## MAINE STATE LEGISLATURE

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1	(EMERGENCY)
2	FIRST REGULAR SESSION
4 5	ONE HUNDRED AND ELEVENTH LEGISLATURE
6 <b>7</b>	Legislative Document No. 1704
8 9	H.P. 1286 House of Representatives, May 26, 1983
10	Reference to the Committee on Judiciary is suggested. Ordered printed and sent up for concurrence.  Submitted by the Department of Educational and Cultural Services
11	pursuant to Joint Rule 24.  EDWIN H. PERT, Clerk
12	Presented by Representative Thompson of So. Portland. Cosponsor: Senator Clark of Cumberland.
13 14	STATE OF MAINE
15 16 17	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-THREE
18 19 20 21	AN ACT to Require Dismissal of State Employees Responsible for Abuse or Neglect of Patients, Clients or Students.
22 23 24	Emergency preamble. Whereas, Acts of the Legis- lature do not become effective until 90 days after adjournment unless enacted as emergencies; and
25 26 27 28 29 30 31	Whereas, the Legislature recognizes the need to deal with instances of "abuse and neglect" resulting in harm to persons entrusted to the care of the State by requiring the dismissal of the responsible individuals from state service including any instances which may occur following the enactment of this legislation; and
32 33 34 35	Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preser-

- vation of the public peace, health and safety; now, therefore,
- 3 Be it enacted by the People of the State of Maine as 4 follows:
- 5 MRSA §678, as amended by PL 1981, c. 493, §2, is repealed and the following enacted in its place:

## 7 §678. Dismissal and disciplinary action

- 1. Dismissal for cause. An appointing authority may dismiss, suspend or otherwise discipline an employee for cause. This right is subject to the right of appeal and arbitration of grievances set forth in chapter 63, or by personnel rule; and chapter 63 shall apply to any employee who has satisfactorily completed an initial probationary period. This subsection shall not apply to an employee appointed to a major policy-influencing position listed in section 711, subsection 2.
- 2. Dismissal for abuse or neglect of persons in state-run facilities. An appointing authority shall dismiss any employee who has abused or neglected any person entrusted to the care of any public agency, institution, school or facility. For the purposes of this section, "abuse and neglect " means a threat to a person's health or welfare by physical or mental injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by an employee of any public agency, institution, school or facility responsible for the care of the person. This right is subject to the right of appeal and arbitration of grievances in chapter 63 and Title 26, section 979-K, or by personnel rule, except that:
  - A. An arbitrator appointed pursuant to the Uniform Arbitration Act, Title 14, chapter 706, to hear a grievance of a state employee shall have no authority to reinstate any employee dismissed in accordance with this subsection where there is a finding of fact by the arbitrator that the employee was responsible for the abuse or neglect of any person entrusted to the care of any public agency, institution, school or facility; and

- B. The State Personnel Board acting under section 753 shall have no authority to reinstate any employee dismissed pursuant to this subsection where there is a finding of fact by the board that the employee was responsible for the abuse or neglect of a person entrusted to the care of any public agency, institution, school or facility.
- 3. Employees of Department of Mental Health and Mental Retardation; criminal offenses. Notwithstanding any other provision of law, the head of any institution under the control of the Department of Mental Health and Mental Retardation as the appointing authority may suspend with pay any employee is charged by indictment with the commission of a criminal offense involving acts alleged to have been perpetrated upon any resident or residents of any such institution. Any such suspension with pay may be authorized by the appointing authority only when to permit the employee to remain on duty at institution would be against the best interest of any one or more of the residents of the institution, and that authorization for suspension with pay shall obtain only during the pendency of the criminal proceedings in the trial court but not longer than 30 working days. Chapter 63 shall not apply to suspension with pay ordered by the appointing authority under this subsection.
- 29 Emergency clause. In view of the emergency cited 30 in the preamble, this Act shall take effect when 31 approved.

## 32 STATEMENT OF FACT

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40 41 This bill to the Personnel Law requires the dismissal of any state employee responsible for the abuse or neglect of any person entrusted to the care of a state-run facility, including institutions and schools. This includes both children and adults at such facilities.

This bill limits the authority of arbitrators and the State Personnel Board in deciding grievances by state employees dismissed for reasons of abuse or neglect in state-run facilities. While the arbitrator, under any applicable collective bargaining agreement, and the board, for other state employees entitled to a grievance procedure, could hear grievances on such dismissals, they could not reinstate any employee to state employment, if they find that the employee was responsible for the abuse or neglect of any person entrusted to the care of a state-operated facility. The arbitrator and the board act as finders of fact and reinstate an employee where they find the evidence did not support the allegations of abuse or neglect.

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