

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

**THIRD SPECIAL SESSION**

October 1, 1992 to October 6, 1992

**FOURTH SPECIAL SESSION**

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

**FIRST REGULAR SESSION**

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR

FIRST REGULAR SESSION

NON-EMERGENCY LAWS IS

OCTOBER 13, 1993

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1993

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND SIXTEENTH LEGISLATURE**

**1993**

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**Sec. 2. 19 MRSA §1003, sub-§1-A** is enacted to read:

**1-A. Procedure.** The following procedures apply to petitions for rights of visitation or access under subsection 1, paragraph B or C.

A. The grandparent must file with the petition for rights of visitation or access an affidavit alleging a sufficient existing relationship with the child, or that sufficient efforts have been made to establish a relationship with the child. When the petition and accompanying affidavit are filed with the court, the grandparent shall serve a copy of both on at least one of the parents or legal guardians of the child.

B. The parent or legal guardian of the child may file an affidavit in response to the grandparent's petition and accompanying affidavit. When the affidavit in response is filed with the court, the parent or legal guardian shall deliver a copy to the grandparent.

C. The court shall determine on the basis of the petition and the affidavit whether it is more likely than not that there is a sufficient existing relationship or, if a sufficient relationship does not exist, that a sufficient effort to establish one has been made.

D. If the court's determination under paragraph C is in the affirmative, the court shall hold a hearing on the grandparent's petition for reasonable rights of visitation or access and shall consider any objections the parents or legal guardians may have concerning the award of rights of visitation or access to the grandparent. The standard for the award of reasonable rights of visitation or access is provided in subsection 2.

This subsection is repealed October 1, 1995.

**Sec. 3. 19 MRSA §1003-A** is enacted to read:

**§1003-A. Mediation**

The court may refer the parties to mediation at any time after the petition is filed and may require that the parties have made a good faith effort to mediate the issue before holding a hearing. If the court finds that either party failed to make a good faith effort to mediate, the court may order the parties to submit to mediation, dismiss the action or any part of the action, render a decision or judgment by default, assess attorney's fees and costs or impose any other sanction that is appropriate in the circumstances. The court may also impose an appropriate sanction upon a party's failure without good cause to appear for mediation after receiving notice of the scheduled time for mediation.

An agreement reached by the parties through mediation on an issue must be reduced to writing, signed by the parties and presented to the court for approval as a court order.

**Sec. 4. 19 MRSA §1005**, as enacted by PL 1991, c. 414, is repealed.

See title page for effective date.

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## CHAPTER 480

### H.P. 621 - L.D. 845

#### An Act to Create a Cause of Action Against the State for Wrongful Imprisonment

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

**Sec. 1. 14 MRSA c. 747** is enacted to read:

#### CHAPTER 747

#### WRONGFUL IMPRISONMENT

#### §8241. Wrongful imprisonment

**1. Exceptions to immunity.** Notwithstanding any immunity of the State from suit, including the Maine Tort Claims Act, chapter 741, the State is liable for the wrongful imprisonment of a person.

**2. Action.** The State is liable for damages for wrongful imprisonment of a person if that person alleges and proves the following by clear and convincing evidence:

A. That the person was convicted of a criminal offense under the laws of this State;

B. That as a result of that conviction, the person was sentenced to a period of incarceration and was actually incarcerated;

C. That subsequent to the conviction and as a condition precedent to suit, the person received a full and free pardon pursuant to the Constitution of Maine, Article V, Part First, Section 11, which is accompanied by a written finding by the Governor who grants the pardon that the person is innocent of the crime for which that person was convicted; and

D. That the court finds that the person is innocent of the crime for which the person was convicted.

**3. Scope of law.** For purposes of this chapter, a person is deemed to have committed a criminal offense

notwithstanding a finding by a state or federal court that the law under which the person was convicted is violative of the Constitution of Maine or the United States Constitution.

**4. Governor's denial of request.** A Governor's failure to issue a written finding that the person is innocent of the crime for which the person was convicted is final and not subject to judicial view.

**5. Settlement.** After commencement of an action under subsection 2, the Attorney General may compromise or settle any claim under this chapter.

#### **§8242. Limitation on damages**

**1. Damages; limitation.** In any action for damages permitted by this chapter, the claim for and award of damages, including costs, against the State may not exceed \$300,000 for all claims arising as a result of a single conviction.

**2. Costs.** Court costs, interest and all other costs that a court may assess are included within the damages limitation specified by this section.

**3. Exclusion from judgment or award.** A judgment or award against the State pursuant to this chapter may not include punitive or exemplary damages.

**4. Payable from General Fund.** Any judgment or award of damages permitted by this chapter must be paid from the General Fund.

#### **§8243. Jurisdiction**

The Superior Court has original jurisdiction over all claims permitted under this chapter.

#### **§8244. Limitation of action**

Every claim for wrongful imprisonment permitted under this chapter is forever barred from the courts of this State unless an action is begun in the courts within 2 years after the date of the full and free pardon of the conviction on which the claim is based.

**Sec. 2. Application.** Any claim that, pursuant to this Act, constitutes a right of action but for the 2-year statute of limitations established in this Act is maintainable if brought within one year of the effective date of this Act.

Application to the Governor for a hearing under this Act by a person convicted of a criminal offense prior to the effective date of this Act must be made to the Governor within 3 months of the effective date of this Act.

See title page for effective date.

## CHAPTER 481

H.P. 1176 - L.D. 1567

### An Act to Make Technical Corrections in Recently Enacted Laws

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

**Sec. 1. PL 1993, c. 277, §5** is enacted to read:

**Sec. 5. Retroactivity.** This Act applies retroactively to October 1, 1993.

**Sec. 2. PL 1993, c. 341, §8** is enacted to read:

**Sec. 8. Retroactivity.** Section 1 of this Act applies retroactively to October 1, 1993.

**Sec. 3. P&SL 1993, c. 11, §3** is repealed and the following enacted in its place:

**Sec. 3. Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

**Sec. 4. Retroactivity.** Section 3 of this Act applies retroactively to April 15, 1993.

See title page for effective date.