

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 355, L.D. 458)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1687

H.P. 1235 House of Representatives, May 29, 1987  
Reported by Representative PRIEST from the Committee on  
Legal Affairs and printed under Joint Rule 2.

EDWIN H. PERT, Clerk  
Original bill sponsored by Representative MANNING of  
Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-SEVEN

1                   **Resolve, Authorizing Dorothy Gammon to Bring**  
2                   **Civil Action Against the State and**  
3                   **Cumberland County.**  
4

5                   **Action against the State and Cumberland County**  
6                   **Authorized. Resolved:** That, notwithstanding the  
7                   Maine Tort Claims Act, the Maine Revised Statutes,  
8                   Title 14, chapter 741, Dorothy Gammon, of Portland,  
9                   be authorized to bring suit against the State and its  
10                  political subdivision, Cumberland County, for damages  
11                  caused by alleged negligence of the State and Cumber-  
12                  land County in maintaining or failing to maintain  
13                  custody of Dwayne Lakin and in failing to notify  
14                  Dorothy Gammon when Dwayne Lakin was returned to cus-  
15                  tody.

1 Action is to be brought within one year of the  
2 passage of this resolve in Superior Court of Cumber-  
3 land County. Liability and damages shall be deter-  
4 mined according to state law, just as in litigation  
5 between individuals.

6 Any judgment that may be awarded in this civil  
7 action against the State shall be payable from the  
8 Treasurer of State on final process issued by the Su-  
9 perior Court or, if applicable, the Supreme Judicial  
10 Court. Any judgment that may be awarded in this civil  
11 action against Cumberland County shall be payable  
12 from the Treasurer of Cumberland County upon final  
13 process issued by the Superior Court or, if applica-  
14 ble, the Supreme Judicial Court. Total recovery by  
15 Dorothy Gammon from all sources in this civil action  
16 shall not exceed an aggregate of \$50,000. Hearing  
17 shall be before a Justice of the Superior Court with  
18 or without a jury.

19 Nothing in this resolve may be construed to in-  
20 crease the limitations on liability of, or to dimin-  
21 ish the defenses of, any employee of the State or  
22 Cumberland County under the Maine Tort Claims Act,  
23 the Maine Revised Statutes, Title 14, chapter 741.

24 FISCAL NOTE

25 If Dorothy Gammon is successful in this civil ac-  
26 tion, a General Fund appropriation of up to \$50,000  
27 will be necessary. The amount of the appropriation  
28 will depend on the total award and the extent to  
29 which the State is determined to be liable.

1 STATEMENT OF FACT

2 This new draft authorizes Dorothy Gammon to sue  
3 the State and Cumberland County, as does the original  
4 resolve, but limits that recovery to a total of no  
5 more than \$50,000. The \$50,000 limit is a total of  
6 damages paid by all sources, including any damages  
7 paid under an insurance policy. Cumberland County  
8 does have insurance coverage, although it is unclear  
9 if the policy is applicable to the damages sought in  
10 this case.

11 The new draft removes the requirement, which was  
12 in the original resolve, for the Attorney General to  
13 represent both the State and Cumberland County. This  
14 is improper because the State and the county have ad-  
15 verse interests.

16 If successful in her suit, Dorothy Gammon may be  
17 awarded up to a total of \$50,000. The judge or jury  
18 shall apportion damages based on the percentage  
19 fault, if any, of the State and Cumberland County.  
20 The total of up to \$50,000 includes any awards covered  
21 by insurance.

22 This new draft does not increase the liability  
23 limits for individual employees, nor does it diminish  
24 any defenses available to employees under the Maine  
25 Tort Claims Act.

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