

MAINE STATE LEGISLATURE

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New Draft of: S. P. 676, L. D. 1783
SECOND REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 1977

S. P. 782

In Senate, March 5, 1980

Reported by Senator Hichens of York from the Committee on Health and Institutional Services. Printed under Joint Rules No. 2.

MAY M. ROSS, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY

AN ACT to Assure Advocacy Services for Children Committed to the Custody of the State of Maine.

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

Sec. 1. 22 MRSA § 3552, sub-§ 4, as enacted by PL 1979, c. 553, § 2, is amended to read:

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 **relevant** 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.

Sec. 2. 22 MRSA § 3553, sub-§ 9, as enacted by PL 1979, c. 553, § 2, is repealed.

Sec. 3. 22 MRSA § 3554, sub-§ 1, as enacted by PL 1979, c. 553, § 2, is amended to read:

1. Complaint. When the agency receives a complaint **which gives reason to believe** that the rights of a developmentally disabled person have been or ~~may have been~~ **are being** violated, an investigation may be conducted, **subject to subsection 2**, 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~~ **mechanisms** for remedy exist. A complaint may be referred to another person as appropriate.

Sec. 4. 22 MRSA § 3554, sub-§ 2, as enacted by PL 1979, c. 553, § 2, is amended to read:

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~~ **are being violated. Prior to initiating its investigation, the agency shall notify the developmentally disabled person or, if he is a minor or has been judged incompetent, his legal guardian, of the specific rights which the agency alleges have been or are being violated.** If the ~~developmentally~~ **developmentally** disabled ~~person~~ **adult** has not been judged incompetent, then the agency must first receive his written consent to the investigation. **If the developmentally disabled minor is competent to understand the purpose, significance and result of the investigation, then the agency shall inform him of his right to stop the investigation. The investigation shall stop if he expresses a clear desire that it stop.**

Sec. 5. 22 MRSA § 3554, sub-§ 3, as enacted by PL 1979, c. 553, § 2, is amended to read:

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 ~~the developmentally disabled persons~~ **person**, authorized agency personnel may enter, at any reasonable time, in and upon the premises of any state agency, commission, board or office of 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 to communicate with providers or recipients of service and to inspect and copy any information, materials or records relevant to an investigation or ease~~ within reasonable limits and in a reasonable manner, subject to section 3555. **Communication with any service recipient shall be under circumstances which are not detrimental to the best interest of that individual.**

Sec. 6. 22 MRSA § 3554, sub-§ 4, as enacted by PL 1979, c. 553, § 2, is amended to read:

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~~ **relevant to the alleged violation of the developmentally disabled person's rights.** These personnel shall have the opportunity to consult with clients whenever necessary for the performance of their duties. Persons shall not refuse access to **relevant** 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.

Sec. 7. 22 MRSA § 3554, last sentence, as enacted by PL 1979, c. 553, § 2, is amended to read:

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.

Sec. 8. 22 MRSA § 3555, as enacted by PL 1979, c. 553, § 2, is amended to read:

§ 3555. Confidentiality of information; use and disclosure by advocacy agency

1. Use and disclosure of nonidentifiable information. 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~~ court proceedings, or any action specified in section 3553.

2. Use and disclosure of identifiable information. Authorized agency personnel may use or disclose information, materials and records which contain personally identifiable data, in the course of ~~negotiations~~ administrative hearings, ~~suits or other legal actions~~ court proceedings, or any action specified in section 3553, 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 or, 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 has been judged incompetent or is a minor~~, then written consent must be received from:

A. The parent or guardian of a developmentally disabled ~~person who is under 18 years old~~ minor. ~~If the person is a ward of the State, the public guardian shall give consent unless it shows that such consent would not be in the person's best interest;~~

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

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

If the developmentally disabled minor is competent to understand the purpose, significance and result of the use and disclosure of identifiable information, then the agency shall inform him of his right to stop that use and disclosure. The use and disclosure of identifiable information shall stop if he expresses a clear desire that it stop.

Sec. 9. 22 MRSA § 3557 is enacted to read:

§ 3557. Rules

Each state department, in conjunction with the Protection and Advocacy Agency for the Developmentally Disabled in Maine, shall adopt, in accordance

with the Maine Administrative Procedure Act, Title 5, chapter 375, rules for effective implementation of this chapter.

STATEMENT OF FACT

This new draft clarifies the law relating to the Protection and Advocacy Agency for the Developmentally Disabled in Maine in the following areas:

1. Access to **relevant** case records;
2. Right to investigate when there is **reason to believe** that developmentally disabled person's rights have been or **are being**, but not may have been, violated;
3. Obligation to inform the developmentally disabled person or his guardian of the investigation;
4. Obligation to communicate with recipients in a manner not detrimental to their best interests; and
5. Right to use and disclose information concerning developmentally disabled minors who are wards of the State.

The new draft also gives a minor who is competent to understand the purpose, significance and result of the investigation the ability to **stop** the investigation or release of information if he states a clear desire that it stop.