

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1714

H.P. 1214

House of Representatives, April 1, 1997

An Act to Implement the Recommendations of the Department of Human Services Study Group on Prosecution of Crimes against the Elderly.

Submitted by the Department of Human Services pursuant to Joint Rule 204.
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative McALEVEY of Waterboro.
Cosponsored by Representatives: BRAGDON of Bangor, QUINT of Portland.

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

2
3 **Sec. 1. 9-B MRSA §161, sub-§2, ¶I**, as amended by PL 1995, c.
4 419, §5, is further amended to read:

6 I. Any disclosure of records made pursuant to Title 22,
7 section 16, 17, 3477 or 4314;

8
9 **Sec. 2. 18-A MRSA §5-411**, as amended by PL 1995, c. 291, §2,
10 is further amended to read:

12 **§5-411. Bond**

14 The court may shall require a conservator of an estate of
15 \$10,000 or more to furnish a bond conditioned upon faithful
16 discharge of all duties of the trust according to law, with
17 sureties as it specifies, unless the court makes a specific
18 finding as to why a bond should not be required. With respect to
19 estates of less than \$10,000, the court may in its discretion
20 require a bond or other surety. A conservator who moves out of
21 this State while serving as conservator shall notify the court
22 regarding the change of residence. The court may require a
23 conservator who moves or locates out of this State while serving
24 as conservator to furnish a bond at that time. Unless otherwise
25 directed, the bond must be in the amount of the aggregate capital
26 value of the property of the estate in the conservator's control
27 plus one year's estimated income minus the value of securities
28 deposited under arrangements requiring an order of the court for
29 their removal and the value of any land that the fiduciary, by
30 express limitation of power, lacks power to sell or convey
31 without court authorization. The court in lieu of sureties on a
32 bond, may accept other security for the performance of the bond,
33 including a pledge of securities or a mortgage of land.

34
35 **Sec. 3. 18-A MRSA §5-507** is enacted to read:

36 **§5-507. Durable financial power of attorney**

38 (a) A durable financial power of attorney is a durable
39 power of attorney by which a principal designates another as
40 attorney-in-fact to make decisions on the principal's behalf in
41 matters concerning the principal's finances and property. In the
42 exercise of the powers conferred under a durable financial power
43 of attorney, an attorney-in-fact shall act as a fiduciary under
44 the standards of care applicable to trustees as described by
45 section 7-302 and shall act with utmost faith and loyalty. An
46 attorney-in-fact is not authorized to make gifts to the
47 attorney-in-fact or to others unless the durable financial power
48 of attorney explicitly authorizes such gifts.

2 (b) A durable financial power of attorney must be witnessed
3 by a notary public or an attorney at law. This requirement does
4 not render ineffective a durable financial power of attorney
5 validly executed prior to the effective date of this section.

6 (c) A durable financial power of attorney must contain the
7 following language:

8
9 "Notice to the Principal: As the "Principal," you are using
10 this Durable Power of Attorney to grant power to another
11 person (called the "Agent") to make decisions about your
12 money and property and to use it on your behalf. The powers
13 granted to the Agent are broad and sweeping. Your Agent
14 will have the power to sell or otherwise dispose of your
15 property and spend your money without advance notice to you
16 or approval by you. Under this document, your Agent will
17 continue to have these powers after you become incapacitated
18 and you may also choose to authorize your Agent to use these
19 powers before you become incapacitated. As the Agent, your
20 authority under this form will end when the Principal dies
21 and you will not have the authority to administer the estate
22 unless so named in the Principal's will. The powers that
23 you give your Agent are explained more fully in the Maine
24 Revised Statutes, Title 18-A, sections 5-501 to 5-507 and in
25 Maine case law. You have the right to revoke or take back
26 this Durable Power of Attorney at any time as long as you
27 are of sound mind. If there is anything about this form
28 that you do not understand, you should ask a lawyer to
29 explain it to you.

30
31 Notice to the Agent: As the "Agent" or "Attorney-in-fact,"
32 you are given power under this Durable Power of Attorney to
33 make decisions about the money and property belonging to the
34 Principal and to spend it on that person's behalf. This
35 Durable Power of Attorney is only valid if the Principal is
36 of sound mind when the Principal signs it. As the Agent,
37 you are under a duty (called a "fiduciary duty") to observe
38 the standards observed by a prudent person dealing with the
39 property of another and to act with utmost faith and
40 loyalty. The duty is explained more fully in the Maine
41 Revised Statutes, Title 18-A, sections 5-501 to 5-507 and
42 7-302 and in Maine case law. As the Agent, you are not
43 entitled to use the money for your own benefit or to make
44 gifts to yourself or others unless the Durable Power of
45 Attorney specifically gives you the authority to do so. As
46 the Agent, your authority under this form will end when the
47 Principal dies and you will not have the authority to
48 administer the estate unless you are named in the
49 Principal's will. If you violate your fiduciary duty under
50 this Durable Power of Attorney, you may be liable for

2 damages and may be subject to criminal prosecution. If
3 there is anything about this form or your duties under it
4 that you do not understand, you should ask a lawyer to
5 explain it to you."

6 **Sec. 4. 22 MRSA §3477, sub-§1**, as amended by PL 1995, c. 696,
7 Pt. B, §3, is further amended to read:

8
9 **1. Reasonable cause to suspect.** When, while acting in a
10 professional capacity, an allopathic or osteopathic physician,
11 medical intern, medical examiner, physician's assistant, dentist,
12 chiropractor, podiatrist, registered or licensed practical nurse,
13 certified nursing assistant, Christian Science practitioner,
14 social worker, psychologist, pharmacist, physical therapist,
15 speech therapist, occupational therapist, mental health
16 professional, law enforcement official, coroner, emergency room
17 personnel, ambulance attendant ~~or~~, emergency medical technician,
18 unlicensed assistive personnel, an employee or representative of
19 a financial institution authorized to do business in this State
20 under Title 9-B, section 131, subsection 17-A or of a credit
21 union authorized to do business in this State under Title 9-B,
22 section 131, subsection 12-A, a financial planner as defined in
23 Title 32, section 9752, subsection 2 or a broker-dealer or sales
24 representative as defined in Title 32, section 10501 suspects
25 that an adult has been abused, neglected or exploited, and has
26 reasonable cause to suspect that the adult is incapacitated, then
27 the professional shall immediately report or cause a report to be
28 made to the department.

29 Whenever a person is required to report as a member of the staff
30 of a medical, public or private institution, agency or facility,
31 the staff person shall immediately make a report directly to the
32 department.
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SUMMARY

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37 During the last legislative session, the Legislature
38 directed the Department of Human Services to convene a "Study
39 Group on Prosecution of Crimes Against the Elderly," for the
40 purpose of reviewing case histories on crimes against the
41 elderly, identifying barriers to successful investigation and
42 prosecution of such crimes and reviewing the criminal code. The
43 study group was made up of representatives of the department's
44 adult protective services program, local law enforcement
45 agencies, local prosecutors, the Attorney General's office and
46 other interested parties. The study group was required to submit
47 a report of its findings and recommendations to the Joint
48 Standing Committee on Criminal Justice. In its report, the study
49
50

2 group recommends that Maine laws governing fiduciary arrangements
3 be amended to include greater safeguards against financial
4 exploitation directed at older people and that the mandatory
5 reporting requirement in the Adult Protective Services Act be
6 extended to include people who work in the financial services
7 field.

8 This bill also amends the Maine Revised Statutes, Title
9 18-A, section 5-411 to require that court-appointed conservators
10 of estates in excess of \$10,000 provide a bond to protect the
11 estate against the possibility of loss and mismanagement. Under
12 current law, a bond is required only when ordered by the Probate
13 Court.

14 This bill also requires that durable financial powers of
15 attorney be notarized and include language advising the principal
16 and the agent of the duties and responsibilities of the agent and
17 liability for neglect or violation of duties.

18 The bill expands the mandatory reporting law under Title 22,
19 section 3477 by requiring bank employees and representatives,
20 financial planners and stockbrokers and credit union employees
21 and unlicensed assistive personnel to report the abuse, neglect
22 or exploitation of incapacitated and dependent adults. The
23 inclusion of unlicensed assistive personnel, which includes
24 personal care attendants, fills an obvious gap in the mandatory
25 reporting law, which includes all other categories of health care
26 personnel.
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