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DISCOVERY PROTOCOL

Originally disseminated in December 2001 as a joint memo from the AAG Child Protection Division Chief and the OCFS Director, this policy describes the protocol that will be followed in all child protection litigation. This policy is intended to reduce the need for formal discovery in child protective cases. The parent and Guardian al litem have rights to seek discovery under the Maine rules of Civil Procedure, but this process is cumbersome and time consuming. This policy is designed to reduce or avoid the need to respond to formal requests for discovery, as well as delays or sanctions in court due to inadequate information sharing.


This policy applies to all child protective cases once a Petition for Child Protection Order has been filed.

In this policy, the "Department" refers to the Maine Department of Health & Human Services, Office of Child & Family Services, child protection and children's services divisions.

All of the Department's records relating to child protection matters are confidential, pursuant to 22 M.R.S.A. §4008. However, child protection proceedings are also governed by the Rules of Civil Procedure (which control all civil cases in court) and attorneys representing parties are entitled to disclosure of most of these records.

Information that is highly sensitive includes the following:

1. **Identity of confidential informants.** This information will not be provided without a specific court order.
2. **Substance abuse evaluations/treatment records.** Federal law prohibits disclosure unless the patient has signed a specific release. This information will not be distributed to parties other than the patient and his or her attorney without a release allowing disclosure to all parties.
3. **Police reports in ongoing investigations.** 16 M.R.S.A. §614 makes records concerning an ongoing investigation confidential.
4. **Non-conviction data on SBI reports is confidential.** 16 M.R.S.A. §612.
5. **Riverview-Augusta/Dorthea Dix Pavillion-Bangor records and psychiatric records** from hospitals that contract with the Department of Mental Health. These can be shared only with the patient named in the record and his or her attorney, and the Guardian ad litem. This

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- information will not be provided to other parties without a specific court order.
6. **HIV test results** will not be released to the parties.
 7. **Probate Court adoption forms and records** are confidential under 18-A M.R.S.A. § 9-310 and will not be distributed.
 8. **AAG/DHHS conversations:** Information concerning discussions between Department personnel and an Assistant Attorney General is confidential lawyer client communication, and should not be released.

The confidential nature of the records continues after they have been provided to the attorneys in the case. All parties to the action should be cautioned that unauthorized re-release of records is a violation of law. 22.M.R.S.A. §4009. A cover letter with that caution should accompany all discovery provided.

Discovery by Parents, Guardian ad Litem, Intervenors


A. Automatic Discovery

1. Petition Includes a Request for Preliminary Protection Order

The caseworker will notify the Guardian ad litem of the name, address and telephone number of the foster care provider within 24 hours of placement or upon appointment of the Guardian, whichever is later.

The caseworker will provide to all parties the following documents before the preliminary hearing (C1):

- a. The DHHS Narrative Log that exists on MACWIS concerning the family for the six month period prior to the date of the Preliminary Protection Petition.
- b. Any reports or evaluations referred to in the Petition or request for a Preliminary Protection Order, and any documentary evidence the Department intends to rely upon at the preliminary hearing.
- c. The most recent safety assessment and safety plans.
- d. Decision about reunification and Family Service Plan(s).
- e. A witness list of any witnesses the Department plans to call to testify at the preliminary hearing.

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2. For All Petitions

- a. When there is not a request for a Preliminary Protection Order, the caseworker shall mail or otherwise provide the documents listed above at least ten days prior to the first scheduled hearing or case management conference.
- b. Parties' responsibility: The parents of any child that is the subject of a child protection proceeding and any person seeking custody or visitation in a child protection action shall sign any releases necessary for the Department to obtain relevant information about the persons' medical, psychological, psychiatric, or substance abuse treatment and/or history, and to provide this information to other parties to the case. If the Department does not have the necessary releases, reports will not be forwarded to all parties.
- c. The caseworker shall mail or otherwise provide to the parties psychological, psychiatric and substance abuse evaluations, drug test results, police reports and other documents received by the Department after the Petition is filed within 7 days of receipt by the Department.
- d. Continuing Duty to Disclose: The Department shall have a continuing duty to disclose the matters specified above on an ongoing basis. All discovery sent shall include a cover letter specifying the information enclosed. If the Department is not providing any specific document or other information to the parties, the caseworker will notify the AAG of this fact and the reasons for it.
- e. At least seven days before any case management conference scheduled in a case, the caseworker will send out to all parties the Legal Summary and full Case Plan, including the Family Services Plan. If there is a request for the updated Narrative Log from any party, those sections not previously provided will be sent out to all parties.

B. Discovery Upon Request

The Department will make available to counsel for all parties and the guardian ad litem the entire file for review, and will make copies of any documents requested. The only items that will not be provided for review are the items 1-8 listed above, or information for which the Department

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does not have a release to disclose. If items are removed from the file or not provided for review by counsel, the Department will disclose to the attorney reviewing the file that items have been removed, and identify them to the extent possible without revealing their contents.

Upon a party's request, the Attorney for the State shall allow access at any reasonable time to any other material discoverable under M.R.Vic.P.26 within the state's possession or control. In affording this access, the Attorney for the State shall allow the party at any reasonable time and in any reasonable manner to inspect, photograph, and copy.

C. Formal Discovery

If an attorney files a formal request for discovery, the AAG must respond to it. The caseworker should send to the AAG involved in the matter any written discovery requests or requests for information received as soon as possible. Discovery may become the subject of a court order. The AAG may direct the caseworker to provide information in a way that is different from this protocol to comply with a court order on discovery.