

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1263

6  
7 S.P. 460

In Senate, April 9, 1985

8 Reference to the Committee on Human Resources suggested and ordered  
9 printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Gauvreau of Androscoggin.

Cosponsored by Senator Brown of Washington, Representative Rolde of  
11 York and Representative Melendy of Rockland.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT Relating to Privileged Communications  
18 under the Child and Family Services  
19 and Child Protection Act.  
20

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

23 Sec. 1. 22 MRSA §4015, as amended by PL 1983, c.  
24 781, §2, is further amended to read:

25 §4015. Privileged or confidential communications

26 The husband-wife and physician and  
27 psychotherapist-patient privileges under the Maine  
28 Rules of Evidence and the confidential quality of  
29 communication under Title 20-A, sections 4008 and  
30 6001, to the extent allowed by applicable federal  
31 law; Title 24-A, section 4224; and Title 32, sections  
32 1092-A and 7005, are, except as provided in section  
33 4015-A, abrogated in relation to required reporting,  
34 cooperating with the department or a guardian ad li-  
35 tem in an investigation or other child protective ac-

1 tivity or giving evidence in a child protection pro-  
2 ceeding.

3 Sec. 2. 22 MRSA §4015-A is enacted to read:

4 §4015-A. Privileged or confidential communications  
5 protected

6 Any communication between a physician or  
7 psychotherapist and a patient which is a result of  
8 counselling or treatment pursuant to court order un-  
9 der this chapter or a service agreement with the de-  
10 partment shall be protected under the physician and  
11 psychotherapist-patient privileges under the Maine  
12 Rules of Evidence and the confidential quality of  
13 communication under Title 20-A, sections 4008 and  
14 6001, to the extent allowed by applicable federal  
15 law, Title 24-A, section 4224; and Title 32, sections  
16 1092-A and 7005. These privileges may be abrogated  
17 only to the extent that the department may obtain a  
18 written summary from a physician or a psychotherapist  
19 pertaining to the diagnosis or condition of any pa-  
20 tient who, pursuant to a court order or service  
21 agreement, is being or has been counselled or treated  
22 with respect to an ongoing child protection proceed-  
23 ing. Such a summary may be admitted as evidence in a  
24 child protection proceeding.

1

## STATEMENT OF FACT

2           Communications       between       a       patient       and  
3       psychotherapist are generally privileged from disclo-  
4       sure in court without the express approval of the pa-  
5       tient. The rationale for the privilege is to encour-  
6       age and facilitate treatment for individuals experi-  
7       encing mental illnesses or disorders. Persons with  
8       mental illnesses are reluctant to discuss their con-  
9       dition and accept treatment without assurances of  
10      strict confidentiality. A psychotherapist can be of  
11      little assistance to an individual who is reluctant  
12      to divulge sensitive matters due to fear of subse-  
13      quent disclosure of those confidences to other par-  
14      ties. Nowhere is this problem more apparent than in  
15      cases of suspected child abuse.

16           Current       law       allows       the       use       of  
17      patient-psychotherapist communications in all facets  
18      of child protection proceedings. Otherwise privi-  
19      leged communications are subjected to review by so-  
20      cial workers and courts out of a legitimate concern  
21      to prevent abuse of children. Yet the abrogation of  
22      the patient-psychotherapist privilege in child pro-  
23      tection proceedings discourages parents from cooper-  
24      ating with therapists and hinders the treatment of  
25      persons in need of help.

26           The present practice of mandating disclosure  
27      places therapists in an awkward situation. Frequent-  
28      ly the trust and confidence a therapist has developed  
29      in a patient is destroyed when the therapist is re-  
30      quired to appear in court and divulge very sensitive  
31      matters disclosed in the privacy of therapy. Depart-  
32      ment efforts at family reunification are stalled un-  
33      til the patient either develops new confidence in the  
34      therapist or is treated by another therapist.

35           This bill strikes a balance with respect to the  
36      use of such privileged communications in child pro-  
37      tection proceedings. The use of such communications  
38      as evidence in a court proceeding or for review by  
39      social workers in the course of a child protection  
40      investigation, is prohibited if the communications  
41      are the product of counselling pursuant to court or-  
42      der or a service agreement. Thus parents are encour-

1    aged to cooperate with the department in securing  
2    counselling and treatment. The department will be  
3    allowed to obtain written summaries from  
4    psychotherapists to determine the progress of indi-  
5    viduals in counselling. Thus the department can mon-  
6    itor parental progress without disturbing the  
7    salutory objectives of counselling and treatment.

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