

## **9.18 Investigatory Subpoenas**

**Effective 10/1/80**

### **PURPOSE**

1. In order to determine whether jeopardy to a child exists, and/or what services are necessary to protect a child, the Department of Human Services frequently needs information from other persons or agencies. Sometimes the information may be confidential or the person may be unwilling to give information voluntarily.
2. When the information appears relevant in determining necessary services to protect a child, which could include case planning, decisions regarding services to protect the child in his own home, possible changes in custody, the Department may issue an investigatory subpoena.
3. The investigatory subpoena is used to gain access to information not otherwise readily disclosed.

### **LEGAL BASE**

1. Title 22, MRSA, §4021 authorizes the Department to issue subpoenas requiring persons to disclose or provide the Department information or records in their possession which are necessary and relevant to an investigation of a report of suspected abuse or neglect or to a subsequent child protection proceeding.
2. Investigatory subpoenas may be issued by the Commissioner, his delegate or legal counsel for the Department.
3. The Department may apply to a District Court to enforce the subpoena.
4. Persons complying with the subpoena are immune from civil or criminal liability.
5. Information obtained in compliance with such a subpoena is confidential in accordance with Title 22, §4008.

### **PRACTICE STANDARDS**

1. The Department may issue an investigatory subpoena when:
  - a. A referral/report is being investigated.
  - b. A child protection proceeding (including preliminary protection order, full hearing, review hearing, or termination of parental rights hearing) is planned or pending before the court.
2. An investigatory subpoena (SWSS-088) will be needed if person or agency:

- a. Refuses to give information voluntarily (usually because of his professional or personal relationship to a party).
  - b. Requires a subpoena to release records which would otherwise not be released.
  - c. Prefers a subpoena to maintain neutrality.
  - d. Is an employer who requires a subpoena to release person who is to disclose information.
3. The Assistant Attorney General will be contacted for consultation.
4. An understanding will be reached, insofar as practical, with the person or agency disclosing information regarding:
  - a. Information needed.
  - b. To whom subpoena will be delivered.
  - c. Method of delivery of subpoena.
  - d. The place where the information will be disclosed or records made available.
5. The subpoena (SWSS-078) will be issued only by the Assistant Attorney General.
6. The subpoena may be delivered by:
  - a. Ordinary or registered mail.
  - b. Assistant Attorney General or departmental social worker who will receive the information, or
  - c. Deputy sheriff, if required by person or agency disclosing information.
7. In securing information, either in discussion or from records, workers will thoroughly explore the information that relates to abuse or neglect of the child, but will not ask for information which does not relate to investigation of the suspected abuse or neglect of the child, or to case planning decisions regarding services, care, or custody to protect the child.
8. Any information which does not relate to the protection of the child will be screened out by the inquiring departmental workers, and will not be recorded in the Department's case records.

## **PROCEDURES**

1. Provide Assistant Attorney General with:
  - a. Name of case
  - b. Name and address of person/agency to be subpoenaed
  - c. Method of delivery of subpoena
2. Assistant Attorney General will issue subpoena.