

MAINE STATE LEGISLATURE

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1 (New Draft of H.P. 1502 L.D. 1978)

2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND ELEVENTH LEGISLATURE
5

6 Legislative Document

No. 2294

7
8 H.P. 1740

House of Representatives, March 19, 1984

9 Reported by Representative Brodeur from the Committee on Health and
10 Institutional Services and printed under Joint Rule 2.

Original bill presented by Representative Nelson of Portland.

11 Cosponsored by Senator Bustin of Kennebec and Representative Richard of
Madison.

12 EDWIN H. PERT, Clerk

13 STATE OF MAINE
14

15 IN THE YEAR OF OUR LORD
16 NINETEEN HUNDRED AND EIGHTY-FOUR
17

18 AN ACT Concerning the Disclosure of
19 Licensing Records Regarding Adult and Child
20 Care Programs.
21

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

24 Sec. 1. 22 MRSA §7702, as amended by PL 1981, c.
25 309, §1, is further amended to read:

26 §7702. Violation; penalty

27 Whoever violates any provision of this subtitle
28 shall be punished by a fine of not more than \$500 or
29 by imprisonment for not more than 11 months, or by
30 both, except that anyone violating ~~section~~ sections
31 7703 and 8305 shall be punished only by a fine of not
32 more than \$500.

33 Sec. 2. 22 MRSA §7703 is enacted to read:

1 §7703. Records; disclosure

2 1. Records. Except as otherwise provided by law
3 and this section, any records that are made, acquired
4 or retained by the department in connection with its
5 responsibilities under this subtitle shall be availa-
6 ble to the public.

7 2. Confidential information. Except as provided
8 in subsections 3 and 4, confidential information may
9 not be released without a court order or a written
10 release from the person about whom the confidential
11 information has been requested. The following infor-
12 mation is confidential:

13 A. Any information which identifies, directly or
14 indirectly, a recipient of services of the facil-
15 ity, a client of the facility or his family or
16 custodian, except where the family member or cus-
17 todian is an owner or operator of the facility;

18 B. Notwithstanding sections 3474 and 4008, any
19 information gathered in the course of an investi-
20 gation of neglect or abuse, except a statement
21 indicating whether or not a report of abuse or
22 neglect has been received, the nature of the al-
23 leged abuse or neglect and the conclusion reached
24 by the department, if any;

25 C. Any information that identifies, directly or
26 indirectly, a reference, complainant or reporter
27 of suspected abuse or neglect;

28 D. Any information pertaining to the adoption of
29 an individual;

30 E. Any information about the private life of any
31 person, other than an owner, operator or employee
32 of a facility, in which there is no legitimate
33 public interest and which would be offensive to a
34 reasonable person, if disclosed, except as pro-
35 vided in paragraph F; and

36 F. Any information about the private life of any
37 person who has applied for a license or approval
38 or is or has been licensed or approved as an
39 adult or child family foster home, as defined in

1 section 7901, subsection 3 and section 8101, sub-
2 section 3, in which there is no legitimate public
3 interest and which would be offensive to a rea-
4 sonable person, if disclosed.

5 Within the department, confidential information shall
6 be available to and used by appropriate departmental
7 personnel and legal counsel in carrying out their
8 various functions. Nothing in this section may pre-
9 vent the release of statistical information regarding
10 the population of the facility by diagnosis or other
11 classification, provided that it does not directly or
12 indirectly identify the clients or recipients of ser-
13 vices of the facility.

14 3. Optional disclosure of confidential informa-
15 tion. Relevant information made confidential by sub-
16 section 2 may be released to the following:

17 A. An agency investigating a report of child or
18 adult abuse or neglect when the investigation is
19 authorized by law or by an agreement with the de-
20 partment;

21 B. A physician treating a child or adult whom he
22 reasonably suspects may be abused or neglected;

23 C. A person, the parent or guardian of a minor,
24 or the guardian of an incapacitated adult named
25 in a record, provided that the identity of any
26 reference, complainant, reporter of suspected
27 abuse or neglect or other person is protected
28 when appropriate;

29 D. A person having the legal responsibility or
30 authorization to educate, care for, evaluate,
31 treat or supervise a client or recipient of ser-
32 vices of the facility. This shall include a mem-
33 ber of a treatment team or group convened to plan
34 for or treat a person named in a record, provided
35 that the identity of any reference, complainant,
36 reporter of suspected abuse or neglect or other
37 person is protected, when appropriate;

38 E. Any person engaged in bona fide research,
39 provided that no personally identifying informa-
40 tion is made available, unless it is essential to

1 the research and the commissioner or his designee
2 gives prior approval. If the researcher desires
3 to contact a subject of a record, the subject's
4 consent shall be obtained by the department prior
5 to the contact;

6 F. Any agency involved in approving homes for
7 the placement of children, provided that the
8 identity of any reference, complainant, reporter
9 of suspected abuse or neglect or other person is
10 protected, when appropriate;

11 G. An individual seeking to place a child or
12 adult in a particular facility with protection
13 for the identity of any reference, complainant,
14 reporter of suspected abuse or neglect or other
15 person, when appropriate; or

16 H. An owner or operator of a facility which is
17 the subject of a record, provided that the iden-
18 tity of any reference, complainant, reporter of
19 suspected abuse or neglect or other person is
20 protected, when appropriate.

21 4. Mandatory disclosure of confidential informa-
22 tion. The department shall disclose relevant infor-
23 mation in the records made confidential by subsection
24 2 to the following persons:

25 A. The guardian ad litem of a child or adult
26 named in a record who is reported to be abused or
27 neglected;

28 B. A law enforcement agency investigating a re-
29 port of child abuse or neglect or the commission
30 of a crime by an owner, operator or employee of a
31 facility against a client or recipient of ser-
32 vices of the facility;

33 C. A court on its finding that access to those
34 records may be necessary for the determination of
35 any issue before the court. Access shall be lim-
36 ited to in camera inspection, unless the court
37 determines that public disclosure of the informa-
38 tion is necessary for the resolution of an issue
39 pending before it;

1 D. A grand jury on its determination that access
2 to those records is necessary in the conduct of
3 its official business;

4 E. An appropriate state executive or legislative
5 official with responsibility for adult or child
6 protection services in carrying out his official
7 functions, provided that no personally identify-
8 ing information may be made available unless nec-
9 essary to his functions;

10 F. The Protection and Advocacy Agency for the
11 Developmentally Disabled in Maine in connection
12 with investigations conducted in accordance with
13 chapter 961. The determination of what informa-
14 tion and records are relevant to the investiga-
15 tion shall be made by agreement between the de-
16 partment and the agency; and

17 G. The Commissioner of Educational and Cultural
18 Services, when the information concerns teachers
19 and other professional personnel issued certifi-
20 cates under Title 20-A.

21 5. Dissemination of confidential information.
22 Information released pursuant to subsections 3 and 4
23 shall be used solely for the purpose for which it was
24 provided and shall not be further disseminated.

1 STATEMENT OF FACT

2 The bill had indicated that any information not
3 specified as available was confidential and could be
4 released only under certain conditions.

5 The new draft clearly identifies which informa-
6 tion is to be made available, which is to be kept
7 confidential and specifies the penalties for viola-
8 tions of the provisions.

9 Confidential information may be released only on
10 written permission of the person to whom it relates,
11 on a court order or as specified in the Revised Stat-
12 utes, Title 22, section 7703, subsections 3 and 4.
13 The Department of Human Services may confirm that an
14 allegation of abuse has been made, or that an abuse
15 investigation is in progress. Information gathered
16 as a result of an investigation or an application for
17 license which is not "of legitimate public interest"
18 is also confidential in the case of family foster
19 homes.

20 The conditions under which this confidential in-
21 formation may be made available, and when it must be
22 made available, are also provided.

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