

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

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Legislative Document

No. 1873

H.P. 1313

House of Representatives, January 3, 2006

An Act Regarding Sexual Assault Forensic Examinations

Submitted by the Department of the Attorney General pursuant to Joint Rule 204.

Received by the Clerk of the House on December 28, 2005. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative PELLETIER-SIMPSON of Auburn.

Cosponsored by Representative: PINGREE of North Haven.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 14 MRSA §171 is enacted to read:

6 §171. Immunity for performance of forensic examination on
alleged victim of gross sexual assault

8 1. Hospital or practitioner immune when consent of alleged
victim obtained. A licensed hospital or licensed health care
10 practitioner is immune from criminal or civil liability for an
act or omission in performing a forensic examination on an
12 alleged victim of gross sexual assault if:

14 A. The hospital or practitioner that conducts the
examination uses a standard forensic examination kit
16 pursuant to Title 25, section 2915;

18 B. The hospital or practitioner conducts the examination
using due care; and

20 C. The hospital or practitioner obtains the consent of the
22 alleged victim.

24 2. Hospital or practitioner immune in absence of consent of
alleged victim. If a licensed hospital or licensed health care
26 practitioner is unable to obtain consent to conduct a forensic
examination of an alleged victim of gross sexual assault due to
28 the victim's inability to consent or inability to decline
consent, the hospital or health care practitioner is immune from
30 criminal or civil liability for an act or omission in performing
a forensic examination on an alleged victim of gross sexual
32 assault if:

34 A. The hospital or practitioner that conducts the
examination uses a standard forensic examination kit
36 pursuant to Title 25, section 2915;

38 B. The hospital or practitioner conducts the examination
using due care; and

40 C. The examination is conducted under circumstances
42 warranting a reasonable person to conclude that exigent
circumstances justify conducting the examination in the
44 absence of consent.

46 Any kit collected in accordance with this subsection must be
collected anonymously and treated in accordance with Title 25,
48 section 3821.

2 **Sec. 2. 18-A MRSA §5-312, sub-§(a), ¶(3)**, as amended by PL 1995,
c. 378, Pt. B, §2, is further amended to read:

4 (3) A guardian may give or withhold consents or approvals
6 related to medical or other professional care, counsel,
7 treatment or service for the ward, except that a guardian
8 may not decline consent for a sexual assault forensic
9 examination of the ward. Except as authorized by a court
10 of competent jurisdiction, a guardian shall make a
11 health-care decision in accordance with the ward's
12 individual instructions, if any, and other wishes expressed
13 while the ward had capacity to the extent known to the
14 guardian. Otherwise, the guardian shall make the decision
15 in accordance with the guardian's determination of the
16 ward's best interest. In determining the ward's best
17 interest, the guardian shall consider the ward's personal
18 values to the extent known to the guardian. A decision of a
19 guardian to withhold or withdraw life-sustaining treatment
20 is effective without court approval unless the guardian's
21 decision is made against the advice of the ward's primary
22 physician and in the absence of instructions from the ward
made while the ward had capacity.

24 **Sec. 3. 18-A MRSA §5-506, sub-§(a)**, as amended by PL 1995, c.
25 378, Pt. B, §3, is further amended to read:

26 (a) A durable health care power of attorney is a durable
27 power of attorney by which a principal designates another as
28 attorney-in-fact to make decisions on the principal's behalf in
29 matters concerning the principal's medical or health treatment
30 and care. An attorney-in-fact designated under a durable health
31 care power of attorney may be authorized to give or withhold
32 consents or approvals relating to any medical, health or other
33 professional care, counsel, treatment or service of or to the
34 principal by a licensed or professional certified person or
35 institution engaged in the practice of, or providing, a healing
36 art, including life-sustaining treatment when the principal is in
37 a terminal condition or a persistent vegetative state.
38 Notwithstanding any provision contained in the durable health
39 care power of attorney, the designated attorney-in-fact may not
40 decline consent for a sexual assault forensic examination of the
41 principal.

44 **Sec. 4. 18-A MRSA §5-802, sub-§(b)**, as amended by PL 1999, c.
45 711, §2, is further amended to read:

46 (b) An adult or emancipated minor with capacity may execute
47 a power of attorney for health care, which may authorize the
48 agent to make any health-care decision the principal could
49 have made while having capacity, except that the agent may
50 have made while having capacity.

2 not decline consent for a sexual assault forensic
3 examination of the principal. The power must be in writing
4 and signed by the principal and 2 witnesses.
5 Notwithstanding any law validating electronic or digital
6 signatures, signatures of the principal and witnesses must
7 be made in person and not by electronic means. The power
8 remains in effect notwithstanding the principal's later
9 incapacity and may include individual instructions. Unless
10 related to the principal by blood, marriage or adoption, an
11 agent may not be an owner, operator or employee of a
12 residential long-term health-care institution at which the
13 principal is receiving care.

14 **Sec. 5. 18-A MRSA §5-805, sub-§(a),** as amended by PL 1999, c.
15 411, §2, is further amended to read:

16 (a) A surrogate may make a decision to withhold or
17 withdraw life-sustaining treatment for a patient who is an adult
18 or emancipated minor if the patient has been determined by the
19 primary physician to lack capacity, no agent or guardian has been
20 appointed or the agent or guardian is not reasonably available
21 and the patient is in a terminal condition or a persistent
22 vegetative state as determined by the primary physician.

23 A surrogate also is authorized to make any other health care
24 decision for a patient who is an adult or emancipated minor if
25 the patient has been determined by the primary physician to lack
26 capacity and no agent or guardian exists, except that a surrogate
27 may not deny surgery, procedures or other interventions that are
28 lifesaving and medically necessary and may not decline consent
29 for a sexual assault forensic examination.

30 A medically necessary procedure is one providing the most
31 patient-appropriate intervention or procedure that can be safely
32 and effectively given.

33 **Sec. 6. 25 MRSA §3821,** as enacted by PL 1999, c. 719, §4 and
34 affected by §11, is amended by adding a new 2nd paragraph to read:

35 In the case of a kit collected pursuant to Title 14, section
36 171, subsection 2, if an alleged victim does not regain the
37 capacity to consent within 60 days, the State may file a motion
38 in District Court requesting an order that the kit be transported
39 to the Maine State Police Crime Laboratory for processing. The
40 District Court shall consider the best interest of the victim
41 when considering the State's motion.

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SUMMARY

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4 This bill provides hospitals and health care practitioners
immunity from criminal or civil liability for an act or omission
in performing a forensic examination on an alleged victim of
6 gross sexual assault under certain circumstances.