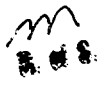


MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1168, L.D. 1568, Bill, "An Act to Amend the Laws Pertaining to Protection and Advocacy for Persons with Developmental or Learning Disabilities or Mental Illness"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 5 MRSA c. 511 is amended by repealing the chapter headnote and enacting the following in its place:

CHAPTER 511

PROTECTION AND ADVOCACY FOR PERSONS WITH
DISABILITIES

Sec. 2. 5 MRSA §19501, as enacted by PL 1989, c. 837, §1, is amended to read:

§19501. Policy

It is the policy of the State to ensure that the legal and human rights of all ~~developmentally-disabled persons and mentally ill--individuals~~ with disabilities residing in the State are protected through the establishment of a protection and advocacy system pursuant to 29 United States Code, Section 794(e), 42 United States Code, Section 6042 et seq., as recodified, and Section 10801 et seq.

COMMITTEE AMENDMENT

2 **Sec. 3. 5 MRSA §19502**, as enacted by PL 1989, c. 837, §1, is amended to read:

3 **§19502. Designation**

4 The Governor shall designate an agency, independent of any
5 state or private agency that provides treatment, services or
6 habilitation to persons with ~~developmental~~ disabilities ~~or mental~~
7 ~~illness~~, to serve as the protection and advocacy agency for
8 persons with disabilities. ~~The agency shall also protect and~~
9 ~~advocate for the rights of persons with learning disabilities.~~

10 **Sec. 4. 5 MRSA §19503, sub-§1**, as enacted by PL 1989, c. 837,
11 §1, is amended to read:

12 **1. Abuse.** "Abuse" means the act or failure to act,
13 knowingly, recklessly or intentionally, that causes, or may
14 cause, injury or death. "Abuse" includes, but is not limited to,
15 rape or sexual assault, the striking of an individual, the use of
16 excessive force in the use of bodily restraints and the use of
17 bodily or chemical restraints in a manner that is not in
18 compliance with federal and state laws, regulations and rules and
19 verbal, nonverbal, mental and emotional harassment.

20 **Sec. 5. 5 MRSA §19503, sub-§2-A** is enacted to read:

21 **2-A. Complaint.** "Complaint" means, but is not limited to,
22 any report or communication, formal or informal, written or oral,
23 including media accounts and telephone calls from any source,
24 including anonymous calls, alleging abuse or neglect of a person
25 with a disability.

26 **Sec. 6. 5 MRSA §19503, sub-§3, ¶C**, as enacted by PL 1989, c.
27 837, §1, is amended to read:

28 C. Results in substantial functional limitations in 3 or
29 more of the following areas of major life activity:

- 30 (1) Self care;
- 31 (2) Receptive and expressive language;
- 32 (3) Learning;
- 33 (4) Mobility;
- 34 (5) Self direction;
- 35 (6) Capacity for independent living; and

(7) Economic self-sufficiency; and

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A person from birth through 9 years of age who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting 3 of the criteria stated in this subsection if there is a high probability that the person will meet those criteria later in life if services and supports are not provided to the person; and

Sec. 7. 5 MRSA §19503, sub-§5, as enacted by PL 1989, c. 837, §1, is repealed and the following enacted in its place:

5. Facility. "Facility" means any foster home; boarding home; nursing home; group home; hospital; state mental health institute; state-operated psychiatric treatment facility; state, county or municipal correctional or detention facility; shelter; or any other facility licensed or funded by the State, or any subdivision of the State, for the provision of services, supports and other assistance or residential services or treatment. "Facility" includes any facility providing services, supports and other assistance or residential services or treatment that operates without a license that is required by law, ordinance or rule.

Sec. 8. 5 MRSA §19503, sub-§9, as enacted by PL 1989, c. 837, §1, is amended to read:

9. Personnel. "Personnel" means salaried staff employed by the agency.

Sec. 9. 5 MRSA §19503, sub-§10, as enacted by PL 1989, c. 837, §1, is repealed and the following enacted in its place:

10. Person with a disability. "Person with a disability" means a person with a physical or mental impairment that substantially limits one or more of the major life activities of that person and includes, but is not limited to, a person with a developmental disability, a learning disability or a mental illness.

Sec. 10. 5 MRSA §19503, sub-§11 is enacted to read:

11. Probable cause. "Probable cause" means a reasonable ground for belief that a person with a disability has been or may be subject to abuse or neglect. The belief may be based on reasonable inferences drawn from experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

2 **Sec. 11. 5 MRSA §19504, sub-§2, ¶¶A and B**, as enacted by PL
3 1989, c. 837, §1, are amended to read:

4
5 A. The advisory council shall advise the agency on policies
6 and priorities to be followed in carrying out the duties of
7 the agency as the protection and advocacy agency for
8 mentally-ill individuals with mental illness.

10 B. Members of the advisory council must include attorneys,
11 mental health professionals, individuals from the public who
12 are knowledgeable about mental illness and the advocacy
13 needs of persons with mental illness and who have
14 demonstrated a substantial commitment to improving mental
15 health services, a provider of mental health services,
16 individuals who have received or who are receiving mental
17 health services and family members of those individuals. At
18 least ~~1/2~~ 60% of the membership must consist of individuals
19 who have received or who are receiving mental health
20 services and family members of those individuals.

22 **Sec. 12. 5 MRSA §19505, sub-§§6 and 7** are enacted to read:

24 6. Goals and priorities. The agency shall represent
25 persons with disabilities and otherwise conduct its activities in
26 accordance with goals and priorities annually established by the
27 agency, with other requirements of applicable federal law and
28 with the terms of any grants or contracts. The agency shall
29 provide the public with an opportunity to comment upon the
30 agency's goals and priorities.

32 7. Monitoring. The agency may monitor the delivery of
33 services, supports and other assistance or residential services
34 or treatment provided to persons with disabilities for the
35 purpose of ensuring that services, supports and assistance meet
36 the needs of those persons and are delivered in conformity with
37 laws, regulations, rules and other standards regarding quality of
38 care.

40 **Sec. 13. 5 MRSA §19506, sub-§1**, as enacted by PL 1989, c. 837,
41 §1, is amended to read:

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43 1. **Records.** Agency personnel must be granted access to all
44 records, reports and supporting information, other than records,
45 reports and supporting information created in the course of a an
46 ongoing criminal investigation by the Attorney General, a
47 district attorney's office or a law enforcement agency or
48 records, reports and supporting information designated as
49 confidential by Title 16, section 614, that:

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2 A. Pertain to a person who is a client of the agency, if
the person or the person's legal guardian or other legal
representative has authorized the agency to have that access;

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6 ~~B. Pertain to an individual who is or was a person with
disabilities and who is the subject of a complaint received
by the agency or who the agency has probable cause to
8 believe has been or is being abused, exploited or neglected,
and who is:~~

10 (1) ~~By reason of a mental or physical condition,
unable to authorize the agency to have access; and~~

14 (2) ~~Either under public guardianship or without a
legal guardian or other representative who may
16 authorize the agency to have access; or~~

18 C. Describe incidents of abuse, exploitation, neglect or
injury, and the steps taken to investigate those incidents,
20 prepared by any staff person of any facility serving persons
with disabilities or by any agency charged with
22 investigating allegations of abuse, exploitation, neglect
and injury occurring at facilities that serve persons with
24 disabilities; or

26 D. Pertain to an individual who is or was a person with a
disability and who is the subject of a complaint received by
28 the agency or who, as a result of monitoring or other
activities resulting from a complaint or other evidence, the
30 agency has probable cause to believe has been or is being
abused, exploited or neglected and who:

32 (1) By reason of a mental or physical condition is
unable to authorize the agency to have access and is
34 either under public guardianship or without a legal
guardian or other representative who may authorize the
36 agency to have access;

38 (2) Has a legal guardian, conservator or other legal
representative who has been contacted by the agency
40 upon receipt of the name and address of the guardian,
conservator or representative, and the agency has
42 offered assistance to that person to resolve the
situation, and that person has failed or refused to act
44 on behalf of the individual; or

46 (3) Is deceased or whose whereabouts are unknown.

48 Agency personnel must be given access to the records of a person
50 with a disability and other records relevant to conducting an

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2 investigation within 3 business days of the agency making a
3 written request. When the agency determines there is probable
4 cause to believe that the health or safety of the person is in
5 serious or immediate jeopardy or in event of the death of a
6 person with a disability, the agency must be given access to
7 records within 24 hours of the agency making a written request.

8 **Sec. 14. 5 MRSA §19506, sub-§3**, as enacted by PL 1989, c. 837,
9 §1, is amended to read:

10 **3. Facilities.** Any facility that serves persons a person
11 with disabilities a disability shall permit entrance access to
12 the premises of the facility by agency personnel performing
13 duties pursuant to section 19505.

14 A. Access to the premises must include reasonable
15 unaccompanied access to all residents of the facility at
16 reasonable times, including normal working and visiting
17 hours, for the following purposes:

18 (1) Providing information and training on and referral
19 to programs addressing the needs of a person with a
20 disability and information about the rights of a person
21 with a disability and the protection and advocacy
22 services of the agency, including the name, address and
23 telephone number of the agency; and

24 (2) Monitoring the rights and safety of recipients of
25 services from the facility.

26 B. If the agency is conducting an investigation of a
27 complaint of abuse, neglect or exploitation, access to the
28 premises must include:

29 (1) The opportunity to interview any recipient of
30 services from the facility, facility employee or other
31 person, including the person suspected to be the victim
32 of abuse, neglect or exploitation, who the agency
33 reasonably believes may have knowledge of the incident
34 under investigation; and

35 (2) The opportunity to view, inspect and photograph
36 all areas of the facility's premises that the agency
37 reasonably believes may be connected to the incident
38 under investigation.

39 **Sec. 15. 5 MRSA §19507, sub-§3, ¶¶F and G** are enacted to read:

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F. The person has a legal guardian, conservator or other legal representative and:

(1) The legal guardian, conservator or legal representative has been contacted by the agency upon receipt of the name and address of the legal guardian, conservator or legal representative;

(2) The agency has offered assistance to the legal guardian, conservator or legal representative to resolve the situation; and

(3) The legal guardian, conservator or legal representative has failed or refused to act on behalf of the person.

G. The person is deceased or the person's whereabouts are unknown.

Sec. 16. 5 MRSA §19509 is enacted to read:

§19509. Notice of death or injury

Notwithstanding any provision of law to the contrary, the following provisions apply to psychiatric hospitals, hospital units that are equipped to provide inpatient care and treatment for persons with mental illness, state mental health institutes and state-operated psychiatric treatment facilities. Notice provided under this section must be provided within 7 days of the date of the death, attempted suicide or the incident resulting in injury. Notice provided under this section must include the name of the person with a disability; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parent if that person is a minor; a detailed description of the occurrence and any injuries sustained; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice.

1. Psychiatric hospitals; hospital units. A psychiatric hospital or a hospital unit that is equipped to provide inpatient care and treatment for persons with mental illness shall provide the agency with access to information relating to the death of any person with a disability who died while in the facility in seclusion or restraint, whose death occurred within 24 hours of being in seclusion or restraint in the hospital or when it is reasonable to conclude that the death is a result of having been in seclusion or restraint in the hospital.

2. State mental health institutes; state-operated psychiatric treatment facilities. A state mental health

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2 institute or state-operated psychiatric treatment facility shall
3 notify the agency and provide access to information relating to a
4 person with a disability if that person, while in the hospital,
5 has died, attempted suicide or sustained a serious injury
6 resulting in significant impairment of physical condition. For
7 the purposes of this subsection, significant impairment includes
8 serious injuries resulting from burns, lacerations, bone
9 fractures, substantial hematoma and injuries to internal organs
10 whether self-inflicted or inflicted by another person.'

12 **SUMMARY**

14 This amendment replaces the bill. It updates the laws
15 relating to the advocacy system for persons with disabilities.
16 It clarifies the obligations of mental health facilities and
17 hospitals to notify the advocacy agency regarding reportable
18 incidents.

COMMITTEE AMENDMENT