

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 559

H.P. 404

House of Representatives, February 24, 2021

**An Act To Improve the Rights and Basic Protections of Persons with
Acquired Brain Injuries**

(EMERGENCY)

Received by the Clerk of the House on February 22, 2021. Referred to the Committee on Health and Human Services pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HEPLER of Woolwich.
Cosponsored by Senator MOORE of Washington and
Representatives: GROHOSKI of Ellsworth, MEYER of Eliot, PERRY of Calais, Senator:
VITELLI of Sagadahoc.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas**, each person with an acquired brain injury is entitled to the same rights
4 enjoyed by other citizens of the State and the United States; and

5 **Whereas**, the Department of Health and Human Services has adopted rules regarding
6 the rights and basic protections of persons who receive adult mental health services and
7 adult developmental services and children who receive behavioral health services but has
8 not adopted rules regarding the rights and basic protections of adults with acquired brain
9 injuries; and

10 **Whereas**, this legislation must take effect before the expiration of the 90-day period
11 so that a study regarding the rights and basic protections of persons with acquired brain
12 injuries may be completed and a report submitted in time for submission to the next
13 legislative session; and

14 **Whereas**, in the judgment of the Legislature, these facts create an emergency within
15 the meaning of the Constitution of Maine and require the following legislation as
16 immediately necessary for the preservation of the public peace, health and safety; now,
17 therefore,

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

19 **PART A**

20 **Sec. A-1. 22-A MRSA §101, sub-§1-B** is enacted to read:

21 **1-B. Acquired brain injury.** "Acquired brain injury" has the same meaning as in
22 Title 22, section 3086, subsection 1.

23 **Sec. A-2. 22-A MRSA §206, sub-§4**, as amended by PL 2011, c. 542, Pt. A, §51,
24 is further amended to read:

25 **4. Grievance procedures.** The commissioner shall establish procedures for hearing
26 grievances of clients who receive mental health services or adult developmental services
27 or of children who receive behavioral health services or of adults who receive acquired
28 brain injury services. The procedures must include the opportunity for a timely hearing
29 before a state hearing examiner or an independent fair hearing examiner. The
30 commissioner may contract for the services of the hearing examiner, who shall conduct
31 adjudicatory proceedings pursuant to the Maine Administrative Procedure Act.

32 **Sec. A-3. 34-B MRSA c. 5, sub-c. 4, headnote**, is amended to read:

33 **SUBCHAPTER 4**

34 **RIGHTS OF PERSONS WITH INTELLECTUAL DISABILITIES ~~OR~~, AUTISM**
35 **OR ACQUIRED BRAIN INJURY**

36 **Sec. A-4. 34-B MRSA §5601, sub-§1-D** is enacted to read:

37 **1-D. Acquired brain injury.** "Acquired brain injury" has the same meaning as in
38 Title 22, section 3086, subsection 1.

1 **Sec. A-5. 34-B MRSA §5602**, as amended by PL 2011, c. 542, Pt. A, §125, is
2 further amended to read:

3 **§5602. Purpose**

4 It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of
5 happiness and the protection of the civil and legal rights of persons with intellectual
6 disabilities or autism or acquired brain injuries and to articulate rights of persons with
7 intellectual disabilities or autism or acquired brain injuries, so that these rights may be
8 exercised and protected.

9 **Sec. A-6. 34-B MRSA §5603**, as amended by PL 2011, c. 542, Pt. A, §126, is
10 further amended to read:

11 **§5603. Entitlement**

12 Each person with an intellectual disability or autism or an acquired brain injury is
13 entitled to the rights enjoyed by citizens of the State and of the United States, unless some
14 of these rights have been limited or suspended by a court of competent jurisdiction.

15 **1. Person committed to the commissioner.** The rights and basic protections set out
16 in section 5605 of a person with an intellectual disability or autism or an acquired brain
17 injury who is committed to the commissioner as not criminally responsible pursuant to Title
18 15, section 103 or as incompetent to stand trial pursuant to Title 15, section 101-D may be
19 limited or suspended only if the commissioner submits to the applicable court a written
20 treatment plan that specifies each limitation of a right or basic protection and the treatment
21 plan has been approved by the court.

22 **Sec. A-7. 34-B MRSA §5604, first ¶**, as amended by PL 2011, c. 542, Pt. A, §127,
23 is further amended to read:

24 The Legislature finds and declares that the rights of persons with intellectual
25 disabilities or autism or acquired brain injuries can be protected best under a system of
26 services that operates according to the principles of normalization and full inclusion and
27 that the State's system of services must operate according to these principles with the goals
28 of:

29 **Sec. A-8. 34-B MRSA §5604, sub-§3**, as amended by PL 2011, c. 657, Pt. EE, §7,
30 is further amended to read:

31 **3. Grievance right.** Providing a person with an intellectual disability or autism or an
32 acquired brain injury with the right to appeal a decision regarding actions or inactions by
33 the department that affects the person's life. The department shall establish in rule a process
34 for hearing such grievances pursuant to Title 22-A, section 206, subsection 4. The rules
35 must contain strict time frames for the resolution of grievances. The rules may provide for
36 resolution of grievances through mediation.

37 A. The department shall provide easily accessible and regular notice of the grievance
38 process to persons with intellectual disabilities or autism or acquired brain injuries
39 served by the department. This notice must be included in informational materials
40 provided to such persons, as well as to guardians, families, correspondents and allies.
41 Notice of the right to appeal must be prominently displayed in regional offices and on
42 the department's publicly accessible website and must be readily available from
43 provider agencies. Notice of the right to appeal must be included in all substantive

1 correspondence regarding personal planning. Written notice of the right to appeal must
2 also be provided when there is a denial or reduction of services or supports to persons
3 served by the department. All notices and information regarding the grievance process
4 must be written in language that is plain and understandable and must include the
5 address and telephone number of the protection and advocacy agency designated
6 pursuant to Title 5, section 19502.

7 B. The department must make available a one-page form that enables a person with an
8 intellectual disability ~~or~~, autism or an acquired brain injury to file a grievance. A
9 grievance may also be filed through an oral request. If a grievance is filed through an
10 oral request, the person receiving the grievance shall reduce the grievance to writing
11 using a one-page form made available by the department.

12 C. The department shall offer regular training in the grievance process for persons
13 served by the department, their families, guardians and allies and department and
14 service provider staff.

15 D. If an appeal proceeds to a hearing, the hearing officer's decision constitutes final
16 agency action for the purposes of Rule 80C of the Maine Rules of Civil Procedure
17 unless final decision-making authority has been reserved by the commissioner. If the
18 commissioner makes the final decision and modifies or rejects the hearing officer's
19 recommended decision, the commissioner must state in writing the basis for the
20 commissioner's decision. When the commissioner rejects or modifies a hearing
21 officer's factual findings or makes additional factual findings, the commissioner shall
22 articulate the evidentiary basis for such rejection or modification with appropriate
23 references to the record. The commissioner shall give substantial deference to a
24 hearing officer's determinations on matters of credibility relating to testimony that was
25 heard by the hearing officer, and when rejecting or modifying such determinations of
26 credibility, the commissioner shall state with particularity the reasons with appropriate
27 references to evidence in the record. In the event the commissioner fails to issue a
28 written final decision within 30 days of the date of the recommended decision, the
29 recommended decision of the hearing officer is deemed the final decision of the
30 commissioner.

31 **Sec. A-9. 34-B MRSA §5604, 2nd ¶**, as amended by PL 2011, c. 542, Pt. A, §127,
32 is further amended to read:

33 The rights and basic protections of a person with an intellectual disability ~~or~~, autism or
34 an acquired brain injury under section 5605 may not be restricted or waived by that person's
35 guardian, except as permitted by rules adopted pursuant to this section.

36 **Sec. A-10. 34-B MRSA §5605**, as amended by PL 2013, c. 500, §1, is further
37 amended by amending the section headnote to read:

38 **§5605. Rights and basic protections of a person with an intellectual disability ~~or~~,
39 autism or an acquired brain injury**

40 **Sec. A-11. 34-B MRSA §5605, first ¶**, as amended by PL 2011, c. 542, Pt. A,
41 §129, is further amended to read:

42 A person with an intellectual disability or autism is entitled to the following rights and
43 basic protections. A person with an acquired brain injury is entitled to the rights and basic
44 protections outlined in subsections 1 to 11.

1 **Sec. A-12. 34-B MRSA §5605, sub-§1**, as amended by PL 2011, c. 542, Pt. A,
2 §129, is further amended to read:

3 **1. Humane treatment.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an
4 acquired brain injury is entitled to dignity, privacy and humane treatment.

5 **Sec. A-13. 34-B MRSA §5605, sub-§2**, as amended by PL 2011, c. 542, Pt. A,
6 §129, is further amended to read:

7 **2. Practice of religion.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an
8 acquired brain injury is entitled to religious freedom and practice without any restriction or
9 forced infringement on that person's right to religious preference and practice.

10 **Sec. A-14. 34-B MRSA §5605, sub-§3**, as amended by PL 2011, c. 542, Pt. A,
11 §129, is further amended to read:

12 **3. Communications.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired
13 brain injury is entitled to private communications.

14 A. A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury is
15 entitled to receive, send and mail sealed, unopened correspondence. A person who is a
16 provider may not delay, hold or censor any incoming or outgoing correspondence of
17 any person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury, nor
18 may any such correspondence be opened without the consent of the person or the
19 person's legal guardian.

20 B. A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury is
21 entitled to reasonable opportunities for telephone and Internet communication.

22 C. A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury is
23 entitled to an unrestricted right to visitations during reasonable hours unless this right
24 has been restricted pursuant to rules adopted pursuant to section 5604.

25 **Sec. A-15. 34-B MRSA §5605, sub-§4**, as amended by PL 2011, c. 542, Pt. A,
26 §129, is further amended to read:

27 **4. Work.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury
28 engaged in work programs that require compliance with state and federal wage and hour
29 laws is entitled to fair compensation for labor in compliance with regulations of the United
30 States Department of Labor.

31 **Sec. A-16. 34-B MRSA §5605, sub-§5**, as amended by PL 2011, c. 542, Pt. A,
32 §129, is further amended to read:

33 **5. Vote.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an acquired brain injury
34 may not be denied the right to vote.

35 **Sec. A-17. 34-B MRSA §5605, sub-§6**, as amended by PL 2011, c. 542, Pt. A,
36 §129, is further amended to read:

37 **6. Personal property.** A person with an intellectual disability $\text{\textcircled{F}}$, autism or an
38 acquired brain injury is entitled to the possession and use of that person's own clothing,
39 personal effects and money, except when temporary custody of clothing or personal effects
40 by a provider is necessary to protect the person or others from imminent injury or unless
41 this right has been restricted pursuant to rules adopted pursuant to section 5604.

1 **Sec. A-18. 34-B MRSA §5605, sub-§7**, as amended by PL 2011, c. 542, Pt. A,
2 §129, is further amended to read:

3 **7. Nutrition.** A person with an intellectual disability or, autism or an acquired brain
4 injury is entitled to nutritious food in adequate quantities and meals may not be withheld
5 for disciplinary reasons.

6 **Sec. A-19. 34-B MRSA §5605, sub-§8**, as amended by PL 2011, c. 542, Pt. A,
7 §129, is further amended to read:

8 **8. Medical care.** A person with an intellectual disability or, autism or an acquired
9 brain injury is entitled to receive prompt and appropriate medical and dental treatment and
10 care for physical and mental ailments and for the prevention of any illness or disability, and
11 medical treatment must be consistent with the accepted standards of medical practice in the
12 community, unless the religion of the person with an intellectual disability or, autism or an
13 acquired brain injury so prohibits.

14 A. Medication may be administered only at the written order of a physician.

15 B. Medication may not be used as punishment, for the convenience of staff, as a
16 substitute for a habilitation plan or in unnecessary or excessive quantities.

17 C. Daily notation of medication received by each person with an intellectual disability
18 or, autism or an acquired brain injury must be kept in the records of the person with an
19 intellectual disability or, autism or an acquired brain injury.

20 D. Periodically, but no less frequently than every 6 months, the drug regimen of each
21 person with an intellectual disability or, autism or an acquired brain injury must be
22 reviewed by a physician or other appropriate monitoring body, consistent with
23 appropriate standards of medical practice.

24 E. All prescriptions must have a termination date.

25 G. Prior to instituting a plan of experimental medical treatment or carrying out any
26 surgical procedure, express and informed consent must be obtained from the person
27 with an intellectual disability or, autism or an acquired brain injury, unless the person
28 has been found to be legally incompetent, in which case the person's guardian may
29 consent.

30 (1) Before making a treatment or surgical decision, the person must be given
31 information, including, but not limited to, the nature and consequences of the
32 procedures, the risks, benefits and purposes of the procedures and the availability
33 of alternate procedures.

34 (2) The person or, if legally incompetent, that person's guardian may withdraw
35 express and informed consent at any time, with or without cause, before treatment
36 or surgery.

37 H. Notwithstanding the absence of express and informed consent, emergency medical
38 care or treatment may be provided to any person with an intellectual disability or,
39 autism or an acquired brain injury who has been injured or who is suffering from an
40 acute illness, disease or condition if delay in initiation of emergency medical care or
41 treatment would endanger the health of the person.

1 I. Notwithstanding the absence of express and informed consent, emergency surgical
2 procedures may be provided to any person with an intellectual disability ~~or~~, autism or
3 an acquired brain injury who has been injured or who is suffering from an acute illness,
4 disease or condition if delay in initiation of emergency surgery would substantially
5 endanger the health of the person.

6 **Sec. A-20. 34-B MRSA §5605, sub-§9**, as amended by PL 2011, c. 542, Pt. A,
7 §129, is further amended to read:

8 **9. Sterilization.** A person with an intellectual disability ~~or~~, autism or an acquired
9 brain injury may not be sterilized, except in accordance with chapter 7.

10 **Sec. A-21. 34-B MRSA §5605, sub-§10**, as amended by PL 2011, c. 542, Pt. A,
11 §129, is further amended to read:

12 **10. Social activity.** A person with an intellectual disability ~~or~~, autism or an acquired
13 brain injury is entitled to opportunities for behavioral and leisure time activities that include
14 social interaction in the community, as set out in section 5610. This right may be waived
15 or restricted only under the rules adopted pursuant to section 5604 or pursuant to a
16 treatment plan approved pursuant to section 5603, subsection 1.

17 **Sec. A-22. 34-B MRSA §5605, sub-§11**, as amended by PL 2011, c. 542, Pt. A,
18 §129, is further amended to read:

19 **11. Physical exercise.** A person with an intellectual disability ~~or~~, autism or an
20 acquired brain injury is entitled to opportunities for appropriate physical exercise, including
21 the use of available indoor and outdoor facilities and equipment.

22 **Sec. A-23. 34-B MRSA §5610**, as amended by PL 2011, c. 542, Pt. A, §131, is
23 further amended to read:

24 **§5610. Service delivery**

25 **1. Guiding service delivery.** The delivery of services by providers of services and
26 the department to persons with intellectual disabilities ~~and~~, autism or acquired brain injuries
27 is guided by the following.

28 A. Persons with intellectual disabilities ~~or~~, autism or acquired brain injuries have the
29 same rights as all citizens, including the rights to live, work and participate in the life
30 of the community.

31 B. Community inclusion is achieved by connecting persons and their families,
32 whenever possible, to local and generic supports within the community and by the use
33 of residential services that are small and integrated into the community.

34 C. Real work for real pay for persons in integrated settings in the community is the
35 cornerstone of all vocational and employment services.

36 D. Service delivery to persons with intellectual disabilities ~~and~~, autism or acquired
37 brain injuries is based on the following fundamentals:

38 (1) Maximizing the growth and development of the person and inclusion in the
39 community;

40 (2) Maximizing the person's control over that person's life;

41 (3) Supporting the person in that person's own home;

- 1 (4) Acknowledging and enhancing the role of the family, as appropriate, as the
2 primary and most natural caregiver; and
3 (5) Planning for the delivery of community services that:
4 (a) Promotes a high quality of life;
5 (b) Is based on ongoing individualized assessment of the strengths, needs and
6 preferences of the person and the strengths of that person's family; and
7 (c) Identifies and considers connections in other areas of the person's life,
8 including but not limited to family, allies, friends, work, recreation and
9 spirituality.

10 **PART B**

11 **Sec. B-1. Task force.** The Commissioner of Health and Human Services, referred
12 to in this Part as "the commissioner," shall convene a task force to develop and make
13 recommendations on rules and procedures regarding the rights and basic protections of
14 persons with acquired brain injuries, referred to in this Part as "the task force."

15 **Sec. B-2. Composition.** The task force must consist of:

- 16 1. Experts in the field of acquired brain injury;
17 2. Providers of services to persons with acquired brain injuries;
18 3. Persons with acquired brain injuries;
19 4. Family members of persons with acquired brain injuries;
20 5. Advocates for persons with acquired brain injuries; and
21 6. Representatives of the Acquired Brain Injury Advisory Council established under
22 the Maine Revised Statutes, Title 34-B, section 19001.

23 **Sec. B-3. Duties.** The task force shall recommend:

- 24 1. Rules regarding the rights and basic protections of persons with acquired brain
25 injuries;
26 2. Procedures for the annual instruction for persons receiving brain injury services,
27 provider staff and others on the rights and basic protections of persons with acquired brain
28 injuries;
29 3. Procedures for hearing grievances of persons with acquired brain injuries; and
30 4. Procedures for the filing and resolution of complaints regarding the brain injury
31 service system for persons with acquired brain injuries.

32 **Sec. B-4. Report.** The commissioner shall report the findings and recommendations
33 of the task force to the Joint Standing Committee on Health and Human Services by January
34 2, 2022.

35 **Sec. B-5. Staff assistance.** The Department of Health and Human Services shall
36 provide necessary staffing services to the task force.

37 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
38 takes effect when approved.

SUMMARY

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This bill adds references to persons with acquired brain injuries to laws providing rights and basic protections to persons with intellectual disabilities or autism, including laws governing grievance procedures. It directs the Commissioner of Health and Human Services to convene a task force to develop and recommend rules and procedures regarding the rights and basic protections of persons with acquired brain injuries. It also requires the commissioner to report the findings and recommendations of the task force to the Joint Standing Committee on Health and Human Services by January 2, 2022.