

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## SECOND REGULAR SESSION - 1990

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Legislative Document

No. 2417

H.P. 1754

House of Representatives, March 8, 1990

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative AULT of Wayne.

Cosponsored by Senator HOLLOWAY of Lincoln, Senator GAUVREAU of Androscoggin and Representative PARADIS of Frenchville.

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STATE OF MAINE

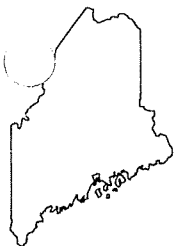
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY

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**An Act to Improve Protective Services for Incapacitated and  
Dependent Adults.**

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

2  
3 Sec. 1. 4 MRSA §807, sub-§3, ¶H, as enacted by PL 1989, c.  
4 265, §1, is repealed and the following enacted in its place:

6 H. A person who is not an attorney, but has been designated  
7 to represent either the Department of Human Services, under  
8 Title 22, section 3473, subsection 3, or the Department of  
9 Mental Health and Mental Retardation, under Title 34-B,  
10 section 1204, subsection 7, in Probate Court proceedings.

12 Sec. 2. 18-A MRSA §5-303, sub-§(e) is enacted to read:

14 (e) When there has been an allegation of abuse, neglect or  
15 exploitation of an allegedly incapacitated person in a petition  
16 or other papers filed with the court, the court may hear the  
17 testimony of the allegedly incapacitated person in chambers with  
18 only the guardian ad litem and counsel present if the statements  
19 made are a matter of record. The court may admit and consider  
20 oral or written evidence of out-of-court statements made by the  
21 allegedly incapacitated person and may rely on that evidence to  
22 the extent of its probative value.

24 Sec. 3. 18-A MRSA §5-407, sub-§(e) is enacted to read:

26 (e) When there has been an allegation of abuse, neglect or  
27 exploitation of an allegedly incapacitated person in a petition  
28 or other papers filed with the court, the court may hear the  
29 testimony of the allegedly incapacitated person in chambers with  
30 only the guardian ad litem and counsel present if the statements  
31 made are a matter of record. The court may admit and consider  
32 oral or written evidence of out-of-court statements made by the  
33 allegedly incapacitated person and may rely on that evidence to  
34 the extent of its probative value.

36 Sec. 4. 22 MRSA §3472, sub-§5, as amended by PL 1989, c. 329,  
37 §4, is further amended to read:

38  
39 5. Department. "Department" means either the Department of  
40 Human Services through its Bureau of Elder and Adult Services or,  
41 in the case of mentally retarded adults, the Commissioner  
42 Department of Mental Health and Mental Retardation.

44 Sec. 5. 22 MRSA §3473, sub-§3 is enacted to read:

46 3. Appearance of designated employees in Probate Court.  
47 The commissioner may designate employees of the department to  
48 represent the department in Probate Court only in:

50 A. Uncontested guardianship and conservatorship proceedings  
51 in which the department is party; or

2            B. Requests for emergency guardianship or conservatorship.

4            **Sec. 6.** 22 MRSA §3474, sub-§2, ¶F, as amended by PL 1987, c.  
714, §3, is further amended to read:

6            F. Any person engaged in bona fide research, provided that  
8            no personally identifying information is made available,  
10            unless it is essential to the research and the commissioner  
12            or his the commissioner's designee gives prior approval. If  
the researcher desires to contact a subject of a record, the  
subject's consent shall must be obtained by the department  
prior to the contact; and

14            **Sec. 7.** 22 MRSA §3474, sub-§2, ¶G, as enacted by PL 1987, c.  
714, §4, is amended to read:

16            G. Persons and organizations pursuant to Title 5, section  
18            9057, subsection 6, and pursuant to chapter 857-; and

20            **Sec. 8.** 22 MRSA §3474, sub-§2, ¶H is enacted to read:

22            H. A relative by blood, marriage or adoption of an  
24            incapacitated or dependent adult named in a record.

26            **Sec. 9.** 22 MRSA §3474, sub-§2-A is enacted to read:

28            2-A. Optional disclosure by public guardian or  
conservator. When the department is appointed public guardian or  
conservator, the department may disclose relevant information to  
any individual or organization necessary to meet the needs of the  
ward or protected person.

32            **Sec. 10.** 22 MRSA §3474, sub-§3, ¶C, as amended by PL 1985, c.  
34            644, §2, is further amended to read:

36            C. A grand jury on its determination that access to those  
38            records is necessary in the conduct of its official  
business; and

40            **Sec. 11.** 22 MRSA §3474, sub-§3, ¶D, as amended by PL 1989, c.  
42            7, Pt. N, §2, is further amended to read:

44            D. An advocacy agency conducting an investigation under  
chapter 961, United States Public Law 88-164, Title I, Part  
C or United States Public Law 99-319, regarding a  
46            developmentally disabled person or mentally ill person who  
is or who, within the last 90 days, was residing in a  
48            facility rendering care or treatment, when a complaint has  
been received by the agency or there is probable cause to  
50            believe that that individual has been subject to abuse or  
neglect, and that person does not have a legal guardian or  
52            the person is under public guardianship. The determination

2 of what which information and records are relevant to the  
investigation shall--be is made by agreement between the  
4 department and the agency; and

6 **Sec. 12. 22 MRSA §3474, sub-§3, ¶E** is enacted to read:

8 E. An appropriate state executive or legislative official  
with responsibility for adult protective services, except  
10 that personally identifying information may not be made  
available unless necessary for the functions of that  
12 executive or official.

14 **Sec. 13. 22 MRSA §3477, sub-§1**, as amended by PL 1989, c. 259,  
§6, is further amended to read:

16 **1. Reasonable cause to suspect.** When, while acting in a  
professional capacity, an allopathic or osteopathic physician,  
18 medical intern, medical examiner, physician's assistant, dentist,  
chiropractor, podiatrist, registered or licensed practical nurse,  
20 certified nursing assistant, Christian Science practitioner,  
social worker, psychologist, pharmacist, physical therapist,  
22 speech therapist, occupational therapist, mental health  
professional, law enforcement official, coroner, emergency room  
24 personnel, ambulance attendant or emergency medical technician  
suspects that an adult has been abused, neglected or exploited,  
26 and has reasonable cause to suspect that the adult is  
incapacitated, then the professional shall immediately report or  
28 cause a report to be made to the department.

30 Whenever a person is required to report in the capacity as a  
member of the staff of a medical, public or private institution,  
32 agency or facility, the staff person shall immediately notify the  
person in charge of the institution, agency or facility, or the  
34 designated agent of the person in charge, who shall then cause a  
report to be made. The staff person shall also make a report  
36 directly to the department.

38 **Sec. 14. 22 MRSA §3479**, as amended by PL 1983, c. 616, §2, is  
repealed and the following enacted in its place:

40 **§3479. Optional reporting**

42 Any person may make a report if that person knows or has  
44 reasonable cause to suspect abuse, neglect or exploitation of an  
incapacitated or dependent adult, or has reasonable cause to  
46 suspect that an adult is incapacitated.

48

2 STATEMENT OF FACT

4 This bill authorizes Department of Human Services  
caseworkers to represent the department in Probate Court hearings  
6 regarding uncontested and emergency guardianship and  
conservatorship cases. This provision was omitted from Public  
8 Law 1989, chapter 265, which authorized caseworkers from the  
Department of Mental Health and Mental Retardation's adult  
10 protective services program to represent that department in the  
same types of hearings in Probate Court. The current bill  
12 corrects this oversight by extending the provisions in that  
legislation to caseworkers in the Department of Human Services'  
14 adult protective services program who operate under the same  
enabling legislation as caseworkers in the Department of Mental  
16 Health and Mental Retardation.

18 This bill also establishes special procedural rules for  
guardianship and conservatorship proceedings involving  
20 allegations of abuse, neglect or exploitation of incapacitated  
adults. These rules make 2 special provisions for an alleged  
22 victim who is the subject of a petition for guardianship or  
conservatorship. These provisions allow the Probate Court to  
24 admit into evidence hearsay statements by the alleged victim and  
to take the alleged victim's testimony in chambers with only the  
26 guardian ad litem and counsel present.

28 This bill also makes changes in provisions of the adult  
protective services laws governing disclosure of information  
30 about incapacitated and dependent adults enabling the Department  
of Human Services to involve family members in an incapacitated  
32 or dependent adult's treatment by allowing the department to  
share relevant information with relatives. This bill clarifies  
34 that the department, when it has been appointed public guardian  
or conservator, may disclose information about a ward or  
36 protected person to any individual or organization when  
disclosure is necessary to meet the needs of the client. The  
38 bill also gives the Legislature and State Government access to  
department records enabling evaluation and improvement of the  
40 system of adult services.

42 This bill amends the language on mandatory reporting  
clarifying that medical interns, rather than student interns  
44 working in other fields, must report abuse, neglect or  
exploitation of an incapacitated adult.

46 This bill also makes technical changes to the language on  
48 optional reporting of abuse, neglect and exploitation.