

## **9.27 Relationship to Law Enforcement**

**Effective 8/10/81**

### **PURPOSE**

1. The role of law enforcement in a community is to investigate violations of the laws, preserve public safety, and prevent crime.
2. Many child protective cases also involve a possible violation of the law (see Legal Base), so that there may be joint jurisdiction between the Department and law enforcement which requires a sorting out of the facts so that the two agencies can determine their joint and/or separate responsibilities and courses of action.
3. In some cases there may be violations of the law or other problems which are not related to suspected abuse or neglect of the child and are entirely the responsibility of law enforcement.
4. Law enforcement is the one service most readily available to all citizens on a 24 hour basis. Law enforcement officers are trained investigators, knowledgeable about the legal rules of evidence and procedures to gather facts.

### **LEGAL BASE**

The statutes for law enforcement activities specifically related to child abuse and neglect are:

1. Titles 19 and 17-A, MRSA, regarding cruelty to children, abandonment, excess physical force, homicide, assault, reckless conduct, sexual abuse, pornography, and endangering welfare.
2. Title 15, MRSA, §3501 (in the juvenile code) permitting a law enforcement officer to involuntarily hold a child up to 6 hours, when the child "is abandoned, lost or seriously endangered in his surroundings and that immediate removal is necessary for his protection" or "has left the care of his parents, guardian or legal custodian without the consent of that person."
3. Title 22, MRSA, §4011 which mandates reporting to the Department of Human Services when a law enforcement officer has reasonable cause to suspect child abuse or neglect.
4. Title 22, MRSA, §4032 which authorizes a police officer or sheriff to file a child protective petition.
5. Title 22, MRSA, §4039 which authorizes a law enforcement officer upon request of the Department or custodian to "take any necessary and reasonable action to obtain physical custody of the child or the rightful custodian when a court has ordered a change in custody

and a person refuses to relinquish physical custody. This action may include entering public or private property with a warrant based on probable cause to believe that the child is there."

6. Rule 41 of Maine Rules of Amended Procedures which authorizes a law enforcement officer to obtain a warrant when he has reasonable cause to believe that a crime has been or is being committed.
7. The "general police powers," which are to protect citizens, preserve order and prevent crime.

## **STANDARDS OF PRACTICE**

### **1. Request for Assistance**

- a. Requests will be made to local law enforcement officials, unless otherwise designated by the local District Attorney.
- b. Requests for assistance should be made when:
  - (1) Worker has reason to believe that violence is occurring or is likely to occur, either directed toward the worker or another person.
    - (a) Our workers are not trained in law enforcement and are not authorized to act as law enforcers.
    - (b) Workers will conduct interviews which are likely to produce considerable stress in a physical setting and with a demeanor which are least likely to produce violence (e.g., near the exit of a home, in the office, at the hospital, at the police station; with another worker, with a police officer; in a low key through direct manner).
    - (c) If an assault or threat of assault on a worker occurs:
      - i. The worker will leave the scene.
      - ii. A determination will be made, in discussion with his supervisor and Regional Director or his designee, whether the worker will make a formal statement to law enforcement (a/k/a "pressing charges" or "signing a complaint"). Factors to be considered include:
        - Extent of injury, if any
        - History of violence
        - Provocation (circumstances)
        - Probable result (e.g., help clarify to the assault or that violence is unacceptable or only increase his feelings of powerlessness and fear manifested by hostility).
  - (2) Worker has reason to believe that law enforcement intervention is likely to be necessary to invoke 6 hour interim care provision under Title 15, §3501 to protect

the child (e.g., parents are likely to flee and/or seriously harm the child before court order can be obtained).

- (3) A warrant appears to be needed to:
  - (a) Gain entrance to the home when there is reason to believe that a child is in immediate risk of serious harm (e.g., occupant refuses entrance or child is unattended), and/or
  - (b) Gather evidence.
- (4) Family members respond only to law enforcement authority.
- (5) Assistance appears to be needed in implementing an emergency case plan, e.g.
  - (a) One person to stay with the child while the other seeks emergency custody order, and/or locates a relative to care for the child, when other Department staff are not available;
  - (b) Placing the child when other Department staff are not available;
  - (c) Removing a parent or other person (e.g., because of his endangering behavior).
- (6) A warrant is needed when the court has ordered a change of custody and the person having the child refuses to relinquish the child.

## 2. **Referrals to Law Enforcement**

- a. Making a referral assists law enforcement in carrying out its responsibilities for a safe and orderly society. It is also good casework practice which promotes an honest relationship with clients. In making an appropriate referral, the worker demonstrates that he supports public standards, has principles, and can be trusted; he shows he is not easily deceived and will endure when the going gets tough.
- b. It is the responsibility of law enforcement to determine whether a crime has been committed and what action to take (e.g., whether to bring charges and to prosecute). In general, a crime occurs when the actions of a person (whether intentional, knowing, negligent or reckless) cause harm or threat of harm to another person.
- c. A referral will be made when:
  - (1) A worker has reasonable cause to suspect, based on worker's knowledge, that a crime is being or has been committed, and
  - (2) The suspected crime appears likely to cause serious harm or threat of serious harm to another person, and
  - (3) A reasonably prudent citizen would be expected to report to law enforcement,
  - (4) Whether or not the suspected crime is related to child protection.
- d. Circumstances to be referred include:
  - (1) An injury has been inflicted which according to a physician is serious enough to require medical attention beyond one office visit,
  - (2) A fracture was inflicted,
  - (3) There were bruises on a child under 1 year,

- (4) There has been prolonged confinement/lock-up,
- (5) There are repeated threats of abuse and at least one incident of abuse,
- (6) The neglect requires hospitalization,
- (7) There has been sexual abuse, or exploitation, including but not limited to rape, incest, misconduct, pornography.
- (8) There are other injuries or conditions of the child which indicate conduct manifesting "extreme indifference to the value of human life" or that "creates a substantial risk of serious bodily injury,"
- (9) Other circumstances which meet the criteria in c. above.
- e. The situation will be discussed with the supervisor unless it appears that delay would be likely to hinder law enforcement's effectiveness in carrying out its duties.
- f. Referrals will be made immediately by phone to the District Attorney, or his designee, in the geographic area where the alleged offense occurred and a written referral/report will follow within 3 days, unless declined by law enforcement.
- g. The referral/report will contain:
  - (1) The facts to date, including names, addresses, phone numbers of child, parents, alleged perpetrators, witnesses, others involved and any other pertinent information.
  - (2) The Department's next steps or plan, if any, which may be of an emergency nature, and probable longer term alternatives, including probable supportive services by the Department and other providers.
  - (3) Suggestions of possible Department and law enforcement roles, including coordination and joint investigation as related to the facts, and alternative treatment plans, which may encourage possible prosecution or discourage further criminal investigation.
  - (4) The joint decision regarding informing parents of the referral. Parents will be informed that a referral has been made unless:
    - (a) Worker or law enforcement has reason to believe that parents will be a danger to themselves or others or will flee, or
    - (b) Law enforcement has reason to believe evidence will be disturbed.
- h. If the District Attorney, or his designee, decides not to prosecute, and/or further investigate at this time, a joint agreement will be reached if the Department has a relevant role in the case to notify the alleged perpetrators or their attorneys of that decision, preferably in writing, including any law enforcement alternatives, e.g., to restrain from prosecution pending the follow through by the family on the social services case plan agreed to by the family, law enforcement, and the Department.

3. **Case Management Services from the Department**

- a. Both law enforcement and the Department have statutory responsibilities for confidentiality of their respective clients, and obligations for disclosure (see policy on Criminal History Records and policy on Confidentiality).
  - b. The Department will not turn over records to law enforcement, nor release information regarding clients, that is not directly related to an alleged offense, unless so ordered by a court.
  - c. Information received from law enforcement in the course of its investigation of an alleged offense will not be disclosed without prior authorization from law enforcement.
  - d. If the family and/or child is receiving services from both the Department and law enforcement, a departmental worker will be designated to inform the District Attorney or designated law enforcement official of the case progress, as it relates to law enforcement's responsibilities:
    - (1) At agreed upon intervals
    - (2) By phone, in person, and/or written summary reports
    - (3) By a written summary report when it is agreed that law enforcement no longer needs to be informed of the case progress.
  - e. The worker may request that he be informed by law enforcement of their handling of the case, as it relates to the Department's responsibilities.
  - f. The parents will be informed that these reports (verbal and/or written) have been made, unless the law enforcement official or the worker has reason to believe the parents will be a danger to themselves or others, or will flee, or evidence will be destroyed. A copy of written reports will be sent to the parents, unless contrary to the case plan.
4. Written working agreements will be developed by regional offices with their local District Attorneys and law enforcement officials.
5. As part of a working relationship law enforcement and departmental staff may work together as a team investigating a case, although they are investigating for different purposes. Usually the problem will be related to suspected abuse or neglect of the referred child in his family or of the child(ren) of the alleged perpetrator. Occasionally, departmental staff may participate as part of a team when there is no suspected abuse or neglect, although, in general, such cases should usually be handled by law enforcement and a local counseling service, such as a mental health facility, hospital, rape counseling service, etc.