

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

---

Legislative Document

No. 1568

H.P. 1168

House of Representatives, March 13, 2001

**An Act to Amend the Laws Pertaining to Protection and Advocacy for  
Persons with Developmental or Learning Disabilities or Mental Illness.**

---

Reference to the Committee on Health and Human Services suggested and ordered printed.

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative BRANNIGAN of Portland.  
Cosponsored by Senator DAGGETT of Kennebec and  
Representative FULLER of Manchester.

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

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

6 **CHAPTER 511**

8 **PROTECTION AND ADVOCACY FOR PERSONS WITH**  
**DISABILITIES**

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

14 **§19501. Policy**

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

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

28 **§19502. Designation**

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

36 **Sec. 4. 5 MRSA §19503, sub-§5**, as enacted by PL 1989, c. 837,  
38 §1, is repealed and the following enacted in its place:

40 **5. Facility.** "Facility" means any foster home; boarding  
home; nursing home; group home; hospital; state mental health  
institute; state, county or municipal detention facility;  
shelter; and 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 other facility providing  
services, supports and other assistance; residential services; or  
treatment residential services that is operating without a  
license, but is required to be licensed under the laws of the  
United States, this State or any subdivision of this State.

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

4           **3. Developmental disability.** "Developmental disability"  
6 means a disability attributable to a mental or physical  
impairment or combination of mental and physical impairments that:

8           A. Is manifested before the person reaches 22 years of age;

10          B. Is likely to continue indefinitely;

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

16               (1) Self care;

18               (2) Receptive and expressive language;

20               (3) Learning;

22               (4) Mobility;

24               (5) Self direction;

26               (6) Capacity for independent living; and

28               (7) Economic self-sufficiency; and

30          D. Reflects the person's need for a combination and  
32 sequence of special, interdisciplinary or generic care,  
treatment or other services that are of a lifelong or  
34 extended duration and are individually planned and  
coordinated.

36 For individuals from birth to 9 years of age, "developmental  
38 disability" means a substantial developmental delay or specific  
congenital or acquired condition that has a high probability of  
resulting in developmental disabilities if services are not  
provided.

40           **Sec. 6. 5 MRSA §19503, sub-§9**, as enacted by PL 1989, c. 837,  
42 §1, is amended to read:

44           **9. Personnel.** "Personnel" means ~~salari~~ed staff employed by  
46 the agency.

48           **Sec. 7. 5 MRSA §19503, sub-§10**, as enacted by PL 1989, c. 837,  
§1, is repealed and the following enacted in its place:



2           (3) Under a legal guardian, conservator or other legal  
4           representative who has been contacted by the agency  
6           upon receipt of the name and address of the  
8           representative, and the agency has offered assistance  
          to the representative to resolve the situation, and the  
          representative has failed or refused to act on behalf  
          of the individual; or

10           (4) Deceased or whose whereabouts are unknown; or

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

20           **Sec. 11. 5 MRSA §19506, sub-§1**, as enacted by PL 1989, c. 837,  
22           §1, is amended to read:

24           **1. Records.** Agency personnel must be granted access to all  
26           records, other than records created in the course of a criminal  
          investigation by the Attorney General, a district attorney's  
          office or a law enforcement agency, that:

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

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

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

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

46           C. Describe incidents of abuse, exploitation, neglect or  
48           injury, and the steps taken to investigate those incidents,  
          prepared by any staff person of any facility serving persons  
          with disabilities or by any agency charged with  
          investigating allegations of abuse, exploitation, neglect

2 and injury occurring at facilities that serve persons with disabilities.

4 The agency personnel must be granted access to the records of  
6 persons with disabilities and other records relevant to  
8 conducting an investigation not later than 3 business days after  
10 the agency makes a written request for the records involved.  
12 When the agency determines there is probable cause to believe  
14 that the health or safety of the person is in serious and  
16 immediate jeopardy, or in any case of the death of a person with  
18 a disability, the agency must be granted access to records not  
20 later than 24 hours after the agency's request for records.

22 **Sec. 12. 5 MRSA §19507, sub-§3, ¶¶F and G** are enacted to read:

24 F. A person has a legal guardian, conservator or other legal  
26 representative, and:

28 (1) The representative has been contacted by the  
30 agency upon receipt of the name and address of the  
32 representative;

34 (2) The agency has offered assistance to the  
36 representative to resolve the situation; and

38 (3) The representative has failed or refused to act on  
40 behalf of the person.

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

46 **Sec. 13. 5 MRSA §19509** is enacted to read:

48 **§19509. Notice of death**

36 Notwithstanding any other provision of law to the contrary,  
38 with respect to any facility to which this chapter applies, the  
40 agency must be provided access to information relating to any  
42 person with a disability whose death occurs while the person is  
44 in seclusion or restraint, or whose death occurs within 24 hours  
46 after the person has been removed from restraint or seclusion, or  
48 when it is reasonable to assume that a person's death is a result  
of such seclusion or restraint. Each facility shall notify the  
agency of any such death. A notification under this section must  
include the name of the person and must be provided not later  
than 7 days after the date of the death of the person.

## SUMMARY

2

4           This bill amends the laws establishing the protection and  
6           advocacy system for developmentally disabled persons and mentally  
8           ill individuals to be consistent with federal laws in the areas  
          of definitions, access and scope of responsibility. It also adds  
          references to federal laws that establish new protection and  
          advocacy services within the overall system and to the services  
          permitted under these federal laws.