

MAINE STATE LEGISLATURE

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L.D. 1106

STATE OF MAINE
SENATE
109TH LEGISLATURE
FIRST REGULAR SESSION

(Filing No. S-305)

COMMITTEE AMENDMENT "A" to S.P. 358, L.D. 1106, Bill,
"AN ACT to Establish a Protection and Advocacy System for the
Developmentally Disabled of the State of Maine."

Amend the Bill by inserting after the enacting clause
the following:

'Sec. 1. 22 MRSA §3067, as enacted by PL 1969, c. 457, §1,
is amended by adding at the end a new sentence to read:
These rules shall include procedures for assuring access to
for the Developmentally Disabled in Maine
records by the Protection and Advocacy Agency/designated under
chapter 961 pursuant to an investigation of alleged rights
violations.'

Further amend the Bill in section 1 in that part designated
"§3551." by striking out all of the last paragraph and inserting
in its place the following:

'The Governor of the State shall designate an agency,
independent of any state or private agency which provides
treatment, services or habilitation to persons with developmental
disabilities to serve as the Protection and Advocacy Agency
for the Developmentally Disabled in Maine pursuant to United
States Code, Title 42, sections 6001 through 6012. The agency
so designated shall have the authority to pursue legal,
administrative and other appropriate remedies to assure the
welfare and protect the rights of persons with developmental
disabilities.'

Further amend the Bill in section 1 in that part designated
"§3552." by striking out all of subsections 4 and 5 and
inserting in their place the following:

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'4. Investigation. "Investigation" means those activities aimed at determining if an alleged violation of rights has occurred or is occurring. These activities shall include reviewing case records, talking with the handicapped person involved, meeting with service providers and any other individual, group or agency that might have information relevant to the case.

5. Personnel. "Personnel" means paid staff directly employed by the agency.

Further amend the Bill in section 1 in that part designated "§3553." by striking out all of the first paragraph and inserting in its place the following:

'The powers and ^{the} duties of the agency designated as the Protection and Advocacy Agency for the Developmentally Disabled in Maine shall include:'

Further amend the Bill in section 1 in that part designated "§3553." by striking out all of subsection 3 and inserting in its place the following:

'3. Request services. Request the cooperation and services of state departments and agencies to aid in its activities;'

Further amend the Bill in section 1 in that part designated "§3553." by striking out all of subsections 7 and 8 and inserting in their place the following:

'7. Report. Prepare an annual report and budget for submission to the Governor and Legislature;

8. Review and approval. Operate in conformance with a

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plan to be submitted annually for the Governor's review and approval; and

9. Serve as surrogate parent. Serve as the surrogate parent for developmentally disabled children committed to the care and custody of the State as may be required by other state and federal laws.'

Further amend the Bill in section 1 by striking out all of those parts designated "§3554." and "§3555." and inserting in their place the following:

'§3554. Investigations

1. Complaint. When the agency receives a complaint that the rights of a developmentally disabled person have been or may have been violated, an investigation may be conducted unless the complaint is beyond the scope of the office's authority or not within the office's priorities. The complainant shall be informed whether an investigation will be conducted, and if not, the reason therefor and whether any other appropriate mechanism for remedy exist. A complaint may be referred to another person as appropriate.

2. Investigation. The agency may conduct investigations upon its own initiative if there is reason to believe that the legal rights of a developmentally disabled person have been or may have been violated. If the developmentally disabled person has not been judged incompetent, then the agency must first receive his written consent to the investigation.

3. Entrance in and upon premises. In the course of an investigation, for the purpose of investigating actual or

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possible neglect, abuse, exploitation or violation of rights of developmentally disabled persons, authorized agency personnel may enter, at any reasonable time, in and upon the premises of any state agency, commission, board or office or any subdivision of the State or the premises of any private agency receiving state or federal funds for the provision of services to the developmentally disabled, speak privately with any individual therein and inspect and copy any information, materials or records relevant to an investigation or case within reasonable limits and in a reasonable manner, subject to section 3555.

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4. Records. Any authorized agency personnel conducting an investigation or handling a case shall have ready access to all records pertaining to a client held by any person, subject to section 3555. These personnel shall have the opportunity to consult with clients whenever necessary for the performance of their duties. Persons shall not refuse access to client records, or the opportunity for consultation, as long as it is requested at a reasonable time and in a reasonable manner. A hospital, institution or mental health or developmental disability facility shall provide adequate privacy for the purpose of consultation with clients and examination of client records.

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Authorized agency personnel inspecting information, materials and records pursuant to an investigation may copy them when personally identifiable material has been removed for the purpose of copying. Where personally identifiable data has not been removed, the agency personnel may copy and use them only after consent is received pursuant to section 3555.

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§3555. Confidentiality of information

information.

1. Disclosure of non-identifiable/ Authorized agency personnel may disclose information, materials and records which do not contain personally identifiable data in the course of negotiations, administrative hearings, suits or other legal or nonlegal actions.

2. Disclosure of identifiable information. Authorized agency personnel may disclose information, materials and records which contain personally identifiable data, in the course of negotiations, administrative hearings, suits or other legal actions if consent is obtained pursuant to subsection 3.

3. Consent. Data that personally identifies the developmentally disabled person can be copied or disclosed only after receipt of that person's written consent. If that person lacks the capacity to understand the purpose, significance and result of the consent or if that person is under 18 years of age, then written consent must be received from:

A. The parent or guardian of a developmentally disabled person who is under 18 years old;

B. The guardian of the developmentally disabled person who is 18 years old or older, provided the guardian has this power; or

C. The guardian ad litem of a developmentally disabled person who is the subject of the information, materials or records.

§3556. Review of guardianship

The appropriate court shall, upon an agency petition which alleges adequate grounds, review the guardianship of a developmentally disabled person.'

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Further amend the Bill by inserting after section 1 the following:

'Sec. 2. 34 MRSA §1-B, sub-§2, as enacted by PL 1975, c. 718, §3, is amended to read:

2. Necessity. As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191 or the purposes of Title 22, section 3554, the investigatory function of the Protection and Advocacy Agency for the Developmentally Disabled in Maine; or'

Further amend the bill by renumbering the sections to read consecutively.

Statement of Fact

The major purposes of this amendment are to:

1. Require that the Vocational Rehabilitation Division for the Developmentally Disabled in Maine provide the Protection and Advocacy Agency/access to records in the course of an agency investigation;
2. Delete the definitions of "Director" and "Person" and add definitions for "Investigation " and "Personnel;"
3. Allow the agency to serve as a surrogate parent for developmentally disabled children committed to the care of the State;
4. Require that the agency receive the written consent of a competent developmentally disabled person before undertaking any investigation on his behalf;

5. Require written consent before data that personally identifies any developmentally disabled person can be copied or disclosed;

6. Require the appropriate court to review a guardianship if the agency presents the court with adequate grounds for review; and

7. Require that the Department of Mental Health and Corrections allow the agency in the course of an investigation to review confidential department records concerning persons receiving department services.

Reported by the Committee on Health and Institutional Services.

Reproduced and distributed pursuant to Senate Rule 11-A.

June 4, 1979

(Filing No. S-305)