated child protective services case records for no more than 18 months following a finding of unsubstantiation and then expunge unsubstantiated case records from all departmental files or archives unless a new referral has been received within the 18-month retention period. Unsubstantiated child protective services records of persons who were eligible for Medicaid services under the federal Social Security Act, Title XIX, at the time of the investigation may be retained for up to 5 years for the sole purpose of state and federal audits of the Medicaid program. Unsubstantiated child protective services case records retained for audit purposes pursuant to this subsection must be stored separately from other child protective services records and may not be used for any other purpose.

[1989, c. 857, §58 (AMD) .]

6. Requests for disclosure of records; establishment of fees; rules. The department may accept requests and charge fees for research and disclosure of its records as provided in this subsection.

A. The department may charge fees for the services listed in paragraph B to any person except the following:

- (1) A parent in a child protection proceeding, an attorney who represents a parent in a child protection proceeding or a guardian ad litem in a child protection proceeding when the parent, attorney or guardian ad litem requests the service for the purposes of the child protection proceeding;
- (2) An adoptive parent or prospective adoptive parent who requests records relating to the child who has been or might be adopted;
- (3) A person having the legal authorization to evaluate or treat a child, parent or custodian who is the subject of a record, including a member of a treatment team or group convened to plan for or treat a child or family that is the subject of a record; the record must be requested for the purpose of evaluating or treating the child, parent or custodian who is the subject of the record;
- (4) Governmental entities of this State that are not engaged in licensing; and
- (5) Governmental entities of any county or municipality of this State that are not engaged in licensing.

A request or order by a court for disclosure of records pursuant to subsection 3, paragraph B must be deemed to have been made by the person requesting that the court order the disclosure. [2003, c. 673, Pt. W, §1 (NEW) .]

B. The department may charge fees for the following services:

- (1) Researching its records to determine whether a particular person is named in the records;
- (2) Receiving and responding to a request for disclosure of department records, whether or not the department grants the request; and
- (3) Disclosing department records. [2003, c. 673, Pt. W, §1 (NEW) .]

C. The department may adopt rules governing requests for the services listed in paragraph B. Those rules may provide for a mechanism for making a request, the information required in making a request, the circumstances under which requests will be granted or denied and any other matter that the department

determines necessary to efficiently respond to requests for disclosure of records. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 673, Pt. W, §1 (NEW).]

D. The department shall establish a schedule of fees by rule. The schedule of fees may provide that certain classes of persons are exempt from the fees, and it may establish different fees for different classes of persons. All fees collected by the department must be deposited in the General Fund. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 673, Pt. W, §1 (NEW).]

E. A governmental entity that is engaged in licensing may charge an applicant for the fees imposed on it by the department for research and disclosure of records. [2003, c. 673, Pt. W, §1 (NEW).]

F. This subsection may not be construed to permit or require the department to make a disclosure in any particular case. [2003, c. 673, Pt. W, §1 (NEW).]

[2003, c. 673, Pt. W, §1 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 327, §§3-5 (AMD). 1983, c. 354, §§1,2 (AMD). 1983, c. 470, §§12,13 (AMD). 1983, c. 783, §4 (AMD). 1985, c. 495, §18 (AMD). 1985, c. 506, §§A43-45 (AMD). 1985, c. 739, §§5,6 (AMD). 1987, c. 511, §§A3,B1 (AMD). 1987, c. 714, §§5-7 (AMD). 1987, c. 744, §§3-7 (AMD). 1989, c. 118, (AMD). 1989, c. 270, §§2-5 (AMD). 1989, c. 483, §A33 (AMD). 1989, c. 502, §§A76,77,D18 (AMD). 1989, c. 700, §A89 (AMD). 1989, c. 857, §58 (AMD). 1989, c. 878, §§A62,63 (AMD). 1991, c. 630, §§2-4 (AMD). 1993, c. 294, §3 (AMD). 1993, c. 294, §4 (AMD). 1993, c. 686, §8 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 391, §2 (AMD). 1995, c. 694, §§D38,39 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 439, §X2 (AMD). 2001, c. 696, §§17-20 (AMD). 2003, c. 673, §§W1,Z2-4 (AMD). 2005, c. 300, §§2-9 (AMD). 2007, c. 140, §§5-7 (AMD). 2007, c. 335, §1-3 (AMD). 2007, c. 371, §§3-6 (AMD). 2007, c. 485, §1 (AMD). 2007, c. 335, §5 (AFF). 2007, c. 473, §1 (AFF). 2007, c. 485, §2 (AFF). 2009, c. 38, §1 (AMD).

22 §4008-A. CHILD ABUSE AND NEGLECT INVESTIGATIONS; DISCLOSURE

1. Disclosure permitted. Notwithstanding any other provision of law, the commissioner, with the advice of the Attorney General, may disclose information as set forth in this section regarding the abuse or neglect of a child and the investigation of and any services related to the abuse and neglect if the commissioner determines that such disclosure is not contrary to the best interests of the child, the child's siblings or other children in the household and any one of the following factors is present:

A. The alleged perpetrator of the abuse or neglect has been charged with committing a crime related to the allegation of abuse or neglect maintained by the department; [1997, c. 328, §1 (NEW).]

B. A judge, a law enforcement agency official, a district attorney or another state or local investigative agency or official has publicly disclosed, as required by law in the performance of official duties, the provision of child welfare services or the investigation by child welfare services of the abuse or neglect of the child; or [2009, c. 38, §2 (AMD).]

C. An individual who is the parent, custodian or guardian of the victim or a child victim over 14 years of age has made a prior knowing, voluntary, public disclosure. [2009, c. 38, §2 (AMD).]

D. [2009, c. 38, §2 (RP).]

[2009, c. 38, §2 (AMD) .]

1-A. Disclosure required. The commissioner shall make public disclosure of the findings or information pursuant to this section in situations where child abuse or neglect results in a child fatality or near fatality, with the exception of circumstances, as determined with the advice of the Attorney General or appropriate district attorney, in which disclosure of child protective information would jeopardize a criminal investigation or proceeding.

[2009, c. 38, §3 (NEW) .]

2. Information. For the purposes of this section, the following information may be disclosed:

A. The name and age of the abused or neglected child. If the child is under 13 years of age, the guardian ad litem must agree with the commissioner to release the information. If the child is 13 years of age or older, the guardian ad litem and the child must agree with the commissioner to release the information; [1997, c. 328, §1 (NEW).]

B. The determination by the local child protective service or the state agency that investigated the alleged abuse or neglect and the findings of the applicable investigating agency upon which the determination was based; [1997, c. 328, §1 (NEW).]

C. Identification of child protective or other services provided or actions, if any, taken regarding the child and the child's family; [1997, c. 328, §1 (NEW).]

D. Whether any report of abuse or neglect regarding the child has been substantiated as maintained by the department; [1997, c. 328, §1 (NEW).]

E. Any actions taken by child protective services in response to reports of abuse or neglect of the child to the department, including, but not limited to, actions taken after every report of abuse or neglect of the child and the dates of the reports; [1997, c. 328, §1 (NEW).]

F. Whether the child or the child's family has received care or services from the child welfare services prior to every report of abuse or neglect of the child; and [1997, c. 328, §1 (NEW).]

G. Any extraordinary or pertinent information concerning the circumstances of the abuse or neglect of the child and the investigation of the abuse or neglect, if the commissioner determines the disclosure is consistent with the public interest. [1997, c. 328, §1 (NEW).]

[1997, c. 328, §1 (NEW) .]

3. Limitations. The following limitations apply to information disclosed pursuant to this section.

A. Information released prior to the completion of the investigation of a report must be limited to a statement that a report is under investigation. [1997, c. 328, §1 (NEW).]

B. If there has been a prior disclosure pursuant to paragraph A, information released in a case in which the report has not been substantiated is limited to the statement that the investigation has been completed and the report has not been substantiated. [1997, c. 328, §1 (NEW).]

C. If the report has been substantiated, information may be released pursuant to subsection 2. [1997, c. 328, §1 (NEW).]

D. The disclosure may not identify or provide any identifying description of the source of the report, and may not identify the name of the abused or neglected child's siblings, the parent or other person legally responsible for the child or any other members of the child's household, other than the subject of the report. [1997, c. 328, §1 (NEW).]

[1997, c. 328, §1 (NEW) .]

4. Considerations. In determining pursuant to subsection 1 whether disclosure would be contrary to the best interests of the child, the child's siblings or other children in the household, the commissioner shall consider the privacy of the child and the child's family and the effects that disclosure may have on efforts to reunite and provide services to the family.

[1997, c. 328, §1 (NEW) .]

5. Other releases and disclosure. Except as it applies directly to the cause of the abuse or neglect of the child, nothing in this section authorizes the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical or medical reports, evaluations or similar materials or information pertaining to the child or the child's family.

[1997, c. 328, §1 (NEW) .]

SECTION HISTORY

1997, c. 328, §1 (NEW). 2009, c. 38, §§2, 3 (AMD).

22 §4009. PENALTY FOR VIOLATIONS

A person who knowingly violates a provision of this chapter commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. [1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §4010. SPIRITUAL TREATMENT

1. Treatment not considered abuse or neglect. Under subchapters I to VII, a child shall not be considered to be abused or neglected, in jeopardy of health or welfare or in danger of serious harm solely because treatment is by spiritual means by an accredited practitioner of a recognized religious organization.

[1979, c. 733, §18 (NEW) .]

2. Treatment to be considered if requested. When medical treatment is authorized under this chapter, treatment by spiritual means by an accredited practitioner of a recognized religious organization may also be considered if requested by the child or his parent.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §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; [2003, c. 2, §78 (COR) .]

B. The reporting of suspected abuse or neglect or other violations to the appropriate designated authorities; [1989, c. 223, (NEW) .]

C. The agency's course of action if allegations of abuse or neglect are made against the agency or its staff; and [1989, c. 223, (NEW).]

D. The agency's grievance procedures for staff and for children and their parents or guardians regarding alleged abuse or neglect. [2003, c. 2, §78 (COR).]

[2003, c. 2, §78 (COR) .]

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.

[1989, c. 223, (NEW) .]

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

[1989, c. 223, (NEW) .]

SECTION HISTORY

1989, c. 223, (NEW). 1989, c. 819, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). RR 2003, c. 2, §78 (COR).

22 §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.

[2001, c. 696, §21 (NEW) .]

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.

[2001, c. 696, §21 (NEW) .]

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

[2001, c. 696, §21 (NEW) .]

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

[2001, c. 696, §21 (NEW) .]

SECTION HISTORY

2001, c. 696, §21 (NEW).

Subchapter 2: REPORTING OF ABUSE OR NEGLECT

22 §4011. PERSONS MANDATED TO REPORT SUSPECTED ABUSE OR NEGLECT

(REPEALED)

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 354, §3 (AMD). 1985, c. 495, §§19,20 (AMD). 1985, c. 530, §1 (AMD). 1985, c. 739, §7 (AMD). 1985, c. 819, §§A25,26 (AMD). 1987, c. 744, §8 (AMD). 1989, c. 270, §6 (AMD). 1989, c. 819, §2 (AMD). 1997, c. 251, §1 (AMD). 1999, c. 300, §§1,2 (AMD). 2001, c. 345, §4 (RP).

22 §4011-A. REPORTING OF SUSPECTED ABUSE OR NEGLECT

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:

- (32) A school bus driver or school bus attendant;
- (31) A family or domestic violence victim advocate; and
- (30) A sexual assault counselor;
- (29) A humane agent employed by the Department of Agriculture, Food and Rural Resources;
- (28) A chair of a professional licensing board that has jurisdiction over mandated reporters;
- (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (26) A commercial film and photographic print processor;
- (25) A municipal code enforcement official;
- (24) A state or municipal fire inspector;
- (23) A law enforcement official;
- (22) A mental health professional;
- (21) Child care personnel;
- (20) A psychologist;
- (19) A medical or social service worker;
- (18) A home health aide;
- (17) A homemaker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (15) A social worker;
- (14) A youth camp administrator or counselor;
- (13) A school official;
- (12) A guidance counselor;
- (11) A teacher;
- (10) A registered or licensed practical nurse;
- (9) A podiatrist;

- (8) A chiropractor;
- (7) A dental assistant;
- (6) A dental hygienist;
- (5) A dentist;
- (4) A physician's assistant;
- (3) A medical examiner;
- (2) An emergency medical services person;
- (1) An allopathic or osteopathic physician, resident or intern;

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; [2009, c. 211, Pt. B, §18 (AMD).]

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 [2003, c. 210, §3 (AMD).]

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. [2003, c. 210, §4 (NEW).]

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.

[2009, c. 211, Pt. B, §18 (AMD).]

1-A. Permitted reporters. An animal control officer, as defined in Title 7, section 3907, subsection 4, may report to the department when that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

[2007, c. 139, §2 (NEW).]

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.

[2007, c. 586, §11 (AMD).]

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.

[2007, c. 586, §12 (AMD).]

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, 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. [2001, c. 345, §5 (NEW).]

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. [2001, c. 345, §5 (NEW).]

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse, 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, neglect or death to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion. [2007, c. 586, §13 (AMD).]

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.

[2007, c. 586, §13 (AMD).]

5. Photographs of visible trauma. Whenever a person is required to report as a staff member of a law enforcement agency or a hospital, that person shall make reasonable efforts to take, or cause to be taken, color photographs of any areas of trauma visible on a child.

A. The taking of photographs must be done with minimal trauma to the child and in a manner consistent with professional standards. The parent's or custodian's consent to the taking of photographs is not required. [2001, c. 345, §5 (NEW).]

B. Photographs must be made available to the department as soon as possible. The department shall pay the reasonable costs of the photographs from funds appropriated for child welfare services. [2001, c. 345, §5 (NEW).]

C. The person shall notify the department as soon as possible if that person is unable to take, or cause to be taken, these photographs. [2001, c. 345, §5 (NEW).]

D. Designated agents of the department may take photographs of any subject matter when necessary and relevant to an investigation of a report of suspected abuse or neglect or to subsequent child protection proceedings. [2001, c. 345, §5 (NEW).]

[2001, c. 345, §5 (NEW).]

6. Permissive reporting of animal cruelty, abuse or neglect. Notwithstanding any other provision of state law imposing a duty of confidentiality, a person listed in subsection 1 may report a reasonable suspicion of animal cruelty, abuse or neglect to the local animal control officer or to the animal welfare program of the Department of Agriculture, Food and Rural Resources established pursuant to Title 7, section 3902. For purposes of this subsection, the reporter shall disclose only such limited confidential information as is necessary for the local animal control officer or animal welfare program employee to identify the animal's location and status and the owner's name and address. For purposes of this subsection, "cruelty, abuse or neglect" has the same meaning as provided in Title 34-B, section 1901, subsection 1, paragraph B. A reporter under this subsection may assert immunity from civil and criminal liability under Title 34-B, chapter 1, subchapter 6.

[2007, c. 140, §8 (NEW).]

SECTION HISTORY

2001, c. 345, §5 (NEW). 2003, c. 145, §2 (AMD). 2003, c. 210, §§3,4 (AMD). 2003, c. 510, §E3 (AMD). 2003, c. 599, §8 (AMD). 2003, c. 510, §E4 (AFF). 2003, c. 599, §§9,14 (AFF). 2007, c. 139, §2 (AMD). 2007, c. 140, §8 (AMD). 2007, c. 586, §§10-13 (AMD). 2009, c. 41, §1 (AMD). 2009, c. 211, Pt. B, §18 (AMD).

22 §4011-B. REPORTING OF PRENATAL EXPOSURE TO DRUGS

1. Reporting of infants with prenatal exposure to drugs. A health care provider involved in the delivery or care of an infant who the provider knows or has reasonable cause to suspect has been born affected by illegal substance abuse or is suffering from withdrawal symptoms resulting from prenatal drug exposure, whether or not the prenatal exposure was to legal or illegal drugs, shall notify the department of that condition in the infant. The report required by this subsection must be made in the same manner as reports of abuse or neglect required by this subchapter.

A. This section, and any notification made pursuant to this section, may not be construed to establish a definition of "abuse" or "neglect." [2003, c. 673, Pt. Z, §5 (NEW).]

B. This section, and any notification made pursuant to this section, may not be construed to require prosecution for any illegal action, including, but not limited to, the act of exposing a fetus to drugs or other substances. [2003, c. 673, Pt. Z, §5 (NEW).]

[2003, c. 673, Pt. Z, §5 (NEW) .]

2. Definition. For purposes of this section, "health care provider" means a person described in section 4011-A, subsection 1, paragraph A, subparagraphs (1) to (10), (15), (17) to (20) or (22) or any person who assists in the delivery or birth of a child for compensation, including, but not limited to, a midwife.

[2003, c. 673, Pt. Z, §5 (NEW) .]

SECTION HISTORY

2003, c. 673, §25 (NEW).

22 §4012. REPORTING PROCEDURES

1. Immediate report. Reports regarding abuse or neglect shall be made immediately by telephone to the department and shall be followed by a written report within 48 hours if requested by the department.

[1979, c. 733, §18 (NEW) .]

2. Information required. The reports shall include the following information if within the knowledge of the person reporting:

A. The name and address of the child and the persons responsible for his care or custody; [1979, c. 733, §18 (NEW).]

B. The child's age and sex; [1979, c. 733, §18 (NEW).]

C. The nature and extent of abuse or neglect, including a description of injuries and any explanation given for them; [1979, c. 733, §18 (NEW).]

D. A description of sexual abuse or exploitation; [1979, c. 733, §18 (NEW).]

E. Family composition and evidence of prior abuse or neglect of the child or his siblings; [1979, c. 733, §18 (NEW).]

F. The source of the report, the person making the report, his occupation and where he can be contacted; [1979, c. 733, §18 (NEW).]

G. The actions taken by the reporting source, including a description of photographs or x rays taken; and [1979, c. 733, §18 (NEW).]

H. Any other information that the person making the report believes may be helpful. [1979, c. 733, §18 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §4013. MANDATORY REPORTING TO MEDICAL EXAMINER FOR POSTMORTEM INVESTIGATION

(REPEALED)

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 343, §2 (AMD). 2005, c. 373, §6 (RP).

22 §4014. IMMUNITY FROM LIABILITY

1. Reporting and proceedings. A person, including an agent of the department, participating in good faith in reporting under this subchapter or participating in a related child protection investigation or proceeding, including, but not limited to, a multidisciplinary team, out-of-home abuse investigating team or other investigating or treatment team, is immune from any criminal or civil liability for the act of reporting or participating in the investigation or proceeding. Good faith does not include instances when a false report is made and the person knows the report is false. Nothing in this section may be construed to bar criminal or civil action regarding perjury or regarding the abuse or neglect which led to a report, investigation or proceeding.

[1987, c. 395, Pt. A, §89 (AMD) .]

2. Photographs and x rays. A person participating in good faith in taking photographs or x rays under this subchapter is immune from civil liability for invasion of privacy that might otherwise result from these actions.

[1979, c. 733, §18 (NEW) .]

3. Presumption of good faith. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 783, §5 (AMD). 1987, c. 395, §A89 (AMD).

22 §4015. PRIVILEGED OR CONFIDENTIAL COMMUNICATIONS

The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 16, section 53-B; Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; Title 32, sections 1092-A and 7005; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section must be kept confidential and may not be disclosed by the department except as provided in section 4008.

[2001, c. 696, §22 (AMD) .]

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

[2001, c. 696, §22 (AMD) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 211, §1 (AMD). 1983, c. 781, §2 (AMD). 1985, c. 495, §21 (AMD). 2001, c. 696, §22 (AMD).

22 §4016. CONFIDENTIALITY OF EMPLOYEE RECORDS

Notwithstanding Title 5, section 554, subsection 2, paragraph E or any other provision of law, the confidentiality of employee records is abrogated in relation to required reporting, cooperating with the department or guardian ad litem in an investigation or other child protective activity or giving evidence in a child protective proceeding. [1983, c. 354, §4 (NEW).]

SECTION HISTORY

1983, c. 354, §4 (NEW).

22 §4017. DISCRIMINATION

No person may be discriminated against by any employer in any way for participating in good faith in reporting under this subchapter or in a related child protection investigation or proceeding. [1983, c. 354, §4 (NEW).]

SECTION HISTORY

1983, c. 354, §4 (NEW).

22 §4018. ABANDONED CHILD; SAFE HAVEN PROVIDER

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

A. "Medical services provider" means an individual certified, registered or licensed in the healing arts, including, but not limited to, a physician, nurse, podiatrist, optometrist, chiropractor, physical therapist, dentist, psychologist, physician's assistant or emergency medical services person. [2001, c. 543, §2 (NEW).]

B. "Safe haven provider" means:

- (1) A law enforcement officer;
- (2) Staff at a medical emergency room;
- (3) A medical services provider; or
- (4) A hospital staff member at a hospital. [2001, c. 543, §2 (NEW).]

[2001, c. 543, §2 (NEW) .]

2. Request for information. A person who voluntarily delivers a child less than 31 days of age to a safe haven provider and who does not express an intent to return for the child may be requested to provide information helpful to the welfare of the child. The person who accepts a child under this section may not detain the person delivering the child to obtain information.

[2001, c. 543, §2 (NEW) .]

3. Action by safe haven provider; guidelines. A safe haven provider who accepts a child under this section shall promptly notify the department of the delivery of the child, transfer the child to the department at the earliest opportunity and provide to the department all information provided by the person delivering the child to the safe haven provider. The department shall establish guidelines to assist safe haven providers concerning procedures when a child is delivered to a safe haven provider under this section.

[2001, c. 543, §2 (NEW) .]

4. Confidentiality. All personally identifiable information provided by the person delivering the child to a safe haven provider is confidential and may not be disclosed by the safe haven provider to anyone except to the extent necessary to provide temporary custody of the child until the child is transferred to the department and except as otherwise provided by court order. All health care or other information obtained by a safe haven provider in providing temporary custody of the child may also be provided to the department upon request.

[2001, c. 543, §2 (NEW) .]

5. Liability. A person or entity who accepts a child under this section or provides temporary custody of a child accepted under this section is not subject to civil, criminal or administrative liability for accepting the child or providing temporary custody of the child in the good faith belief that the action is required or authorized by this section. This subsection does not affect liability for personal injury or wrongful death, including, but not limited to, injury resulting from medical malpractice.

[2001, c. 543, §2 (NEW) .]

SECTION HISTORY

2001, c. 543, §2 (NEW) .

Subchapter 3: INVESTIGATIONS AND EMERGENCY SERVICES

22 §4021. INVESTIGATIONS

1. Subpoenas and obtaining criminal history. The commissioner, his delegate or the legal counsel for the department may:

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 [2007, c. 586, §14 (AMD) .]

B. Obtain nonconviction data and other criminal history record information under Title 16, 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. [2007, c. 586, §15 (AMD) .]

[2007, c. 586, §§14, 15 (AMD) .]

2. Confidentiality. Information or records obtained by subpoena shall be treated in accordance with section 4008.

[1979, c. 733, §18 (NEW) .]

3. Interviewing the child without prior notification. The department may interview a child without prior notification under the following provisions.

A. The department may interview a child without prior notification to the parent or custodian when the department has reasonable grounds to believe that prior notice would increase the threat of serious harm to the child or another person. The department may conduct one initial interview with a child without

prior notification to the parent or custodian of the child when the child contacts the department or a person providing services puts the child into contact with the department. [1989, c. 270, §7 (AMD) .]

B. The interview may take place at a school, hospital, police station or other place where the child is present. [1981, c. 369, §10 (NEW) .]

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

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

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

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

(a) Requiring that certain persons be present during the interview;

(b) Prohibiting certain persons from being present during the interview; and

(c) Requiring notice to or consent from a parent or guardian.

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

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

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

Violation of this paragraph subjects any person involved in the violation, including individual school personnel, to the penalty provided in section 4009. This section does not apply to out-of-home abuse and neglect allegations as covered under section 4088. [2007, c. 132, §1 (AMD) .]

[2007, c. 132, §1 (AMD) .]

4. Audio recording of planned interviews of children. To the extent possible, the department shall audio record all planned questioning of and planned interviews with children. No later than February 1, 2003, the commissioner shall provisionally adopt rules in accordance with Title 5, chapter 375 to establish procedures for the audio recording of planned questioning of and planned interviews with children. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be reviewed before final approval by the joint standing committee of the Legislature having jurisdiction over judiciary matters.

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

[2001, c. 696, §23 (NEW) .]

5. Right to record. A person being questioned or interviewed under this chapter or the parent of a child who is the subject of a proceeding under this chapter may not be prohibited from audio recording the questioning or interview.

[2001, c. 696, §23 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §10 (AMD). 1989, c. 270, §7 (AMD). 1993, c. 294, §5 (AMD). 2001, c. 696, §23 (AMD). 2007, c. 132, §1 (AMD). 2007, c. 586, §§14, 15 (AMD).

22 §4022. VOLUNTARY CARE

On the written request of a person responsible for the child, the department may care for that child for a specified period by agreement, unless a custodian objects. Voluntary care agreements shall not affect custody. The department may require reimbursement from a parent or custodian for these services. [1979, c. 733, §18 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §4023. SHORT-TERM EMERGENCY SERVICES

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

A. "Agency" means a person with a contract or written agreement with the department to provide short-term emergency services. [1979, c. 733, §18 (NEW).]

B. "Short-term emergency services" means protective services, emergency shelter care, counselling, emergency medical treatment and other services which are essential to the care and protection of a child. These services may include emergency caretaker or homemaker services in the child's home or care outside his home when no parent or other responsible adult is available and willing to care for the child in his home. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2. Authorization. The department may provide short-term emergency services, directly or through contracts or written agreements with agencies, to a child who has been or appears to be:

A. Threatened with serious harm; [1979, c. 733, §18 (NEW).]

B. A runaway from the child's parents or custodian; [1989, c. 270, §8 (AMD).]

C. Without any person responsible for the child; [2003, c. 626, §1 (AMD).]

D. Taken into interim care under Title 15, section 3501, by a law enforcement officer; or [2003, c. 626, §2 (AMD).]

E. In a situation in which the child has lost both parents as a result of a homicide or has lost one parent and the other parent has been arrested, detained or sentenced and committed to a state correctional facility, state mental health institute or county jail for an offense related to the homicide. [2003, c. 626, §3 (NEW).]

[2003, c. 626, §§1-3 (AMD) .]

3. Consent to treatment. The department may give consent for the child to receive necessary emergency medical treatment while receiving short-term emergency services. When the department has given its consent, a physician or health care provider shall be immune from civil liability for providing emergency medical treatment without the informed consent of the child or the child's parents or custodian.

[1979, c. 733, §18 (NEW) .]

4. Contacting parents. The following procedures shall apply.

A. Prior to or on initiating short-term emergency services, the department or agency shall take reasonable steps to notify a custodian that the child will receive or is receiving the services. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by the parental notification requirements contained in the Department of Health and Human Services rules for the licensure of shelters for homeless children. [1989, c. 270, §9 (AMD); 1989, c. 819, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

B. Short-term emergency services, except for medical treatment, shall not be provided to a child who expresses a clear desire not to receive them. [1979, c. 733, §18 (NEW) .]

C. If a parent or custodian objects to medical treatment, it shall be discontinued within 6 hours of receiving the objection. [1979, c. 733, §18 (NEW) .]

[1989, c. 270, §9 (AMD); 1989, c. 819, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

5. Time limit. Short-term emergency services shall not exceed 72 hours from the time of the department's assumption of responsibility for the child. Notwithstanding this subsection, shelters for homeless children, as defined in section 8101, subsection 4-A, are governed by the time-limit requirements contained in the Department of Health and Human Services rules for the licensure of shelters for homeless children.

[1989, c. 270, §10 (AMD); 1989, c. 819, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

6. Parent's obligations. Providing short-term emergency services to a child shall not affect a parent's obligation for the support of the child.

[1979, c. 733, §18 (NEW) .]

7. Reimbursement. The department may, by agreement or court order, obtain reimbursement from a parent for the support of a child who receives short-term emergency services. An agency may also obtain reimbursement from a parent subject to its contract or written agreement with the department.

[1979, c. 733, §18 (NEW) .]

8. Emergency assessment. In the event of a homicide as described in subsection 2, paragraph E, the department shall perform an emergency assessment for the purposes of temporary placement with a relative or other responsible person. The department shall provide a copy of the assessment performed under this subsection to the law enforcement personnel involved with the family of the child.

[2003, c. 626, §4 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 354, §5 (AMD). 1989, c. 270, §§8-10 (AMD). 1989, c. 819, §§3,4 (AMD). 2003, c. 626, §§1-4 (AMD). 2003, c. 689, §B6 (REV).

22 §4024. DEPARTMENT RESPONSIBLE FOR REQUIRED SERVICES

If the department requires that a child receive mental health services or other medical services as an alternative to the initiation of a child protection proceeding, the department shall inform the person responsible for the child that the services must be approved by the department. If the person responsible for the child's medical expenses is unable to pay for the services required, the department shall inform the person responsible for the child that the department will pay for the services if the services are approved by the department. [1991, c. 623, (NEW).]

SECTION HISTORY

1991, c. 623, (NEW).

Subchapter 4: PROTECTION ORDERS

22 §4031. JURISDICTION; VENUE

1. Jurisdiction. The following provisions shall govern jurisdiction.

A. The District Court shall have jurisdiction over child protection petitions. [1979, c. 733, §18 (NEW).]

B. The Probate Court and the Superior Court shall have concurrent jurisdiction to act on requests for preliminary child protection orders under section 4034. As soon as the action is taken by the Probate Court or the Superior Court, the matter shall be transferred to the District Court. [1989, c. 270, §11 (AMD).]

C. [1989, c. 270, §12 (RP).]

D. The District Court has jurisdiction over judicial reviews transferred to the District Court pursuant to Title 18-A, section 9-205. [1995, c. 694, Pt. D, §40 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

[1995, c. 694, Pt. D, §40 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

2. Venue.

A. Petitions shall be brought in the district where the child legally resides or where the child is present. When a child is in voluntary placement with the department or an agency, the petition may be brought only in the district where he legally resides. [1979, c. 733, §18 (NEW).]

B. The court, for the convenience of the parties or in the interests of justice, may transfer the petitions to another district or division. [1979, c. 733, §18 (NEW).]

C. A judge from another district, division or county may hear a petition and make a preliminary or final protection order if no judge is available in the district and division in which the petition is filed. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

3. Scope of authority. The court shall consider and act on child protection petitions regardless of other decrees regarding a child's care and custody. The requirements and provisions of Title 19-A, chapter 58 do not apply to child protection proceedings. If custody is an issue in another pending proceeding, the proceedings may be consolidated in the District Court with respect to the custody issue. In any event, the court shall make an order on the child protection petition in accordance with this chapter. That order takes precedence over any prior order regarding the child's care and custody.

[1999, c. 1, §29 (COR) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1985, c. 547, (AMD). 1989, c. 270, §§11,12 (AMD). 1991, c. 548, §A19 (AMD). 1993, c. 686, §9 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §§D40,41 (AMD). 1995, c. 694, §E2 (AFF). RR 1999, c. 1, §29 (COR).

22 §4032. CHILD PROTECTION PETITION; PETITIONERS; CONTENT; FILING

1. Who may petition. Petitions may be brought by:

- A. The department through an authorized agent; [1979, c. 733, §18 (NEW).]
- B. A police officer or sheriff; or [1979, c. 733, §18 (NEW).]
- C. Three or more persons. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2. Contents of petition. A petition must be sworn and include at least the following:

- A. Name, date, place of birth and municipal residence, if known, of each child; [1979, c. 733, §18 (NEW).]
- B. The name and address of the petitioner and the nature of the petitioner's relationship to the child; [2001, c. 696, §24 (AMD).]
- C. Name and municipal residence, if known, of each parent and custodian; [1979, c. 733, §18 (NEW).]
- D. A summary statement of the facts that the petitioner believes constitute the basis for the petition; [2001, c. 696, §24 (AMD).]
- E. An allegation that is sufficient for court action; [2001, c. 696, §24 (AMD).]
- F. A request for specific court action; [1979, c. 733, §18 (NEW).]
- G. A statement that the parents and custodians are entitled to legal counsel in the proceedings and that, if they want an attorney but are unable to afford one, they should contact the court as soon as possible to request appointed counsel; [2001, c. 696, §24 (AMD).]
- H. A statement that petition proceedings could lead to the termination of parental rights under section 4051 et seq.; [2001, c. 696, §24 (AMD).]
- I. A statement explaining the specific reasonable efforts made to prevent the need to remove the child from the home or to resolve jeopardy; [2001, c. 696, §24 (NEW).]
- J. The names of relatives who may be able to provide care for the child; and [2001, c. 696, §24 (NEW).]
- K. The names of relatives who are members of an Indian tribe. [2001, c. 696, §24 (NEW).]

[2001, c. 696, §24 (AMD) .]

3. Hearing date. On the filing of a petition, the court shall set the earliest practicable time and date for a hearing.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 2001, c. 696, §24 (AMD).

22 §4033. SERVICE AND NOTICE

1. Petition service. A child protection petition shall be served as follows:

A. The petition and a notice of hearing shall be served on the parents and custodians, the guardian ad litem for the child and any other party at least 10 days prior to the hearing date. A party may waive this time requirement if the waiver is written and voluntarily and knowingly executed in court before a judge. Service shall be made in accordance with the District Court Civil Rules. [1979, c. 733, §18 (NEW).]

B. If the department is not the petitioner, the petitioner shall serve a copy of the petition and notice of hearing on the State. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

2. Notice of preliminary protection order. If there is to be a request for a preliminary protection order, the petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request that order and of the time and place at which he will make the request. This notice is not required if the petitioner includes in the petition a sworn statement of his belief that:

A. The child would suffer serious harm during the time needed to notify the parents or custodians; or [1979, c. 733, §18 (NEW).]

B. Prior notice to the parents or custodians would increase the risk of serious harm to the child or petitioner. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

3. Service of preliminary protection order. If the court makes a preliminary protection order, a copy of the order shall be served on the parents and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is made; [1979, c. 733, §18 (NEW).]

B. Service in accordance with the Maine Rules of Civil Procedure. Notwithstanding the Maine Rules of Civil Procedure, the court may waive service by publication of a preliminary protection order for a party whose whereabouts are unknown if the department shows by affidavit that diligent efforts have been made to locate the party; or [1989, c. 819, §5 (AMD).]

C. Another manner ordered by the court. [1979, c. 733, §18 (NEW).]

[1989, c. 819, §5 (AMD) .]

3-A. Information provided to parents. When the court makes a preliminary protection order on a child who is physically removed from his parents or custodians, the following information shall be provided to the parents or custodians in written form by the petitioner at the time of removal of the child:

A. The assigned caseworker's name and work telephone number; [1987, c. 395, Pt. A, §90 (NEW).]

B. The location where the child will be taken; and [1987, c. 395, Pt. A, §90 (NEW).]

C. A copy of the complete preliminary protection order. [1987, c. 395, Pt. A, §90 (NEW).]

This information is not required if the petitioner includes in the petition a sworn statement of his belief that providing the information would cause the threat of serious harm to the child, the substitute care giver, the petitioner or any other person.

[1987, c. 395, Pt. A, §90 (NEW) .]

4. Service of final protection order. The court shall deliver in-hand at the court, or send by ordinary mail promptly after it is entered, a copy of the final protection order to the parent's or custodian's counsel or, if no counsel, to the parents or custodians. The copy of the order shall include a notice to them of their rights under section 4038. Lack of compliance with this subsection does not affect the validity of the order.

[1979, c. 733, §18 (NEW) .]

5. Notice to foster parents, preadoptive parents and relatives providing care. The department shall provide written notice of all proceedings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and a right to be heard in any proceeding held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the proceeding or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the proceeding.

[2007, c. 255, §5 (AMD) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1987, c. 395, §A90 (AMD). 1989, c. 819, §5 (AMD). 1997, c. 715, Pt. B, §6 (NEW). 1997, c. 715, §B6 (AMD). 2007, c. 255, §5 (AMD).

22 §4034. REQUEST FOR A PRELIMINARY PROTECTION ORDER

1. Request. A petitioner may add to a child protection petition a request for a preliminary protection order or may request a preliminary protection order separately from the child protection petition. A request for a preliminary protection order must include a sworn summary of facts to support the request.

[2001, c. 696, §25 (AMD) .]

2. Order. If the court finds by a preponderance of the evidence presented in the sworn summary or otherwise that there is an immediate risk of serious harm to the child, it may order any disposition under section 4036. A preliminary protection order automatically expires at the time of the issuing of a final protection order under section 4035 or a judicial review order under section 4038.

[2001, c. 696, §25 (AMD) .]

3. Custodial consent. If the custodian consents in writing and the consent is voluntarily and knowingly executed in court before a judge, or the custodian does not appear after proper notice has been given, then the hearing on the preliminary protection order need not be held, except as provided in subsection 4.

[1983, c. 184, §3 (AMD) .]

4. Summary preliminary hearing. If the custodial parent appears and does not consent, or if a noncustodial parent requests a hearing, then the court shall hold a summary preliminary hearing on that order within 14 days but not less than 7 days of its issuance or request. If a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian may request a subsequent preliminary hearing within 10 days after receipt of the petition. The petitioner bears the burden of proof. At a summary preliminary hearing, the court may limit testimony to the testimony of the caseworker, parent, custodian, guardian ad litem, foster parent, preadoptive parent or relative providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence. If

after the hearing the court finds by a preponderance of the evidence that returning the child to the child's custodian would place the child in immediate risk of serious harm, it shall continue the order or make another disposition under section 4036. If the court's preliminary order includes a finding of an aggravating factor, the court may order the department not to commence reunification or to cease reunification, in which case the court shall conduct a hearing on jeopardy and conduct a permanency planning hearing. The hearings must commence within 30 days of entry of the preliminary order.

[2001, c. 696, §26 (AMD) .]

5. Contents of order. The preliminary protection order must include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G and, if the order was made without consent, notice of the date and time of the summary preliminary hearing. The order must include a notice to the parent or custodian that if a parent or custodian is not served with the petition before the summary preliminary hearing, the parent or custodian is entitled to request a subsequent preliminary hearing within 10 days after receipt of the petition. The order must include a notice that visitation must be scheduled within 7 days of the issuance of the order unless there is a compelling reason not to schedule visitation.

[2001, c. 696, §27 (AMD) .]

6. Visitation. When the court issues a preliminary protection order, the court shall order the department to schedule visitation with the child's parents and siblings within 7 days of the issuance of the order, unless there is a compelling reason not to schedule such visitation.

[2001, c. 696, §28 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 184, §§3,4 (AMD). 1997, c. 715, §§A4,5 (AMD). 2001, c. 696, §§25-28 (AMD).

22 §4034-A. EVIDENCE AND FINDINGS INADMISSIBLE

1. Evidence. The exception under section 4034, subsection 4 for the admission of evidence that would otherwise be inadmissible hearsay applies to only the preliminary protection hearing under section 4034, subsection 4. Evidence admitted under that exception is not admissible in any other proceeding unless the evidence is admitted pursuant to the laws and rules of evidence applicable to that other proceeding.

[2001, c. 696, §29 (NEW) .]

2. Findings. A finding made at the conclusion of a preliminary protection hearing based on evidence that would otherwise be inadmissible hearsay admitted under section 4034, subsection 4 is not admissible in any other proceeding.

[2001, c. 696, §29 (NEW) .]

SECTION HISTORY

2001, c. 696, §29 (NEW).

22 §4035. HEARING ON JEOPARDY ORDER PETITION

1. Hearing required. The court shall hold a hearing prior to making a jeopardy order.

[1997, c. 715, Pt. A, §7 (AMD) .]

2. Adjudication. After hearing evidence, the court shall make a finding, by a preponderance of the evidence, as to whether the child is in circumstances of jeopardy to the child's health or welfare.

A. The court shall make a fresh determination of the question of jeopardy and may not give preclusive effect to the findings of fact made at the conclusion of the hearing under section 4034, subsection 4.

[2001, c. 696, §30 (NEW) .]

B. The court shall make findings of fact on the record upon which the jeopardy determination is made.

[2001, c. 696, §30 (NEW) .]

C. The court shall make a jeopardy determination with regard to each parent who has been properly served. [2001, c. 696, §30 (NEW) .]

[2001, c. 696, §30 (AMD) .]

2-A. Conviction or adjudication for certain sex offenses; presumption. There is a rebuttable presumption:

A. That the person seeking custody or contact with the child would create a situation of jeopardy for the child if any contact were to be permitted and that contact is not in the best interest of the child if the court finds that the person:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C, or an offense in another jurisdiction that involves conduct that is substantially similar to that contained in Title 17-A, section 253, subsection 1, paragraph B or C, and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The person seeking custody or contact with the child may produce evidence to rebut the presumption; and [2007, c. 513, §6 (AMD) .]

B. That the parent or person responsible for the child would create a situation of jeopardy for the child if the parent or person allows, encourages or fails to prevent contact between the child and a person who:

(1) Has been convicted of an offense listed in Title 19-A, section 1653, subsection 6-A, paragraph A in which the victim was a minor at the time of the offense and the person was at least 5 years older than the minor at the time of the offense except that, if the offense was gross sexual assault under Title 17-A, section 253, subsection 1, paragraph B or C and the minor victim submitted as a result of compulsion, the presumption applies regardless of the ages of the person and the minor victim at the time of the offense; or

(2) Has been adjudicated in an action under Title 22, chapter 1071 of sexually abusing a person who was a minor at the time of the abuse.

The parent or person responsible for the child may produce evidence to rebut the presumption. [2005, c. 366, §7 (NEW) .]

[2007, c. 513, §6 (AMD) .]

3. Grounds for disposition. If the court determines that the child is in circumstances of jeopardy to the child's health or welfare, the court shall hear any relevant evidence regarding proposed dispositions, including written or oral reports, recommendations or case plans. The court shall then make a written order of any disposition under section 4036. If, after reasonable effort, the department has been unable to serve a parent by the time of the hearing under subsection 1, the court may order any disposition under section 4036 until such time as the parent is served and a jeopardy determination is made with regard to that parent. If possible,

this dispositional phase must be conducted immediately after the adjudicatory phase. Written materials to be offered as evidence must be made available to each party's counsel and the guardian ad litem reasonably in advance of the dispositional phase.

[2001, c. 696, §31 (AMD) .]

4. Final protection order.

[1997, c. 715, Pt. A, §8 (RP) .]

4-A. Jeopardy order. The court shall issue a jeopardy order within 120 days of the filing of the child protection petition.

This time period does not apply if good cause is shown. Good cause does not include a scheduling problem.

[1997, c. 715, Pt. A, §9 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 184, §5 (AMD). 1991, c. 176, §2 (AMD). 1995, c. 481, §2 (AMD). 1997, c. 475, §1 (AMD). 1997, c. 715, §§A6-9 (AMD). 2001, c. 696, §§30,31 (AMD). 2005, c. 366, §7 (AMD). 2007, c. 513, §6 (AMD).

22 §4036. DISPOSITION AND PRINCIPLES

1. Disposition. In a protection order, the court may order one or more of the following:

A. No change in custody; [1979, c. 733, §18 (NEW).]

B. Departmental supervision of the child and family in the child's home; [1979, c. 733, §18 (NEW).]

C. That the child, the custodians, the parents and other appropriate family members accept treatment or services to ameliorate the circumstances related to the jeopardy; [1979, c. 733, §18 (NEW).]

D. Necessary emergency medical treatment for the child when the custodians are unwilling or unable to consent; [1979, c. 733, §18 (NEW).]

E. Emancipation of the child, if the requirements of Title 15, section 3506-A are met; [1983, c. 480, Pt. B, §27 (AMD).]

F. Removal of the child from his custodian and granting custody to a noncustodial parent, other person or the department; [1979, c. 733, §18 (NEW).]

F-1. Removal of the perpetrator from the child's home, prohibiting direct or indirect contact with the child by the perpetrator and prohibiting other specific acts by the perpetrator which the court finds may threaten the child; [1985, c. 164, (NEW).]

F-2. Visitation between the child and a sibling pursuant to section 4068; [2005, c. 526, §1 (NEW).]

G. Payment by the parents of a reasonable amount of support for the child as determined or modified according to Title 19-A, chapter 63; [1995, c. 694, Pt. D, §42 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

G-1. [1997, c. 715, Pt. A, §10 (RP).]

G-2. If the court's jeopardy order includes a finding of an aggravating factor, the court may order the department to cease reunification, in which case a permanency planning hearing must commence within 30 days of the order to cease reunification. [1997, c. 715, Pt. A, §11 (NEW).]

H. Other specific conditions governing custody; or [1995, c. 405, §22 (AMD).]

I. The court may not order and the State may not pay for the defendant to attend a batterers' intervention program unless the program is certified under Title 19-A, section 4014. [1995, c. 694, Pt. D, §43 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

[2005, c. 526, §1 (AMD) .]

1-A. Parental rights and responsibilities orders. Upon request of a parent, the court may enter an order pursuant to Title 19-A, section 1653 if the court determines that the order will protect the child from jeopardy and is in the child's best interest as defined in Title 19-A, section 1653, subsection 3. If the court enters an order pursuant to this subsection:

A. The order has the same force and effect as other orders entered pursuant to Title 19-A, section 1653; [2007, c. 256, §1 (NEW).]

B. The order is subject to modification or termination in the same manner as other orders entered pursuant to Title 19-A, section 1653; [2007, c. 256, §1 (NEW).]

C. Any person who requests a modification or termination of the order must serve the department with the motion or petition; [2007, c. 256, §1 (NEW).]

D. The department is not a party to proceedings to modify or terminate the order unless otherwise ordered by the court. This paragraph may not be construed to limit the department's ability to request a judicial review pursuant to section 4038, subsection 2; [2007, c. 256, §1 (NEW).]

E. Notwithstanding section 4038, the court may order that further judicial reviews may not be held unless requested by a party and, notwithstanding section 4038-B, may order that further permanency planning hearings may not be held; and [2007, c. 256, §1 (NEW).]

F. The court may terminate the appointments of the guardian ad litem and attorneys for parents and guardians, in which case the attorneys and guardian ad litem have no further responsibilities to their clients or the court. [2007, c. 256, §1 (NEW).]

[2007, c. 256, §1 (NEW) .]

2. Principles. In determining the disposition, the court shall apply the following principles in this priority:

A. Protect the child from jeopardy to his health or welfare; [1979, c. 733, §18 (NEW).]

B. Give custody to a parent if appropriate conditions can be applied; [1979, c. 733, §18 (NEW).]

C. Make disposition in the best interests of the child; and [1979, c. 733, §18 (NEW).]

D. Terminate department custody at the earliest possible time. [1979, c. 733, §18 (NEW).]

[1979, c. 733, §18 (NEW) .]

3. Time of order. The order may be for a specified period, with a review at the end of that period, or it may be for an indeterminate period, not beyond age 18.

[1979, c. 733, §18 (NEW) .]

4. Disposition of child in custody of department. The court may not order that a child who has been ordered into the custody of the department be placed with a parent. Nothing in this subsection prevents the department from placing a child in its custody in the home of a parent for a trial period.

[1985, c. 739, §10 (NEW) .]

5. Notice of criminal penalties. If an order is issued under this section that contains a provision subject to criminal penalties under section 4036-A, the order must indicate in a clear and conspicuous manner the potential consequences of violating the order.

[1993, c. 443, §1 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 480, §B27 (AMD). 1985, c. 164, (AMD). 1985, c. 739, §§8-10 (AMD). 1989, c. 834, §B15 (AMD). 1993, c. 443, §1 (AMD). 1995, c. 405, §§21-23 (AMD). 1995, c. 694, §§D42,43 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 715, §§A10,11 (AMD). 2005, c. 526, §1 (AMD). 2007, c. 256, §1 (AMD).

22 §4036-A. CRIMINAL PENALTY

1. Definition. For purposes of this section, "order" means an order entered in a case filed pursuant to this chapter.

[1993, c. 443, §2 (NEW) .]

2. Crime committed. When disposition under section 4036 includes a provision that a party named in a petition not have contact with a child or children named in the petition or a provision that a party named in the petition not enter the residence of a child or children named in the petition, and the party has prior actual notice of the order containing those provisions, violation of that provision is a Class D crime. The criminal sanctions in this subsection are in addition to and not in lieu of contempt powers of the court.

[1993, c. 443, §2 (NEW) .]

3. Warrantless arrest. Notwithstanding any statutory provision to the contrary, an arrest for criminal violation of an order may be without warrant upon probable cause whether or not the violation is committed in the presence of the law enforcement officer. The law enforcement officer may verify, if necessary, the existence of an order by telephone or radio communication with an agency with knowledge of the order.

[1993, c. 443, §2 (NEW) .]

SECTION HISTORY

1993, c. 443, §2 (NEW).

22 §4036-B. REMOVAL OF CHILD FROM HOME

1. Application. The provisions of this section apply in any case in which the court orders, or has ordered, the removal of a child from home.

[2003, c. 408, §1 (NEW) .]

2. Welfare of child. Before a court may order removal of a child from home, the court must specifically find that remaining in the home is contrary to the welfare of the child.

[2003, c. 408, §1 (NEW) .]

3. Reasonable efforts to prevent removal. The department shall make reasonable efforts to prevent removal of the child from home, unless the court finds the presence of an aggravating factor. In an order providing for removal of the child from home, or within 60 days of the date of removal of the child from home, the court shall make a finding:

A. Whether or not the department has made reasonable efforts to prevent the removal of the child from home; and [2003, c. 408, §1 (NEW).]

B. If the court finds that the department did not make reasonable efforts to prevent the removal of the child from home, whether or not there is an aggravating factor. [2003, c. 408, §1 (NEW).]

[2003, c. 408, §1 (NEW) .]

4. Reasonable efforts to reunify. The department shall make reasonable efforts to rehabilitate and reunify the family as provided in section 4041, subsection 1-A unless the court has ordered that the department need not commence or may cease reunification pursuant to section 4041, subsection 2. In the jeopardy order pursuant to section 4035 and in each judicial review order pursuant to section 4038, the court shall make a finding whether or not the department has made reasonable efforts to rehabilitate and reunify the family.

[2003, c. 408, §1 (NEW) .]

5. Reasonable efforts to finalize permanency plan. The department shall make reasonable efforts to finalize the permanency plan. In each order determining a permanency plan pursuant to section 4038-B, the court shall make a finding whether or not the department has made reasonable efforts to finalize the permanency plan.

[2005, c. 372, §3 (AMD) .]

6. Requirements for findings. A court order making any finding required by this section must:

A. Be in writing; [2003, c. 408, §1 (NEW).]

B. State that the finding was based on the specific facts and circumstances relating to the child; and [2003, c. 408, §1 (NEW).]

C. Explicitly document the basis for the finding. [2003, c. 408, §1 (NEW).]

[2003, c. 408, §1 (NEW) .]

SECTION HISTORY

2003, c. 408, §1 (NEW). 2005, c. 372, §3 (AMD).

22 §4037. AUTHORITY OF CUSTODIAN

When custody of the child is ordered to the department or other custodian under a preliminary or final protection order, the custodian has full custody of the child subject to the terms of the order and other applicable law. Custody does not include the right to initiate adoption proceedings without parental consent, except as provided under Title 18-A, section 9-302. [1995, c. 694, Pt. D, §44 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §11 (AMD). 1993, c. 686, §10 (AMD). 1993, c. 686, §13 (AFF). 1995, c. 694, §D44 (AMD). 1995, c. 694, §E2 (AFF).

22 §4038. MANDATED REVIEW; REVIEW ON MOTION

1. Mandated review. If a court has made a jeopardy order, it shall review the case at least once every 6 months, unless the child has been emancipated or adopted.

[1997, c. 715, Pt. B, §7 (AMD) .]

1-A. No mandated review. Notwithstanding subsection 1, no subsequent judicial review is required unless petitioned for by any party or unless specifically ordered by the court:

- A. When custody has been granted to a person other than a parent or the department; [2007, c. 284, §6 (AMD) .]
- B. When custody has been granted to a parent who did not have custody at the time the child protection petition was filed; or [2007, c. 284, §6 (AMD) .]
- E. When a permanency guardianship has been established pursuant to section 4038-C. [2007, c. 284, §6 (NEW) .]

[2007, c. 284, §6 (AMD) .]

2. Review on motion. The court, the child's parent, custodian or guardian ad litem or a party to the proceeding, except a parent whose rights have been terminated under subchapter VI, may move for judicial review. The moving party shall have the burden of going forward.

[1985, c. 739, §12 (AMD) .]

3. Notice of review. Notice of the reviews must be given to all parties to the initial proceeding according to District Court Civil Rule 4. Notice may not be given to a parent whose rights have been terminated under subchapter VI. The department shall provide written notice of all reviews and hearings in advance of the proceeding to the foster parent, preadoptive parent and relative providing care. The notice must be dated and signed, must include a statement that the foster parent, preadoptive parent and relative providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing.

[1997, c. 715, Pt. B, §8 (AMD) .]

3-A. Prehearing conference. The court may convene a prehearing conference to clarify the disputed issues and review the possibility of settlement.

[2001, c. 559, Pt. CC, §2 (NEW) .]

4. Disposition.

[1985, c. 739, §13 (RP) .]

5. Hearing. The court shall hear evidence and shall consider the original reason for the adjudication and disposition under sections 4035 and 4036, the events that have occurred since then and the efforts of the parties as set forth under section 4041. After hearing or by agreement, the court shall make written findings that determine:

- A. The safety of the child in the child's placement; [2003, c. 408, §6 (NEW) .]
- B. The continuing necessity for and appropriateness of the child's placement; [2003, c. 408, §6 (NEW) .]
- C. The effect of a change in custody on the child; [2003, c. 408, §6 (NEW) .]

D. The extent of the parties' compliance with the case plan and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care; [2003, c. 408, §6 (NEW).]

E. A likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship; and [2003, c. 408, §6 (NEW).]

F. If the child is 16 years of age or older, whether or not the child is receiving instruction to aid the child in independent living. [2003, c. 408, §6 (NEW).]

[2003, c. 408, §6 (AMD).]

6. Disposition. The court may make any further order, based on a preponderance of evidence, that is authorized under section 4036.

A. [1989, c. 270, §13 (RP).]

B. [1989, c. 270, §13 (RP).]

C. [1989, c. 270, §13 (RP).]

[1989, c. 270, §13 (AMD).]

7. Review of child in custody of the department.

[1997, c. 715, Pt. B, §9 (RP).]

7-A. Permanency planning hearing.

[2005, c. 372, §4 (RP).]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §12 (AMD). 1983, c. 185, (RPR). 1985, c. 739, §§11-14 (AMD). 1987, c. 269, §§1,2 (AMD). 1989, c. 270, §§13,14 (AMD). 1991, c. 176, §3 (AMD). 1993, c. 198, §1 (AMD). 1997, c. 475, §§2-6 (AMD). 1997, c. 715, §§B7-10 (AMD). 2001, c. 559, §§CC2,3 (AMD). 2001, c. 696, §32 (AMD). 2003, c. 408, §§2-6 (AMD). 2005, c. 372, §4 (AMD). 2007, c. 284, §6 (AMD).

22 §4038-A. TRANSFER TO DISTRICT COURT

If a case is transferred to the District Court pursuant to Title 18-A, section 9-205, the court shall conduct a hearing and enter a dispositional order using the same standards as set forth in section 4036. The court after the hearing and entering of a dispositional order shall conduct reviews in accordance with section 4038 and permanency planning hearings in accordance with section 4038-B. [2005, c. 372, §5 (AMD).]

SECTION HISTORY

1993, c. 686, §11 (NEW). 1993, c. 686, §13 (AFF). 1995, c. 694, §D45 (AMD). 1995, c. 694, §E2 (AFF). 2005, c. 372, §5 (AMD).

22 §4038-B. PERMANENCY PLANS

1. Mandated permanency planning hearing. Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing and shall determine a permanency plan within the earlier of:

A. Thirty days after a court order to cease reunification; and [2005, c. 372, §6 (NEW).]

B. Twelve months after the time a child is considered to have entered foster care. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after removal of the child from home, whichever occurs first. [2005, c. 372, §6 (NEW).]

[2005, c. 372, §6 (NEW) .]

2. Subsequent permanency planning hearings. Unless subsequent judicial reviews are not required pursuant to section 4038, subsection 1-A, the District Court shall conduct a permanency planning hearing within 12 months of the date of any prior permanency planning order.

[2005, c. 372, §6 (NEW) .]

3. Permanency planning orders. After each permanency planning hearing, the District Court shall adopt a permanency plan for a child that complies with subsection 4. The court shall enter the order within the time limitations contained in subsection 1 or 2, whichever is applicable to the permanency planning hearing.

[2005, c. 372, §6 (NEW) .]

4. Contents of permanency plan. A permanency plan for a child under this section must contain determinations on the following issues.

A. The permanency plan must determine whether and when, if applicable, the child will be:

- (1) Returned to a parent. Before the court may enter an order returning the custody of the child to a parent, the parent must show that the parent has carried out the responsibilities set forth in section 4041, subsection 1-A, paragraph B; that to the court's satisfaction the parent has rectified and resolved the problems that caused the removal of the child from home and any subsequent problems that would interfere with the parent's ability to care for the child and protect the child from jeopardy; and that the parent can protect the child from jeopardy;
- (2) Placed for adoption, in which case the department shall file a petition for termination of parental rights;
- (3) Cared for by a permanency guardian, as provided in section 4038-C, or a guardian appointed by the Probate Court pursuant to Title 18-A, sections 5-206 and 5-207;
- (4) Placed with a fit and willing relative; or
- (5) Placed in another planned permanent living arrangement. The District Court may adopt another planned permanent living arrangement as the permanency plan for the child only after the department has documented to the court a compelling reason for determining that it would not be in the best interests of the child to be returned home, be referred for termination of parental rights or be placed for adoption, be cared for by a permanency guardian or be placed with a fit and willing relative. [2005, c. 372, §6 (NEW).]

B. In the case of a child placed outside the state in which the parents of the child live, the permanency plan must determine whether the out-of-state placement continues to be appropriate and in the best interests of the child. [2005, c. 372, §6 (NEW).]

C. In the case of a child who is 16 years of age or older, the permanency plan must determine the services needed to assist the child to make the transition from foster care to independent living. [2005, c. 372, §6 (NEW).]

[2005, c. 372, §6 (NEW) .]

5. Wishes of child. The District Court shall consider, but is not bound by, the wishes of a child in making a determination under this section.

[2005, c. 372, §6 (NEW) .]

SECTION HISTORY

2005, c. 372, §6 (NEW).

22 §4038-C. PERMANENCY GUARDIAN

As part of the permanency plan, the District Court may appoint a person or persons as guardian of a minor, to be known as a permanency guardian. "Permanency guardian," when used in this section and in section 4038-D and Title 20-A, section 12572, means the person or persons appointed as the permanency guardian. [2005, c. 471, §3 (AMD).]

1. Criteria. The District Court may appoint a person to be a permanency guardian only if the court finds that the prospective permanency guardian:

A. Has the ability to provide a safe home for the child; [2005, c. 372, §6 (NEW) .]

B. Has a close emotional bond with the child and that the child has a close emotional bond with the prospective permanency guardian; [2005, c. 372, §6 (NEW) .]

C. Is willing and able to make an informed, long-term commitment to the child; and [2005, c. 372, §6 (NEW) .]

D. Has the skills to care for the child and to obtain needed information about and assistance with any special needs of the child. [2005, c. 372, §6 (NEW) .]

[2005, c. 372, §6 (NEW) .]

2. Powers and duties of permanency guardian. A permanency guardian has all of the powers and duties of a guardian of a minor pursuant to Title 18-A, section 5-209.

[2005, c. 372, §6 (NEW) .]

3. Parental and relative contact. A parent, grandparent or sibling of a child subject to a permanency guardianship or to a proceeding to establish a permanency guardianship may petition the court to determine rights of contact as provided in subsection 6. If the District Court determines that it is in the best interest of the child, it may order that the parent, grandparent or sibling of the child has a reasonable right of contact with the child and may specify the type, frequency, duration and conditions of that contact.

[2005, c. 372, §6 (NEW) .]

4. Child support. The parents shall pay the permanency guardian child support. Title 19-A, section 1652 and Title 19-A, chapter 63 govern the award of child support to the permanency guardian. The child support obligation may be enforced pursuant to Title 19-A, chapter 65 or 67.

If there is an existing child support order or obligation regarding the child, and if the District Court fails to make a child support order at the time of appointing a permanency guardian, the permanency guardian becomes the obligee under the existing support order or obligation. A copy of the order appointing the permanency guardian is sufficient proof of the permanency guardian's status as obligee.

[2005, c. 372, §6 (NEW) .]

5. Jurisdiction over permanency guardian. The District Court has exclusive jurisdiction to appoint or remove a permanency guardian and to establish any rights of contact between a child and a parent, grandparent or sibling.

[2005, c. 372, §6 (NEW) .]

6. Proceedings to terminate permanency guardianship or to determine rights of contact.

Proceedings to terminate permanency guardianship or to determine rights of contact are governed by the following.

A. Any party to the child protective proceeding may petition to terminate a permanency guardianship and any parent, grandparent or sibling of the child may petition the court to establish rights of contact with the child, except that a person having once petitioned unsuccessfully to terminate a permanency guardianship or to establish rights of contact may not bring a new petition to terminate the permanency guardianship or to establish rights of contact within 12 months after the end of the previous proceeding, and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare. [2005, c. 372, §6 (NEW).]

B. Notice of a petition under paragraph A must be given in the manner provided for by Rule 4 of the Maine Rules of Civil Procedure to all parties to the child protective case and to the permanency guardian. [2005, c. 372, §6 (NEW).]

C. The permanency guardianship may be terminated only if the petitioner proves by a preponderance of the evidence that the termination is in the best interest of the child. [2005, c. 372, §6 (NEW) .]

[2005, c. 372, §6 (NEW) .]

7. Effect on inheritance rights and public benefits. The appointment of a permanency guardian does not affect the inheritance rights between a child and the child's parent or parents.

The appointment of a permanency guardian may not affect the child's entitlement to benefits due that child from any 3rd person, agency or state or the United States. Except as required by federal law or regulation, the permanency guardian's resources and income are not counted in determining eligibility for any public benefit to which the child may be entitled.

The permanency guardianship does not affect the rights and benefits that a Native American derives from descent from a member of a federally recognized Indian tribe.

[2005, c. 521, §1 (AMD) .]

8. Resignation, death or incapacity of permanency guardian. Resignation of a permanency guardian does not terminate the guardianship until it has been approved by the court. If a permanency guardian resigns, dies or becomes incapacitated, the District Court shall hold a judicial review and a permanency planning hearing at the earliest practicable time.

[2005, c. 372, §6 (NEW) .]

9. Preference. The District Court shall give preference for placement and permanency guardianship to a person nominated by a deceased permanency guardian in a valid will or by an incapacitated permanency guardian in a valid power of attorney, unless the District Court finds that the placement or permanency guardianship is not in the child's best interest.

[2005, c. 372, §6 (NEW) .]

10. Limitation. The District Court does not have authority to provide a guardianship subsidy for permanency guardianship under section 4038-D.

[2005, c. 683, Pt. A, §36 (AMD) .]

11. Application to pending cases. The District Court may appoint a permanency guardian in a proceeding pending on September 17, 2005 or in a proceeding commenced on or after September 17, 2005.

[2005, c. 521, §2 (NEW) .]

12. Appointments terminate; later appointments. Unless the District Court has scheduled a judicial review or orders otherwise, the court's appointments of the guardian ad litem and attorneys for parents and guardians terminate, and the attorneys and guardian ad litem have no further responsibilities to their clients or the court upon appointment of a permanency guardian pursuant to this section. If a party files a motion for judicial review when no judicial review is required pursuant to section 4038, subsection 1-A, or if a party files a petition pursuant to subsection 6 to terminate a permanency guardianship or determine rights of contact, the court shall appoint a guardian ad litem and attorneys for indigent parents and custodians, including permanency guardians, as required by section 4005.

[2007, c. 284, §7 (NEW) .]

SECTION HISTORY

2005, c. 372, §6 (NEW). 2005, c. 471, §3 (AMD). 2005, c. 521, §§1,2 (AMD). 2005, c. 683, §A36 (AMD). 2007, c. 284, §7 (AMD).

22 §4038-D. GUARDIANSHIP SUBSIDY

1. Establishment of program; use of federal funds. There is established in the department the Guardianship Subsidy Program, referred to in this section as "the program." For the purposes of this section, the department is authorized to use funds that are appropriated for child welfare services and funds provided under the United States Social Security Act, Titles IV-B and IV-E, or under any waiver that the department receives pursuant to those Titles.

[2005, c. 372, §6 (NEW) .]

2. Eligibility for guardianship subsidy payments. Subject to rules adopted to implement this section, the department may provide subsidies for a special needs child who is placed in a permanency guardianship or in a similar status by a Native American tribe, when reasonable but unsuccessful efforts have been made to place the child without guardianship subsidies and if the child would not be placed in a permanency guardianship without the assistance of the program.

[2005, c. 372, §6 (NEW) .]

3. Definition of "special needs child." For purposes of this section, "special needs child" means a child who:

A. Has a physical, mental or emotional handicap that makes placement difficult; [2005, c. 372, §6 (NEW) .]

B. Has a medical condition that makes placement difficult; [2005, c. 372, §6 (NEW) .]

C. Is a member of a sibling group that includes at least one member who is difficult to place; [2005, c. 372, §6 (NEW) .]

D. Is difficult to place because of age or race; [2005, c. 372, §6 (NEW) .]

E. Has been a victim of physical, emotional or sexual abuse or neglect that places the child at risk for future emotional difficulties; or [2005, c. 372, §6 (NEW) .]

F. Has in the family background factors such as severe mental illness, substance abuse, genetic or medical conditions or illnesses that place the child at risk for future problems. [2005, c. 372, §6 (NEW) .]

[2005, c. 372, §6 (NEW) .]

4. Amount of guardianship subsidy. The amount of a guardianship subsidy is determined according to this subsection.

A. The amount may vary depending upon the resources of the permanency guardian, the special needs of the child and the availability of other resources. [2005, c. 372, §6 (NEW) .]

B. The amount may not exceed the total cost of caring for the child if the child were to remain in the care or custody of the department, without regard to the source of the funds. [2005, c. 372, §6 (NEW) .]

C. Except as provided in paragraph D, assistance may be provided only for special needs. [2005, c. 372, §6 (NEW) .]

D. Subject to rules adopted by the department, the amount may include up to \$400 for reimbursement for legal expenses, including attorney's fees, incurred by the permanency guardian to complete the permanency guardianship in Indian tribal court cases. [2005, c. 372, §6 (NEW) .]

[2005, c. 372, §6 (NEW) .]

5. Duration of guardianship subsidy. A guardianship subsidy may be provided for a period of time based on the special needs of a child. The subsidy may continue until the termination of the permanency guardianship or until the permanency guardian is no longer caring for the child, at which time the guardianship subsidy ceases. If the child has need of educational benefits or has a physical, mental or emotional handicap, the guardianship subsidy may continue until the child has attained 21 years of age if the child, the parents and the department agree that the need for care and support exists.

[2005, c. 372, §6 (NEW) .]

6. Administration of program. Applications for the program may be submitted by a prospective permanency guardian. A written agreement between the permanency guardian entering into the program and the department must precede the order creating the permanency guardianship, except that an application may be filed subsequent to the creation of the permanency guardianship if there were facts relevant to the child's eligibility that were not presented at the time of placement or if the child was eligible for participation in the program at the time of placement and the permanency guardian was not apprised of the program.

[2005, c. 372, §6 (NEW) .]

7. Annual review required. If the subsidy continues for more than one year, the need for the subsidy must be reviewed annually. The subsidy continues regardless of the state in which the permanency guardian resides, or the state to which the permanency guardian moves, if the permanency guardian continues to be responsible for the child.

[2005, c. 372, §6 (NEW) .]

8. Death of permanency guardian. Upon the death of all persons serving as permanency guardian, the subsidy may be transferred to a new legal guardian as long as the child continues to be eligible for the guardianship subsidy pursuant to the terms of the most recent agreement with the permanency guardian. The department shall enter into a new agreement with the new legal guardian.

[2005, c. 372, §6 (NEW) .]

9. Adoption of rules. The department shall adopt rules for the program consistent with this section. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2005, c. 372, §6 (NEW) .]

10. Permanency guardian's eligibility for public benefits. Except as required by federal law or regulation, the guardianship subsidy may not be counted as resources or income in the determination of the permanency guardian's eligibility for any public benefit.

[2005, c. 521, §3 (AMD) .]

11. Application to pending cases. The department may provide a guardianship subsidy pursuant to this section to a child who is the subject of a child protection proceeding pending on September 17, 2005 or to a child who is the subject of a child protection proceeding commenced on or after September 17, 2005.

[2005, c. 521, §4 (NEW) .]

SECTION HISTORY

2005, c. 372, §6 (NEW). 2005, c. 521, §§3,4 (AMD).

22 §4039. ENFORCEMENT OF CUSTODY ORDERS

When the court has ordered a change in the custody of a child and a person not entitled to custody refuses to relinquish physical custody to the custodian, then, at the request of the department or custodian, a law enforcement officer may take any necessary and reasonable action to obtain physical custody of the child for the rightful custodian. Necessary and reasonable action may include entering public or private property with a warrant based on probable cause to believe that the child is there. [1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW).

Subchapter 5: FAMILY REUNIFICATION

22 §4041. DEPARTMENTAL RESPONSIBILITIES

1. Rehabilitation and reunification.

[2001, c. 559, Pt. CC, §4 (RP) .]

1-A. Rehabilitation and reunification. A child is considered to have entered foster care on the date of the first judicial finding that the child has been subjected to child abuse or neglect or on the 60th day after the child is removed from the home, whichever occurs first. When a child is considered to have entered foster care, the responsibility for reunification and rehabilitation of the family must be shared as follows.

A. The department shall:

- (1) Develop a rehabilitation and reunification plan as provided in this subparagraph.

(a) In developing the rehabilitation and reunification plan, the department shall make good faith efforts to seek the participation of the parent. Information that must be included in developing the plan includes the problems that present a risk of harm to the child, the services needed to address those problems, provisions to ensure the safety of the child while the parent engages in services, a means to measure the extent to which progress has been made, and visitation that protects the child's physical and emotional well-being. With this information, the department shall prepare a written rehabilitation and reunification plan.

(b) The department shall circulate the plan to the parties at least 10 days before a scheduled court hearing and shall present the plan to the court for filing at that hearing.

(c) The rehabilitation and reunification plan must include the following:

(i) The reasons for the removal of the child from home;

(ii) The changes that are necessary to eliminate jeopardy to the child while in the care of a parent;

(iii) Rehabilitation services that will be provided and must be completed satisfactorily prior to the child's returning home;

(iv) Services that must be provided or made available to assist the parent in rehabilitating and reunifying with the child, as appropriate to the child and family, including, but not limited to, reasonable transportation for the parent for visits and services, child care, housing assistance, assistance with transportation to and from required services and other services that support reunification;

(v) A schedule of and conditions for visits between the child and the parent designed to provide the parent and child time together in settings that provide as positive a parent-child interaction as can practicably be achieved while ensuring the emotional and physical well-being of the child when visits are not detrimental to the child's best interests;

(vi) Any use of kinship support, including, but not limited to, placement, supervision of visitation, in-home support or respite care;

(vii) A reasonable time schedule for proposed reunification, reasonably calculated to meet the child's needs; and

(viii) A statement of the financial responsibilities of the parent and the department during the reunification process;

(2) Provide the parent with prompt written notice of the following, unless that notice would be detrimental to the best interests of the child:

(a) The child's residence and, when practicable, at least 7 days' advance written notice of a planned change of residence; and

(b) Any serious injuries, major medical care received or hospitalization of the child;

(3) Make good faith efforts to cooperate with the parent in the pursuit of the plan;

(4) Periodically review with the parent the progress of the plan and make any appropriate changes in that plan. If the parties disagree about the proposed changes in the plan, any party may seek an informal conference with all other parties in an effort to resolve the disagreement, prior to initiating court action. If the parties are unable to agree after an informal conference, the parties may have access to the court's case management system. This subparagraph may not be construed to limit the court's authority to manage and control any cases within the court;

(5) Petition for judicial review and return of custody of the child to the parent at the earliest appropriate time; and

(6) Petition for termination of parental rights at the earliest possible time that it is determined that family reunification efforts will be discontinued pursuant to subsection 2 and that termination is in the best interests of the child. [2001, c. 559, Pt. CC, §5 (NEW).]

B. The responsibilities of the parent include, as appropriate to the child and family, that the parent:

- (1) Rectify and resolve problems that prevent the return of the child to the home;
- (2) Cooperate with the department in the development of the plan, as described in paragraph A;
- (3) Take part in a reasonable rehabilitation and reunification plan. Use of rehabilitation and other services by a parent may not be used to constitute an admission by the parent;
- (4) Maintain meaningful contact with the child pursuant to the plan. When a parent has moved from the area where the child has been placed, the parent shall make arrangements to visit the child at or near the child's placement. If a significant practical barrier to parental contact with the child arises, any party aware of the barrier shall notify the other parties and all parties shall make efforts to overcome the barrier to contact;
- (5) Seek and utilize appropriate services to assist in rehabilitating and reunifying with the child;
- (6) Pay reasonable sums toward the support of the child within the limits of the parent's ability to pay;
- (7) Maintain contact with the department, including prompt written notification to the department of any change of address; and
- (8) Make good faith efforts to cooperate with the department in developing and pursuing the plan. [2001, c. 559, Pt. CC, §5 (NEW).]

C. Unless excused for good cause shown, at any hearing held under section 4034, subsection 4 or within 10 days of the filing of the petition if a hearing under section 4034, subsection 4 is not held, the department shall present to the court for review a preliminary rehabilitation and reunification plan, a plan to avoid removal of the child from home or decision not to commence reunification.

- (1) A preliminary plan must be developed with the custodial parent and the department caseworker if the parent is willing to engage in the development of the plan.
- (2) The preliminary plan must include the following: a statement of the problems causing risk to the child identified by the department and by the parent; preliminary identification by the parent and by the department of services needed; a description of the visitation plan or explanation of why visits are not scheduled; the names, addresses and telephone numbers of any relatives or family friends known to the department and parent to be available as resources for rehabilitation and reunification; and the department's preliminary assessment of any kinship placements.
- (3) Prior to review by the court, the department shall provide a copy of the preliminary plan to counsel for the parents, or to the parents if they do not have counsel, and to the guardian ad litem.
- (4) The court may review the preliminary plan in a hearing that does not allow testimonial evidence with all parties and counsel present or may hold a summary hearing at which the court may limit testimony to the testimony of the caseworker, parent, guardian ad litem, person to whom trial placement was given, foster parents, preadoptive parents or relatives providing care and may admit evidence, including reports and records, that would otherwise be inadmissible as hearsay evidence.
- (5) The preliminary plan remains in effect until the court enters a jeopardy order under section 4035. A party may file an amended plan at any time before the jeopardy order is entered with the written agreement of all parties. [2001, c. 559, Pt. CC, §5 (NEW).]

D. The department may make reasonable efforts to place a child for adoption or with a legal guardian concurrently with reunification efforts if potential adoptive parents have expressed a willingness to support the rehabilitation and reunification plan. [2001, c. 559, Pt. CC, §5 (NEW).]

[2001, c. 559, Pt. CC, §5 (NEW).]

2. Determination of need to commence or discontinue rehabilitation and reunification efforts.

The following provisions determine when rehabilitation and reunification efforts are not necessary or may be discontinued.

A. [1997, c. 715, Pt. B, §11 (RP).]

A-1. [2001, c. 696, §33 (RP).]

A-2. The court may order that the department need not commence or may cease reunification efforts only if the court finds at least one of the following:

- (1) The existence of an aggravating factor; or
- (2) That continuation of reunification efforts is inconsistent with the permanency plan for the child.
 - (a) When 2 placements with the same parent have failed and the child is returned to the custody of the department, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child.
 - (b) If the permanency plan provides for a relative or other person to have custody of the child and the court has ordered custody of the child to that relative or other person, the court shall make a finding that continuation of reunification efforts is inconsistent with the permanency plan for the child and order the department to cease reunification unless the parent demonstrates that reunification should be continued and the court determines reunification efforts to be in the best interests of the child. [2001, c. 696, §34 (NEW).]

B. [1997, c. 715, Pt. B, §11 (RP).]

B-1. When the department discontinues efforts to return the child to a parent, it shall give written notice of this decision to that parent at the parent's last known address. This notice must include the specific reasons for the department's decision, the specific efforts the department has made in working with the parent and child and a statement of the parent's rights under section 4038. The department shall seek an order authorizing it to discontinue reunification efforts. Within 10 days of sending written notice of the decision to discontinue reunification efforts, the department shall file a motion for approval of discontinuance of reunification efforts with supporting affidavits. If the parents file a responsive pleading within 21 days, the court shall conduct a summary proceeding in accordance with the provisions of section 4034, subsection 4. If no responsive pleading is filed, the court may hold a summary hearing in accordance with the provisions of section 4034, subsection 4 or may decide the matter without a hearing. [1997, c. 715, Pt. B, §11 (NEW).]

C. If the department discontinues efforts to return the child to a parent but does not seek termination of parental rights, then subsection 1-A, paragraph A, subparagraph (1), division (c), subdivision (v) and subsection 1-A, paragraph A, subparagraph (2) still apply. [2005, c. 397, Pt. B, §5 (AMD).]

[2005, c. 397, Pt. B, §5 (AMD) .]

3. Notice to guardian ad litem. The department shall notify the guardian ad litem, as described in section 4005, of any substantial change in circumstances that may have an impact on the best interests of the child. A substantial change in circumstances includes but is not limited to any change in the child's residence.

[1991, c. 356, (AMD) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 772, §§5,6 (AMD). 1983, c. 862, §71 (AMD). 1985, c. 739, §15 (AMD). 1989, c. 759, (AMD). 1991, c. 161, (AMD). 1991, c. 356, (AMD). 1995, c. 694, §D46 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 715, §B11 (AMD). 2001, c. 559, §§CC4,5 (AMD). 2001, c. 696, §§33,34 (AMD). 2005, c. 397, §B5 (AMD).

Subchapter 6: TERMINATION OF PARENTAL RIGHTS

22 §4050. PURPOSE

Recognizing that instability and impermanency are contrary to the welfare of children, it is the intent of the Legislature that this subchapter:

1. Termination of parental rights. Allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts have been discontinued and termination is in the best interest of the child;

[1983, c. 772, §7 (NEW) .]

2. Return to family. Eliminate the need for children to wait unreasonable periods of time for their parents to correct the conditions which prevent their return to the family;

[1983, c. 772, §7 (NEW) .]

3. Adoption. Promote the adoption of children into stable families rather than allowing children to remain in the impermanency of foster care; and

[1983, c. 772, §7 (NEW) .]

4. Protect interests of child. Be liberally construed to serve and protect the best interests of the child.

[1983, c. 772, §7 (NEW) .]

SECTION HISTORY

1983, c. 772, §7 (NEW).

22 §4051. VENUE

A petition for termination of parental rights must be brought in the court that issued the final protection order. The court, for the convenience of the parties or other good cause, may transfer the petition to another district or division. A petition for termination of parental rights may also be brought in a Probate Court as part of an adoption proceeding as provided in Title 18-A, article IX, when a child protective proceeding has not been initiated. [1997, c. 2, §48 (COR) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §13 (AMD). RR 1997, c. 2, §48 (COR) .

22 §4052. TERMINATION PETITION; PETITIONERS; TIME FILED; CONTENTS

1. Petitioner. A termination petition may be brought by the custodian of the child or by the department.

[1997, c. 715, Pt. B, §12 (AMD) .]

2. Time filed.

[1997, c. 715, Pt. B, §13 (RP) .]

2-A. Department as petitioner or as party. The department shall file a termination petition or seek to be joined as a party to any pending petition:

A. When a child has been in foster care for 15 of the most recent 22 months. The department must file the petition before the end of the child's 15th month in foster care. In calculating when to file a termination petition:

- (1) The time the child has been in foster care begins when the child is considered to have entered foster care as specified in section 4038-B, subsection 1, paragraph B;
- (2) When a child experiences multiple exits from and entries into foster care during the 22-month period, all periods in foster care must be accumulated; and
- (3) The time in foster care does not include trial home visits or times during which the child is a runaway.

This paragraph does not apply if the department is required to undertake reunification efforts and the department has not provided to the family of the child such services as the court determines to be necessary for the safe return of the child to the child's home consistent with the time period in the case plan; [2005, c. 372, §7 (AMD).]

B. Within 60 days of a court order that includes a finding of an aggravating factor and an order to cease reunification; or [2003, c. 408, §7 (AMD).]

C. Within 60 days of a court finding that the child has been abandoned. [2003, c. 408, §7 (NEW).]

The department is not required to file a termination petition if the department has chosen to have the child cared for by a relative or the department has documented to the court a compelling reason for determining that filing such a petition would not be in the best interests of the child.

[2005, c. 372, §7 (AMD) .]

3. Contents of petition. A termination petition shall be sworn and shall include at least the following:

- A. The name, date and place of birth and municipal residence, if known, of the child; [1979, c. 733, §18 (NEW).]
- B. The name and address of the petitioner and the nature of his relationship to the child; [1979, c. 733, §18 (NEW).]
- C. The name and municipal residence, if known, of each of the child's parents; [1979, c. 733, §18 (NEW).]
- D. The names and address of the guardian ad litem of the child in the related child protection proceeding or adoption proceeding; [1981, c. 369, §14 (AMD).]
- E. A summary statement of the facts which the petitioner believes constitute the basis for the request for termination; [1979, c. 733, §18 (NEW).]
- F. An allegation which is sufficient for termination; [1979, c. 733, §18 (NEW).]
- G. A statement of the effects of a termination order; and [1979, c. 733, §18 (NEW).]
- H. A statement that the parents are entitled to legal counsel in the termination proceedings and that, if they want an attorney and are unable to afford one, they should contact the court as soon as possible to request appointed counsel. [1979, c. 733, §18 (NEW).]

[1981, c. 369, §14 (AMD) .]

4. Hearing date. On the filing of a petition, the court shall set a time and date for a hearing.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §14 (AMD). 1983, c. 249, §1 (AMD). 1995, c. 694, §D47 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 475, §§7,8 (AMD). 1997, c. 715, §§B12-14 (AMD). 1997, c. 475, §11 (AFF). 2003, c. 408, §7 (AMD). 2005, c. 372, §7 (AMD).

22 §4053. SERVICE AND NOTICE

The petition and the notice of hearing must be served on the parents and the guardian ad litem for the child at least 10 days prior to the hearing date. Service must be made in accordance with the District Court Civil Rules. The department shall provide written notice of all reviews and hearings in advance of the proceeding to foster parents, preadoptive parents and relatives providing care. The notice must be dated and signed, must include a statement that foster parents, preadoptive parents and relatives providing care are entitled to notice of and an opportunity to be heard in any review or hearing held with respect to the child and must contain the following language:

"The right to be heard includes only the right to testify and does not include the right to present other witnesses or evidence, to attend any other portion of the review or hearing or to have access to pleadings or records."

A copy of the notice must be filed with the court prior to the review or hearing. The department shall mail a copy of the petition to all attorneys of record when the petition is filed in court. [1997, c. 715, Pt. B, §15 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1997, c. 715, §B15 (AMD). 1997, c. 715, Pt. B, §15 (AMD).

22 §4054. HEARING ON TERMINATION PETITION

The court shall hold a hearing prior to making a termination order. [1979, c. 733, §18 (NEW).]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §4055. GROUNDS FOR TERMINATION

1. Grounds. The court may order termination of parental rights if:

A. One of the following conditions has been met:

(1) Custody has been removed from the parent under:

- (a) Section 4035 or 4038;
- (b) Title 19-A, section 1502 or 1653;
- (c) Section 3792 prior to the effective date of this chapter; or
- (d) Title 15, section 3314, subsection 1, paragraph C-1; or

(2) The petition has been filed as part of an adoption proceeding in Title 18-A, article IX; and [2001, c. 696, §35 (AMD).]

B. Either:

(1) The parent consents to the termination. Consent shall be written and voluntarily and knowingly executed in court before a judge. The judge shall explain the effects of a termination order; or

(2) The court finds, based on clear and convincing evidence, that:

- (a) Termination is in the best interest of the child; and
- (b) Either:

- (i) The parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs;
- (ii) The parent has been unwilling or unable to take responsibility for the child within a time which is reasonably calculated to meet the child's needs;
- (iii) The child has been abandoned; or
- (iv) The parent has failed to make a good faith effort to rehabilitate and reunify with the child pursuant to section 4041. [1983, c. 772, §8 (AMD).]

[2001, c. 696, §35 (AMD) .]

1-A. Rebuttable presumption. The court may presume that the parent is unwilling or unable to protect the child from jeopardy and these circumstances are unlikely to change within a time which is reasonably calculated to meet the child's needs if:

- A. The parent has acted toward a child in a manner that is heinous or abhorrent to society or has failed to protect a child in a manner that is heinous or abhorrent to society, without regard to the intent of the parent; [1995, c. 481, §3 (AMD).]
- B. The victim of any of the following crimes 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 and the parent has been convicted of:
 - (1) Murder;
 - (2) Felony murder;
 - (3) Manslaughter;
 - (4) Aiding or soliciting suicide;
 - (5) Aggravated assault;
 - (6) Rape;
 - (7) Gross sexual misconduct or gross sexual assault;
 - (8) Sexual abuse of minors;
 - (9) Incest;
 - (10) Kidnapping;
 - (11) Promotion of prostitution; or
 - (12) A comparable crime in another jurisdiction; [1995, c. 481, §3 (AMD).]
- C. The child has been placed in the legal custody or care of the department, the parent has a chronic substance abuse problem, and the parent's prognosis indicates that the child will not be able to return to the custody of the parent within a reasonable period of time, considering the child's age and the need for a permanent home. The fact that a parent has been unable to provide safe care of a child for a period of 9 months due to substance abuse constitutes a chronic substance abuse problem; [1997, c. 475, §9 (AMD) .]
- D. The child has been placed in the legal custody or care of the department, the court has previously terminated parental rights to another child who is a member of the same family and the parent continues to lack the ability or willingness to show the court that the parent has sought services that would rehabilitate the parent or the parent can not show evidence that an additional period of services would result in reunification in a time reasonably calculated to meet the needs of the child and the child's need for a permanent home; or [1995, c. 481, §4 (NEW).]

E. The child has been placed in the legal custody or care of the department for at least 9 months, and the parents have been offered or received services to correct the situation but have refused or have made no significant effort to correct the situation. [1997, c. 475, §9 (AMD).]

[1997, c. 475, §9 (AMD) .]

2. Primary considerations. In deciding to terminate parental rights, the court shall consider the best interest of the child, the needs of the child, including the child's age, the child's attachments to relevant persons, periods of attachments and separation, the child's ability to integrate into a substitute placement or back into the parent's home and the child's physical and emotional needs.

[1997, c. 475, §10 (AMD) .]

3. Wishes of child. The court shall consider, but is not bound by, the wishes of a child 12 years of age or older in making an order under this section.

[1997, c. 715, Pt. A, §12 (AMD) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 369, §§15,16 (AMD). 1983, c. 249, §2 (AMD). 1983, c. 772, §§8,9 (AMD). 1985, c. 739, §16 (AMD). 1993, c. 198, §2 (AMD). 1995, c. 481, §§3-5 (AMD). 1995, c. 694, §D48 (AMD). 1995, c. 694, §E2 (AFF). 1997, c. 475, §§9,10 (AMD). 1997, c. 715, §A12 (AMD). 2001, c. 696, §35 (AMD).

22 §4056. EFFECTS OF TERMINATION ORDER

1. Parent and child divested of rights. An order terminating parental rights divests the parent and child of all legal rights, powers, privileges, immunities, duties and obligations to each other as parent and child, except the inheritance rights between the child and his parent.

[1979, c. 733, §18 (NEW) .]

2. Only one parent affected. The termination of one parent's rights shall not affect the rights of the other parent.

[1979, c. 733, §18 (NEW) .]

3. Parent not entitled to participate in adoption proceedings. A parent whose rights have been terminated shall not be entitled to notice of the child's adoption proceedings, nor shall he have any right to object to the adoption or participate in the proceedings.

[1979, c. 733, §18 (NEW) .]

4. Child not disentitled to benefit. No order terminating parental rights may disentitle a child to benefits due him from any 3rd person, agency, state or the United States; nor may it affect the rights and benefits that a native American derives from his descent from a member of a federally-recognized Indian tribe.

[1979, c. 733, §18 (NEW) .]

5. Financial support. If, prior to the termination of parental rights, the parent was convicted of a crime against the child, the court may include in the termination order the requirement that the parent whose rights are terminated make a lump sum payment to assist in the future financial support of the child.

[2003, c. 216, §1 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 2003, c. 216, §1 (AMD).

22 §4057. TERMINATION ORDERS OF OTHER STATES

If parental rights have been terminated by judicial order in another state, the order, unless against the public policy of this State, shall be accorded full faith and credit. [1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW).

22 §4058. REVIEW

The provision in this chapter dealing with family rehabilitation and reunification must be reviewed in accordance with Title 3, chapter 35. [2005, c. 397, Pt. B, §6 (AMD) .]

SECTION HISTORY

1985, c. 739, §17 (NEW). 2005, c. 397, §B6 (AMD).

Subchapter 7: CARE OF CHILD IN CUSTODY

22 §4061. EXPENSES; REIMBURSEMENT

1. Department. The department shall care for a child ordered into its custody in licensed or approved family foster homes, in other residential child care facilities or in other living arrangements as appropriate to meet the child's individual needs.

[1983, c. 354, §6 (AMD) .]

2. Reimbursement. The department may obtain reimbursement for child care expenses from the child's parents according to a support order or agreement.

[1979, c. 733, §18 (NEW) .]

3. Other custodian. When a child is ordered into the custody of a custodian other than the department, that custodian shall support the child, subject to a support order or agreement.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1983, c. 354, §6 (AMD).

22 §4062. PAYMENTS

1. Payments by department. The department shall provide payments to facilities caring for children to meet the costs of clothing, board and care, within the limits of available funds. The department may establish, by rule, different categories of facilities, levels of need and care and flat-rate or reimbursement methods to

distribute these funds. The department may provide child care and travel expense payments to foster and adoptive parents and trainers participating in foster and adoptive parent training programs and volunteers participating in the administrative case review program.

Notwithstanding section 4061, subsection 3, any federally recognized Indian tribe in this State or any Indian foster family home is eligible for benefits and reimbursement under any state or federally funded program administered by the State for the benefit of Maine children, including, but not limited to, children within the jurisdiction of the Passamaquoddy Tribe or Penobscot Indian Nation under the Indian Child Welfare Act, 25 United States Code, Section 1901, et seq.

[1999, c. 392, §1 (AMD) .]

2. Unexpended balance. An unexpended balance of funds for these purposes shall not be transferred to another account and shall not lapse.

[1979, c. 733, §18 (NEW) .]

3. Priority of payments. The department shall ensure that payments for foster care made under this subchapter have the same priority as payments for temporary assistance for needy families pursuant to section 3769, subsection 1.

[1997, c. 530, Pt. A, §31 (AMD) .]

4. Kinship preference. In the residential placement of a child, the department shall consider giving preference to an adult relative over a nonrelated caregiver when determining placement for a child, as long as the related caregiver meets all relevant state child protection standards.

[1999, c. 382, §1 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1985, c. 521, (AMD). 1991, c. 747, §4 (AMD). 1997, c. 530, §A31 (AMD). 1999, c. 382, §1 (AMD). 1999, c. 392, §1 (AMD).

22 §4063. RELIGIOUS FAITH OF PLACEMENTS; PARENTS' REQUEST

If the parents of a child in the custody of the department request in writing that the child be placed in a family of the same general religious faith, for foster care or adoption, the department shall do so when a suitable family of that faith can be found. [1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW) .

22 §4063-A. MEDICAL AND PSYCHOLOGICAL EXAMINATION

1. Physical examination required. The department shall ensure that a child ordered into its custody receives an appointment for a medical examination by a licensed physician or nurse practitioner within 10 working days after the department's custody of the child commences.

[1991, c. 194, (NEW) .]

2. Psychological assessment. If the physician or nurse practitioner who performs a physical examination pursuant to subsection 1 determines that a psychological assessment of the child is appropriate, the department shall ensure that an appointment is obtained for such an assessment within 30 days of the physical examination.

[1991, c. 194, (NEW) .]

SECTION HISTORY

1991, c. 194, (NEW).

22 §4063-B. ESTABLISHMENT OF EARLY COUNSELING

Whenever a child is ordered into the custody of the department under this chapter and the child is not expected to be returned to the home within 21 days, the department shall obtain counseling for the child as soon as possible, unless the department finds that counseling is not indicated. [1991, c. 882, §2 (NEW); 1991, c. 882, §4 (AFF).]

SECTION HISTORY

1991, c. 882, §2 (NEW). 1991, c. 882, §4 (AFF).

22 §4064. LONG-TERM FOSTER CARE

(REPEALED)

SECTION HISTORY

2007, c. 46, §1 (RP).

22 §4065. DEPARTMENT'S RESPONSIBILITY AFTER DEATH OF COMMITTED CHILD

If a child in the custody of the department dies, the department shall arrange and pay for a decent burial for the child. If administration of the deceased child's estate is not commenced, within 60 days after the date of death, by an heir or a creditor, then the department may petition the Probate Court to appoint an administrator and settle the estate of the deceased child pursuant to Title 18-A. [1981, c. 470, Pt. A, §102 (AMD).]

SECTION HISTORY

1979, c. 733, §18 (NEW). 1981, c. 470, §A102 (AMD).

22 §4066. ANNUAL REPORT

The department shall submit a report to the joint standing committee of the Legislature having jurisdiction over health and human services matters by January 1st each year covering the operations of the Bureau of Child and Family Services and the experience of the department with foster care and adoptions of children in the care and custody of the department, including but not limited to the following topics: [1997, c. 322, §1 (NEW).]

1. Types of reports. A listing of the types of reports on the operations of the Bureau of Child and Family Services that are available to the public, including a notice on how the public can request those reports;

[1997, c. 322, §1 (NEW) .]

2. Listing of services. A listing of services provided to children and their families and foster families and any services needed but not provided by the department, and a listing of problems experienced by children and their families and foster families;

[1997, c. 322, §1 (NEW) .]

3. Custody. The number of children in the care and custody of the department, the average and median lengths of their custody and the number who were previously in the custody of the department;

[1997, c. 322, §1 (NEW) .]

4. Reunification efforts. The number of children in the care and custody of the department in the process of reunification efforts, and the number in which parental rights have been terminated or are in the process of termination;

[1997, c. 322, §1 (NEW) .]

5. Adoption. The number of children in the care and custody of the department available for adoption and the number of children adopted, identifying special needs and nonspecial needs; the number receiving adoption assistance; and the number adopted by their foster parents;

[1997, c. 322, §1 (NEW) .]

6. Out-of-state placement. The number of children in the care and custody of the department placed out-of-state for hospitalization and residential care and the costs for each; and

[1997, c. 322, §1 (NEW) .]

7. Analysis. An analysis of any major initiatives planned by the department to improve the functioning of the Bureau of Child and Family Services and the delivery of services to children in the care and custody of the department and their families and foster families.

[1997, c. 322, §1 (NEW) .]

SECTION HISTORY

1997, c. 322, §1 (NEW).

22 §4067. PERMISSION FOR PARTICIPATION IN SCHOOL ACTIVITIES

The department shall develop and disseminate a standard form to be used by school administrative units to authorize participation by children in the custody of the department in school athletics, field trips and other extracurricular activities. This form must be signed once each year by a representative of the department following the enrollment of the child in a school and forwarded to the school administrative unit attended by the child. This form provides the necessary legal permission for the child to participate in such activities. A child in the custody of the department must secure the signature of a caretaker on permission slips for specific activities as do other students in order to ensure notice to the caretaker of the child's participation in those activities. [2005, c. 309, §1 (NEW).]

SECTION HISTORY

2005, c. 309, §1 (NEW).

22 §4068. SIBLING VISITATION

1. Visitation. If the court determines that it is reasonable, practicable and in the best interests of the children involved, the court shall order the custodian of the child who is the subject of the child protection proceeding and any party who is the custodian of a sibling of the child to make the children available for visitation with each other. The court may order a schedule and conditions pursuant to which the visits are to occur.

[2005, c. 526, §2 (NEW) .]

2. Siblings separated through adoption. The department shall make reasonable efforts to establish agreements with prospective adoptive parents that provide for reasonable contact between an adoptive child and the child's siblings when the department believes that the contact will be in the children's best interests.

[2005, c. 526, §2 (NEW) .]

3. Request of child. In a child protection proceeding, a child may request visitation rights pursuant to subsection 1 with a sibling from whom the child has been separated as a result of the child protection proceeding.

[2005, c. 526, §2 (NEW) .]

SECTION HISTORY

2005, c. 526, §2 (NEW).

Subchapter 8: MEDICAL TREATMENT ORDER

22 §4071. MEDICAL TREATMENT ORDER

1. Petitioner. The department, a physician or a chief medical administrator of a hospital may petition for a medical treatment order.

[1979, c. 733, §18 (NEW) .]

2. Contents of petition. A petition shall be sworn and shall include at least the following:

A. Name, date of birth and municipal residence, if known, of the child; [1979, c. 733, §18 (NEW) .]

B. The name and address of the petitioner and his professional position; [1979, c. 733, §18 (NEW) .]

C. Name and municipal residence, if known, of each parent and custodian; [1979, c. 733, §18 (NEW) .]

D. A summary of the medical diagnosis and treatment alternatives; [1979, c. 733, §18 (NEW) .]

E. A request for the court to order specific treatment; and [1979, c. 733, §18 (NEW) .]

F. A statement that attempts to notify and secure consent from the custodians have been unsuccessful, either because they cannot be located or they have refused consent. [1979, c. 733, §18 (NEW) .]

3. Notice to parents and custodians. The petitioner shall, by any reasonable means, attempt to notify the parents and custodians of his intent to request the order and of the time and place he will make the request, unless the petitioner believes that the child would suffer increased serious injury during the time needed to notify them.

[1979, c. 733, §18 (NEW) .]

4. Order. On the basis of the petition or other evidence, the court may order medical treatment for the child if the custodians are unable or unwilling to consent to it, and the treatment is necessary to treat or prevent an immediate risk of serious injury. The order shall include a notice to the parents and custodians of their right to counsel, as required under section 4032, subsection 2, paragraph G, and notice of the date and time of the hearing.

[1979, c. 733, §18 (NEW) .]

5. Service of order. If a hearing has not been held prior to issuing the order, a copy of the order and petition shall be served on the parents and custodians by:

A. In-hand delivery by the judge or court clerk to any parent, custodian or their counsel who is present when the order is issued; [1979, c. 733, §18 (NEW).]

B. Service in accordance with the District Court Civil Rules. Notwithstanding the civil rules, service by publication of an order and petition shall be complete 5 days after a single publication; or [1979, c. 733, §18 (NEW).]

C. Another manner ordered by the court. [1979, c. 733, §18 (NEW).]

6. Hearing. If a hearing has not been held prior to issuing the order, then it shall be held within 10 days of its issuance, unless all parties agree to a later date. If, after the hearing, the court finds, by a preponderance of the evidence, that the medical treatment ordered is necessary to treat or prevent the immediate risk of serious injury to the child, then it may continue the order.

[1979, c. 733, §18 (NEW) .]

SECTION HISTORY

1979, c. 733, §18 (NEW).

Subchapter 9: HOSPITAL BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES HEADING: T. 22, §4085 (RP)

22 §4081. PURPOSE DEFINITIONS

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP).
1987, c. 402, §A143 (RPR). MRSA T.22 ., §4085 (RP).

22 §4082. DEFINITIONS MAINE CHILDREN'S TRUST FUND

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP).
1987, c. 402, §A143 (RPR). MRSA T.22 ., §4085 (RP).

22 §4083. HOSPITAL BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES BOARD; ESTABLISHMENT

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1987, c. 402, §A144 (RP).
1987, c. 402, §A143 (RPR). MRSA T.22 ., §4085 (RP).

22 §4084. REPORT DUTIES

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1985, c. 785, §B93 (AMD).
1985, c. 667, §1 (RPR). 1987, c. 402, §A144 (RP). 1987, c. 402, §A143
(RPR). MRSA T.22 ., §4085 (RP).

22 §4084-A. REPORT

(REPEALED)

SECTION HISTORY

1985, c. 667, §2 (NEW). 1987, c. 402, §A143 (RP).

22 §4085. DISBURSEMENT OF FUND MONEY

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1985, c. 500, (NEW). 1985, c. 667, §3 (AMD).
1987, c. 366, (AMD). 1987, c. 769, §A78 (AMD). 1987, c. 402, §A144
(RP). 1987, c. 402, §A143 (RPR). MRSA T.22 ., §4085 (RP).

22 §4086. REVIEW

(REPEALED)

SECTION HISTORY

1985, c. 441, §3 (NEW). 1987, c. 402, §A144 (RP).

Subchapter 10: CHILD WELFARE SERVICES
OMBUDSMAN HEADING: PL 1989, C. 400, §6 (RP)

22 §5001. CHILD WELFARE SERVICES OMBUDSMAN

(REPEALED)

SECTION HISTORY

1987, c. 511, §A4 (NEW). 1989, c. 410, §23 (AMD). 1989, c. 400, §§6,14
(RP). 1995, c. 462, §A45 (AMD).

Subchapter 10-A: OMBUDSMAN SERVICES HEADING:
PL 1989, C. 400, §7 (NEW); 2001, C. 439, PT. X, §3 (RPR)

22 §4087. CHILD WELFARE SERVICES OMBUDSMAN

(REPEALED)

SECTION HISTORY

1989, c. 400, §§7,14 (NEW). 2001, c. 439, §X4 (RP).

22 §4087-A. OMBUDSMAN PROGRAM

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

A. "Ombudsman" means the director of the program and persons employed or volunteering to perform the work of the program. [2001, c. 439, Pt. X, §5 (NEW).]

B. "Program" means the ombudsman program established under this section. [2001, c. 439, Pt. X, §5 (NEW).]

[2001, c. 439, Pt. X, §5 (NEW) .]

2. Program established. The ombudsman program is established as an independent program within the Executive Department to provide ombudsman services to the children and families of the State regarding child welfare services provided by the Department of Health and Human Services. The program shall consider and promote the best interests of the child involved, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights of the child and family involved. The program must be staffed, under contract, by an attorney or a master's level social worker who must have experience in child development and advocacy, and support staff as determined to be necessary. The program shall function through the staff of the program and volunteers recruited and trained to assist in the duties of the program.

[2001, c. 439, Pt. X, §5 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3. Contracted services. The program shall operate by contract with a nonprofit organization that the Executive Department determines to be free of potential conflict of interest and best able to provide the services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

[2001, c. 439, Pt. X, §5 (NEW) .]

4. Services. The program shall provide services directly or under contract. The first priority in the work of the program and any contract for ombudsman services must be case-specific advocacy services. In performing services under this section, the program, as it determines to be appropriate, may create and maintain records and case-specific reports. Any work on systems improvements or lobbying must be adjunctive to case-specific activities. The program may:

A. Provide information to the public about the services of the program through a comprehensive outreach program. The ombudsman shall provide information through a toll-free telephone number or numbers; [2001, c. 439, Pt. X, §5 (NEW).]

B. Answer inquiries, investigate and work toward resolution of complaints regarding the performance and services of the department and participate in conferences, meetings and studies that may improve the performance of the department; [2001, c. 439, Pt. X, §5 (NEW).]

C. Provide services to persons to assist them in protecting their rights; [2001, c. 439, Pt. X, §5 (NEW).]

D. Inform persons of the means of obtaining services from the department; [2001, c. 439, Pt. X, §5 (NEW).]

E. Provide information and referral services; [2001, c. 439, Pt. X, §5 (NEW).]

F. Analyze and provide opinions and recommendations to agencies, the Governor and the Legislature on state programs, rules, policies and laws; [2001, c. 439, Pt. X, §5 (NEW).]

G. Determine what types of complaints and inquiries will be accepted for action by the program and adopt policies and procedures regarding communication with persons making inquiries or complaints and the department; [2001, c. 439, Pt. X, §5 (NEW).]

H. Apply for and utilize grants, gifts and funds for the purpose of performing the duties of the program; and [2001, c. 439, Pt. X, §5 (NEW).]

I. Collect and analyze records and data relevant to the duties and activities of the program and make reports as required by law or determined to be appropriate. [2001, c. 439, Pt. X, §5 (NEW).]

[2005, c. 410, §1 (AMD) .]

4-A. Information for parents in child protective cases. The program, in consultation with appropriate interested parties, shall provide information about child protection laws and procedures to parents whose children are the subject of child protective investigations and cases under this chapter. The providing of the information under this subsection does not constitute representation of parents. Parents may seek and receive information regardless of whether they are represented by legal counsel. The information must be provided free of charge to parents.

The program shall report annually to the joint standing committee of the Legislature having jurisdiction over judiciary matters, starting February 1, 2003, on the provision of information required by this subsection.

This subsection does not create new rights or obligations concerning the provision of legal advice or representation of parents. Failure to provide information under this subsection does not create a cause of action or have any effect on a child protective proceeding.

[2001, c. 696, §36 (NEW) .]

5. Access to persons, files and records. As necessary for the duties of the program, the ombudsman has access to the files and records of the department, without fee, and to the personnel of the department for the purposes of investigation of an inquiry or complaint. The ombudsman may also enter the premises of the department for the purposes of investigation of an inquiry or complaint without prior notice. The program shall maintain the confidentiality of all information or records obtained under this subsection.

[2001, c. 439, Pt. X, §5 (NEW) .]

6. Confidentiality of records. Information held by or records or case-specific reports maintained by the program are confidential. Disclosure may be made as allowed or required in accordance with the provisions of section 4008, subsections 2 and 3. Unlawful dissemination is subject to the provisions of section 4008, subsection 4.

[2005, c. 410, §2 (RPR) .]

7. Liability. Any person who in good faith submits a complaint or inquiry to the program pursuant to this section is immune from any civil or criminal liability. For the purpose of any civil or criminal proceedings, there is a rebuttable presumption that any person acting pursuant to this section did so in good faith. The ombudsman and employees and volunteers in the program are employees of the State for the purposes of the Maine Tort Claims Act.

[2001, c. 439, Pt. X, §5 (NEW) .]

8. Penalties. A person who intentionally obstructs or hinders the lawful performance of the ombudsman's duties commits a Class E crime. A person who penalizes or imposes a restriction on a person who makes a complaint or inquiry to the ombudsman as a result of that complaint or inquiry commits a Class E crime. The Attorney General shall enforce this subsection under Title 5, section 191.

[2001, c. 439, Pt. X, §5 (NEW) .]

9. Information. Beginning January 1, 2002, information about the services of the program and any applicable grievance and appeal procedures must be given to all children and families receiving child welfare services from the department and from all persons and entities contracting with the department for the provision of child welfare services.

[2001, c. 439, Pt. X, §5 (NEW) .]

10. Report. The program shall report to the Governor, the department and the Legislature before January 1st each year on the activities and services of the program, priorities among types of inquiries and complaints that may have been set by the program, waiting lists for services, the provision of outreach services and recommendations for changes in policy, rule or law to improve the provision of services.

[2001, c. 439, Pt. X, §5 (NEW) .]

11. Oversight. The joint standing committee of the Legislature having jurisdiction over health and human services matters shall review the operations of the program and may make recommendations to the Governor regarding the contract for services under this section. The committee may submit legislation that it determines necessary to amend or repeal this section.

[2001, c. 439, Pt. X, §5 (NEW) .]

SECTION HISTORY

2001, c. 439, §X5 (NEW). 2001, c. 696, §36 (AMD). 2003, c. 20, §EEE1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 410, §§1,2 (AMD).

Subchapter 11: OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM HEADING: PL 1989, C. 400, §8 (RP)

22 §5005. OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM (REPEALED)

SECTION HISTORY

1987, c. 511, §B2 (NEW). 1987, c. 744, §9 (AMD). 1989, c. 400, §§8,14 (RP).

Subchapter 11-A: OUT-OF-HOME ABUSE AND NEGLECT INVESTIGATING TEAM HEADING: PL 1989, C. 400, §9 (NEW)

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

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).]

[2007, c. 539, Pt. N, §33 (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). 2003, c. 399, §§1-4 (AMD). RR 2003, c. 2, §79 (COR). 2003, c. 689, §B6 (REV). 2005, c. 279, §14 (AMD). 2007, c. 539, Pt. N, §§33-38 (AMD).

Subchapter 12: CHILD WELFARE ADVISORY COMMITTEE HEADING: PL 1989, C. 400, §10 (NEW); 2001, C. 352, §12 (RP)

22 §4089. CHILD WELFARE ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY

1989, c. 400, §§10,14 (NEW). 1989, c. 819, §6 (AMD). 2001, c. 352, §12 (RP).

Subchapter 13: HOSPITAL-BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES HEADING: RR 1991, C. 2, §82 (COR)

22 §4091. PURPOSE

The purpose of this subchapter is to encourage the implementation of statewide standards to be developed by the Department of Health and Human Services and participating hospitals for the identification and management of suspected child abuse and neglect cases presented at hospitals by providing financial support for the establishment of hospital-based suspected child abuse and neglect committees. [1989, c. 483, Pt. A, §34 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

1989, c. 483, §A34 (NEW). 2003, c. 689, §B6 (REV).

22 §4092. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1989, c. 483, Pt. A, §34 (NEW).]

1. Case plan prescription. "Case plan prescription" means a plan developed by the family support team.

[1989, c. 483, Pt. A, §34 (NEW) .]

1-A. Council.

[1995, c. 233, Pt. B, §2 (RP) .]

2. Family support team. "Family support team" means a specialized team of professionals evaluating children who are suspected victims of child abuse and neglect as defined in section 4002, subsection 1. Evaluations shall include a family diagnosis and recommendations for treatment and follow-up.

[1989, c. 483, Pt. A, §34 (NEW) .]

3. Protocols. "Protocols" means procedures developed for the interaction of the suspected child abuse and neglect committee and family support team.

[1989, c. 483, Pt. A, §34 (NEW) .]

4. Suspected child abuse and neglect committee. "Suspected child abuse and neglect committee" means a committee representing public and private community agencies, hospital departments and the department which are directly involved in providing services to suspected victims of child abuse and the victims' families.

[1989, c. 483, Pt. A, §34 (NEW) .]

SECTION HISTORY

1989, c. 483, §A34 (NEW). 1989, c. 892, §2 (AMD). 1995, c. 233, §B2 (AMD).

22 §4093. HOSPITAL-BASED SUSPECTED CHILD ABUSE AND NEGLECT COMMITTEES

Each hospital may establish a suspected child abuse and neglect committee and family support team under this subchapter. The committee shall meet regularly to provide the ongoing development and monitoring of the specialized family support team and the approval of protocols. These hospitals shall serve as a resource to other institutions desiring to form such a program. [1989, c. 483, Pt. A, §34 (NEW) .]

The family support team shall be coordinated by a team manager who shall be hired by the participating hospital. The team shall be available to evaluate children who are the suspected victims of abuse and neglect. The department shall contract for the services of the family support team manager. [1989, c. 483, Pt. A, §34 (NEW) .]

The family support team shall provide a multidisciplinary approach for suspected child abuse cases that are initially identified in hospital emergency rooms, inpatient pediatric departments and ambulatory clinics. The child protective staff of the Bureau of Child and Family Services shall participate on the teams. The team shall report immediately to the department as required in section 4011-A. [2001, c. 345, §6 (AMD) .]

The team shall review the nature, extent and severity of abuse or neglect and the needs of the child and other family members. The team shall develop a case plan prescription for the treatment, management and follow-up of the child abuse victims and their families, and shall forward these recommendations to the department. [1989, c. 483, Pt. A, §34 (NEW).]

SECTION HISTORY

1989, c. 483, §A34 (NEW). 2001, c. 345, §6 (AMD).

22 §4094. MAINE SUSPECTED CHILD ABUSE AND NEGLECT COUNCIL

(REPEALED)

SECTION HISTORY

1989, c. 892, §3 (NEW). 1995, c. 233, §B3 (RP).

Subchapter 14: YOUTH IN NEED OF SERVICES PILOT
PROGRAM HEADING: PL 1999, C. 778, §2 (NEW)

22 §4095. DEFINITIONS

(REALLOCATED TO TITLE 22, SECTION 4100)

(REPEALED)

SECTION HISTORY

1999, c. 778, §2 (NEW). 1999, c. 783, §6 (NEW). RR 1999, c. 2, §26 (RAL). MRSA T. 22, §4099 (RP).

22 §4096. YOUTH IN NEED OF SERVICES PILOT PROGRAM

(REPEALED)

SECTION HISTORY

1999, c. 778, §2 (NEW). MRSA T.22 ., §4099 (RP).

22 §4097. PRELIMINARY ASSESSMENT; SAFETY PLAN; OTHER SERVICES

(REPEALED)

SECTION HISTORY

1999, c. 778, §2 (NEW). MRSA T.22 ., §4099 (RP).

22 §4098. YOUTH IN NEED OF SERVICES OVERSIGHT COMMITTEE

(REPEALED)

SECTION HISTORY

1999, c. 778, §2 (NEW). MRSA T.22 ., §4099 (RP).

22 §4099. REPEAL

(REPEALED)

SECTION HISTORY

1999, c. 778, §2 (NEW). 2001, c. 445, §1 (AMD). MRSA T.22 ., §4099 (RP).

Subchapter 15: YOUTH IN NEED OF SERVICES PROGRAM
HEADING: PL 2003, C. 451, PT. P, §3 (NEW); PL 2009, C. 155, §1 (RP)

22 §4099-A. DEFINITIONS

(REPEALED)

SECTION HISTORY

2009, c. 155, §1 (RP).

22 §4099-B. HOMELESS YOUTH PROGRAM

(REPEALED)

SECTION HISTORY

2009, c. 155, §1 (RP).

22 §4099-C. PRELIMINARY ASSESSMENT; SAFETY PLAN; OTHER SERVICES

(REPEALED)

SECTION HISTORY

2009, c. 155, §1 (RP).

Subchapter 16: MAINE RUNAWAY AND HOMELESS YOUTH

22 §4099-D. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 155, §2 (NEW).]

1. Homeless youth. "Homeless youth" means a person 21 years of age or younger who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care or who lacks a fixed, regular and adequate nighttime residence. "Homeless youth" does not include a person incarcerated or otherwise detained under federal or state law.

[2009, c. 155, §2 (NEW) .]

2. Fixed, regular and adequate nighttime residence. "Fixed, regular and adequate nighttime residence" means a dwelling at which a person resides on a regular basis that adequately provides safe shelter. "Fixed, regular and adequate nighttime residence" does not include a publicly or privately operated institutional shelter designed to provide temporary living accommodations; transitional housing; a temporary placement with a peer, friend or family member who has not offered a permanent residence, residential lease or temporary lodging for more than 30 days; or a public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

[2009, c. 155, §2 (NEW) .]

3. Runaway. "Runaway" means an unmarried child under 18 years of age who is absent from the home of a parent or guardian or other lawful placement without the consent of the parent, guardian or lawful custodian.

[2009, c. 155, §2 (NEW) .]

SECTION HISTORY

2009, c. 155, §2 (NEW).

22 §4099-E. COMPREHENSIVE PROGRAM FOR HOMELESS YOUTH

The department shall establish and support a comprehensive program for homeless youth in the State by contracting with organizations and agencies licensed by the department that provide street outreach, shelter and transitional living services for homeless youth. The department shall by rule establish licensure requirements and shall establish performance-based contracts with organizations and agencies to provide the following programs and services: [2009, c. 155, §2 (NEW).]

1. Street and community outreach and drop-in programs. Youth drop-in centers to provide walk-in access to crisis intervention and ongoing supportive services, including one-to-one case management services on a self-referral basis and street and community outreach programs to locate, contact and provide information, referrals and services to homeless youth, youth at risk of homelessness and runaways. Information, referrals and services provided may include, but are not limited to family reunification services; conflict resolution or mediation counseling; assistance in obtaining temporary emergency shelter; case management aimed at obtaining food, clothing, medical care or mental health counseling; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases, HIV and pregnancy; referrals to other agencies that provide support services to homeless youth, youth at risk of homelessness and runaways; assistance with education, employment and independent living skills; aftercare services; and specialized services for highly vulnerable runaways and homeless youth, including teen parents, sexually exploited youth and youth with mental illness or developmental disabilities;

[2009, c. 155, §2 (NEW) .]

2. Emergency shelter program. Emergency shelter programs to provide homeless youth and runaways with referrals and walk-in access to short-term residential care on an emergency basis. The program must provide homeless youth and runaways with safe, dignified, voluntary housing, including private shower facilities, beds and at least one meal each day, and assist a runaway with reunification with family or a legal guardian when required or appropriate. The services provided at emergency shelters may include, but are not limited to, family reunification services or referral to safe, dignified housing; individual, family and group counseling; assistance obtaining clothing; access to medical and dental care and mental health counseling; education and employment services; recreational activities; case management, advocacy and referral services; independent living skills training; and aftercare, follow-up services and transportation; and

[2009, c. 155, §2 (NEW) .]

3. Transitional living programs. Transitional living programs to help homeless youth find and maintain safe, dignified housing. The program may also provide rental assistance and related supportive services or may refer youth to other organizations or agencies that provide such services. Services provided may include, but are not limited to, provision of safe, dignified housing; educational assessment and referrals to educational programs; career planning, employment, job skills training and independent living skills training; job placement; budgeting and money management; assistance in securing housing appropriate to needs and income; counseling regarding violence, prostitution, substance abuse, sexually transmitted diseases and pregnancy; referral for medical services or chemical dependency treatment; parenting skills; self-sufficiency support services or life skills training; and aftercare and follow-up services.

[2009, c. 155, §2 (NEW) .]

SECTION HISTORY

2009, c. 155, §2 (NEW).

22 §4099-F. DATA COLLECTION

The department shall collect data from its licensed organizations and agencies to ensure that appropriate and high-quality services are being delivered to homeless youth, youth at risk of homelessness and runaways and shall use the data to monitor the success of the contracts and programs as well as changes in the rates of homelessness among youth in the State. [2009, c. 155, §2 (NEW).]

SECTION HISTORY

2009, c. 155, §2 (NEW).

22 §4099-G. RULES

The department shall adopt rules as may be necessary for the effective administration of the comprehensive program under section 4099-E. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 155, §2 (NEW).]

SECTION HISTORY

2009, c. 155, §2 (NEW).

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