

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

**Legislative Document**

**No. 1106**

S. P. 358

In Senate, March 9, 1979

Referred to Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

Presented by Senator Najarian of Cumberland.

Cosponsor: Senator Gill of Cumberland.

MAY M. ROSS, Secretary of the Senate.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-NINE

**AN ACT to Establish a Protection and Advocacy System for the Developmentally  
Disabled of the State of Maine.**

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

Sec. 1. 22 MRSA c. 961 is enacted to read:

**CHAPTER 961**

**PROTECTION AND ADVOCACY FOR THE  
DEVELOPMENTALLY DISABLED**

§ 3551. Policy

It is the policy of the State to assure the legal and human rights of all developmentally disabled persons residing in the State through the establishment of a protection and advocacy system as required by United States Code, Title 42, section 6012.

The Governor of the State shall designate a private nonprofit agency independent of any state 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 subject 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.

**§ 3552. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. **Advocacy.** “Advocacy” means speaking for, pleading for, supporting, advising, espousing the rights of or interceding on behalf of persons with developmental disabilities before public or private agencies, organizations, institutions or individuals serving developmentally disabled persons.

2. **Agency.** “Agency” means the Protection and Advocacy Agency for the Developmentally Disabled in Maine designated by the Governor to carry out the purposes of this chapter.

3. **Developmental disability.** “Developmental disability” means a disability attributable to a mental or physical impairment or combination of mental and physical impairments which:

A. Are manifested before the person reaches age 22;

B. Are likely to continue indefinitely;

C. Result in substantial functional limitations in 3 or more of the following areas of major life activity:

(1) Self care;

(2) Receptive and expressive language;

(3) Learning;

(4) Mobility;

(5) Self direction;

(6) Capacity for independent living; or

(7) Economic self-sufficiency; or

D. Reflect the person’s need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

4. **Director.** “Director” means the executive director of the private agency designated by the Governor.

5. **Person.** “Person” means one or more individuals, partnerships, associations, unincorporated organizations, corporations, cooperatives, labor unions or organizations, legal representatives, trustees and receivers, agents or

any group of persons, the State or any political or civil subdivision or instrumentality thereof; and

6. **Protection.** "Protection" means preventive or supportive assistance given with the purpose of preventing or alleviating neglect, abuse or exploitation of children or adults who are substantially impaired in their capacity to protect their own self-interest.

§ 3553. Powers and duties

The agency designated as the Protection and Advocacy Agency for the Developmentally Disabled in Maine shall:

1. **Cooperate and consult.** Cooperate and consult with state agencies as appropriate in developing state plans and other programs to effectuate the purposes of this chapter;

2. **Comment upon.** Comment upon or recommend to any state agency, procedures or regulations for the purpose of safeguarding the civil rights of individuals within the State;

3. **Obtain services.** Obtain upon request and utilize the services of all state departments and agencies;

4. **Eliminate unfair or discriminatory practices.** Attempt by means of education, conferences, conciliation and persuasion to eliminate unfair or discriminatory practices as being contrary to the public policy of the State;

5. **Agreements.** Contract or enter into agreements as appropriate to effectuate the purposes of this chapter;

6. **Finances; aid.** Accept public and private gifts, bequests, grants or other payments to help finance the activities of the agency;

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

8. **Review and approval.** Operate in conformance with a plan to be submitted annually for the Governor's review and approval.

§ 3554. Investigations

1. **Complaint.** When the agency receives a complaint that the rights of a developmentally disabled person have been, may have been or may be 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 rights of a developmentally disabled person have been, may have been or may be violated.

**3. Entrance in and upon premises.** In the course of an investigation, for the purpose of investigating actual or possible neglect, abuse, exploitation or violation of rights of developmentally disabled persons, 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, 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.

**4. Records.** Any agency personnel conducting an investigation or handling a case shall have ready access to view and copy 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 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 space and privacy for the purpose of consultation with clients and examination of client records.

#### **§ 3555. Confidentiality of information**

**1. Copies.** Agency personnel inspecting information, materials and records pursuant to an investigation, may copy all information, materials and records when personally identifying data can be removed for the purpose of the copying. Where personally identifying data cannot be removed, the office personnel may copy the information, materials and records only after consent is received pursuant to subsection 4.

**2. Utilization of information.** Agency personnel may utilize viewed or copied 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.

**3. Identifiable data.** Agency personnel may utilize viewed or copied 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 4.

**4. Consent.** Consent to copy or utilize information, materials and records containing personally identifiable data must be given knowingly, voluntarily and in writing. For the purposes of subsections 1 and 3, the following persons may give written consent:

**A.** A developmentally disabled person who is the subject of the information, materials or records and who is 18 years or older unless the person lacks the capacity to understand the purpose, significance and result of giving his consent;

**B. The parent or guardian of a developmentally disabled person who is the subject of the information, materials or records and who is under 18 years old;**

**C. The guardian of a developmentally disabled person who is the subject of the information, materials or records and who is 18 years old or older, provided the guardian has this power; or**

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

**5. Disclosure.** Office personnel may not disclose any personally identifiable information, materials or records unless authorized by the subject of the information, materials and records provided he is legally competent to give consent.

**Sec. 2. Appropriation.** The following funds shall be appropriated from the General Fund to carry out the purposes of this Act.

**1979-80**

PROTECTION AND ADVOCACY AGENCY  
FOR THE DEVELOPMENTALLY DISABLED  
IN MAINE

All Other

\$15,000

STATEMENT OF FACT

The purpose of this bill is to provide a legislative mandate for protection and advocacy for developmentally disabled people in the State through an agency completely free of any conflict of interest, such as might be entailed in being a state agency providing services to the developmentally disabled.

Protection and advocacy services are those services that are aimed at assuring that all legal and human rights of the developmentally disabled are observed and that they are protected from harm.

The bill is necessary to insure that the protection and advocacy system has clear legal standing in such matters as:

1. Access to state agency records in any action related to protecting a developmentally disabled person's interests;

2. Right and obligation to act as surrogate parent for developmentally disabled state wards; and

3. Right and obligation to take any and all administrative, legal and other remedies on behalf of the developmentally disabled.

Currently, access to state agency records is dependent upon a specific release from the client. This is a problem in advocating for state wards where the agency that can give permission for access to information may be the agency against which a complaint has been made. Futhermore, in other education-related matters, federal law and regulation requires the appointment of a surrogate parent for state wards. The surrogate is now a state employee and that does not offer adequate protection to the ward in all cases.

In addition to clarifying the standing of the protection and advocacy agency regarding federal and state confidentiality requirements, the bill would also provide a legislative appropriation to partially support the provision of protection and advocacy services. An appropriation of \$15,000 for fiscal year 1979-80 will be adequate to meet the need for state funds.