

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINTH LEGISLATURE

FIRST REGULAR SESSION

January 3, 1979 to June 15, 1979

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~~In addition, every vehicle carrying logs during~~ **During** the hours when lights are required, ~~every owner of a vehicle carrying logs~~ which project more than 5 feet from the rear of the vehicle, shall **be required to display a red reflector or to paint reflectorized paint** on the end of the log projecting furthest to the rear. ~~Such~~ **The reflector or reflectorized paint** shall be deemed inadequate unless of sufficient size, properly located and maintained so as to reflect, at night on an unlighted highway for at least 200 feet, the lawful undimmed headlights of a vehicle approaching from the rear.

Effective September 14, 1979

CHAPTER 553

S. P. 358 — L. D. 1106

AN ACT to Establish a Protection and Advocacy System for the Developmentally Disabled of the State of Maine.

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

Sec. 1. 22 MRSA § 3067, as enacted by PL 1969, c. 457, § 1, is amended by adding at the end a new sentence to read:

These rules shall include procedures for assuring access to records by the Protection and Advocacy Agency for the Developmentally Disabled in Maine designated under chapter 961 pursuant to an investigation of alleged rights violations.

Sec. 2. 22 MRSA c. 961 is enacted to read:

CHAPTER 961

PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

§ 3551. Policy

It is the policy of the State to assure the legal and human rights of all developmentally disabled persons residing in the State through the establishment of a protection and advocacy system as required by the United States Code, Title 42, section 6012.

The Governor of the State shall designate an agency, independent of any state or

private agency which provides treatment, services or habilitation to persons with developmental disabilities, to serve as the Protection and Advocacy Agency for the Developmentally Disabled in Maine pursuant to the United States Code, Title 42, sections 6001 through 6012. The agency so designated shall have the authority to pursue legal, administrative and other appropriate remedies to assure the welfare and protect the rights of persons with developmental disabilities.

§ 3552. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings.

1. Advocacy. "Advocacy" means speaking for, pleading for, supporting, advising, espousing the rights of or interceding on behalf of persons with developmental disabilities before public or private agencies, organizations, institutions or individuals serving developmentally disabled persons.

2. Agency. "Agency" means the Protection and Advocacy Agency for the Developmentally Disabled in Maine designated by the Governor to carry out the purposes of this chapter.

3. Developmental disability. "Developmental disability" means a disability attributable to a mental or physical impairment or combination of mental and physical impairments which:

A. Are manifested before the person reaches age 22;

B. Are likely to continue indefinitely;

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

(1) Self care;

(2) Receptive and expressive language;

(3) Learning;

(4) Mobility;

(5) Self direction;

(6) Capacity for independent living; or

(7) Economic self-sufficiency; or

D. Reflect the person's need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of

lifelong or extended duration and are individually planned and coordinated.

4. Investigation. "Investigation" means those activities aimed at determining if an alleged violation of rights has occurred or is occurring. These activities shall include reviewing case records, talking with the handicapped person involved, meeting with service providers and any other individual, group or agency that might have information relevant to the case.

5. Personnel. "Personnel" means paid staff directly employed by the agency.

6. Protection. "Protection" means preventive or supportive assistance given with the purpose of preventing or alleviating neglect, abuse or exploitation of children or adults who are substantially impaired in their capacity to protect their own self-interest.

§ 3553. Powers and duties

The powers and the duties of the agency designated as the Protection and Advocacy Agency for the Developmentally Disabled in Maine shall include:

1. Cooperate and consult. Cooperate and consult with state agencies as appropriate in developing state plans and other programs to effectuate the purposes of this chapter;

2. Comment upon. Comment upon or recommend to any state agency, procedures or regulations for the purpose of safeguarding the civil rights of individuals within the State;

3. Request services. Request the cooperation and services of state departments and agencies to aid in its activities;

4. Eliminate unfair or discriminatory practices. Attempt by means of education, conferences, conciliation and persuasion to eliminate unfair or discriminatory practices as being contrary to the public policy of the State;

5. Agreements. Contract or enter into agreements as appropriate to effectuate the purposes of this chapter;

6. Finances; aid. Accept public and private gifts, bequests, grants or other payments to help finance the activities of the agency;

7. Report. Prepare an annual report and budget for submission to the Governor and Legislature;

8. Review and approval. Operate in conformance with a plan to be submitted annually for the Governor's review and approval; and

9. Serve as surrogate parent. Serve as the surrogate parent for developmentally disabled children committed to the care and custody of the State as may be required by other state and federal laws.

§ 3554. Investigations

1. Complaint. When the agency receives a complaint that the rights of a developmentally disabled person have been or may have been violated, an investigation may be conducted unless the complaint is beyond the scope of the office's authority or not within the office's priorities. The complainant shall be informed whether an investigation will be conducted, and if not, the reason therefor and whether any other appropriate mechanism for remedy exist. A complaint may be referred to another person as appropriate.

2. Investigation. The agency may conduct investigations upon its own initiative if there is reason to believe that the legal rights of a developmentally disabled person have been or may have been violated. If the developmentally disabled person has not been judged incompetent, then the agency must first receive his written consent to the investigation.

3. Entrance in and upon premises. In the course of an investigation, for the purpose of investigating actual or possible neglect, abuse, exploitation or violation of rights of developmentally disabled persons, authorized agency personnel may enter, at any reasonable time, in and upon the premises of any state agency, commission, board or office or any subdivision of the State or the premises of any private agency receiving state or federal funds for the provision of services to the developmentally disabled, speak privately with any individual therein and inspect and copy any information, materials or records relevant to an investigation or case within reasonable limits and in a reasonable manner, subject to section 3555.

4. Records. Any authorized agency personnel conducting an investigation or handling a case shall have ready access to all records pertaining to a client held by any person, subject to section 3555. These personnel shall have the opportunity to consult with clients whenever necessary for the performance of their duties. Persons shall not refuse access to client records, or the opportunity for consultation, as long as it is requested at a reasonable time and in a reasonable manner. A hospital, institution or mental health or developmental disability facility shall provide adequate privacy for the purpose of consultation with clients and examination of client records.

Authorized agency personnel inspecting information, materials and records pursuant to an investigation may copy them when personally identifiable material has been removed for the purpose of copying. Where personally identifiable data has not been removed, the agency personnel may copy and use them only after consent is received pursuant to section 3555.

§ 3555. Confidentiality of information

1. **Disclosure of nonidentifiable information.** Authorized agency personnel may disclose information, materials and records which do not contain personally identifiable data in the course of negotiations, administrative hearings, suits or other legal or nonlegal actions.

2. **Disclosure of identifiable information.** Authorized agency personnel may disclose information, materials and records which contain personally identifiable data, in the course of negotiations, administrative hearings, suits or other legal actions if consent is obtained pursuant to subsection 3.

3. **Consent.** Data that personally identifies the developmentally disabled person can be copied or disclosed only after receipt of that person's written consent. If that person lacks the capacity to understand the purpose, significance and result of the consent or if that person is under 18 years of age, then written consent must be received from:

A. The parent or guardian of a developmentally disabled person who is under 18 years old;

B. The guardian of the developmentally disabled person who is 18 years old or older, provided the guardian has this power; or

C. The guardian ad litem of a developmentally disabled person who is the subject of the information, materials or records.

§ 3556. Review of guardianship

The appropriate court shall, upon an agency petition which alleges adequate grounds, review the guardianship of a developmentally disabled person.

Sec. 3. 34 MRSA § 1-B, sub-§ 2, as enacted by PL 1975, c. 718, § 3, is amended to read:

2. **Necessity.** As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191 or the purposes of Title 22, section 3554, the investigatory function of the Protection and Advocacy Agency for the Developmentally Disabled in Maine; or

Effective September 14, 1979

CHAPTER 554

H. P. 1018 — L. D. 1251

AN ACT to Amend the Law Relating to the State Board of Social Worker Registration.