

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

**FIRST REGULAR SESSION**

December 5, 1984 to June 20, 1985  
Chapters 384-End

AND AT THE

**FIRST SPECIAL SESSION**

November 13, 1985

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Co., Inc.  
Augusta, Maine  
1985

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**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND TWELFTH LEGISLATURE

1985

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4. Juvenile caseworkers' powers. Juvenile caseworkers shall have the same arrest powers as other law enforcement officers with respect to juveniles placed under their supervision.

Effective September 19, 1985.

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## CHAPTER 440

S.P. 218 - L.D. 577

### AN ACT to Amend the Probate Code to Improve Guardianship and Conservatorship Proceedings.

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

Sec. 1. 18-A MRSA §5-303, as amended by PL 1983, c. 816, Pt. A, §8, is further amended to read:

§5-303. Procedure for court appointment of a guardian of an incapacitated person

(a) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian. The person nominated to serve as guardian shall file a plan which, where relevant, shall include, but not be limited to, the type of proposed living arrangement for the ward, how the ward's financial needs will be met, how the ward's medical and other remedial needs will be met, how the ward's social needs will be met and a plan for the ward's continuing contact with relatives and friends.

(b) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it may appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem unless it is indicated on the petition that the allegedly incapacitated person will attend the hearing or unless it is demonstrated that the appointment will serve no useful purpose, the court shall appoint one or more of the following: A visitor, a guardian ad litem or an attorney to represent the allegedly incapacitated person in the proceeding. The cost of this appointment shall be paid from the estate of the allegedly incapacitated

person if the court is satisfied sufficient funds are available. The person alleged to be incapacitated shall be examined by a physician or by a licensed psychologist acceptable to the court who shall submit his report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses. The court may appoint a visitor who shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made, and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

(c) If appointed, the visitor shall interview the allegedly incapacitated person and the person who is seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will reside if the requested appointment is made and submit his report in writing to the court. The visitor shall explain the meaning and possible consequences of the requested appointment to the allegedly incapacitated person and inquire if he wishes to attend the hearing, to contest any aspect of the proceeding or to seek any limitation of the proposed guardian's powers. If the visitor determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of his own choice, the visitor shall so indicate in his written report to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see and hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person alleged to be incapacitated or his counsel so requests.

(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court, and all parties of record, at least 10 days before any hearing on the petition.

Sec. 2. 18-A MRSA §5-304, as amended by PL 1979, c. 690, §18, is repealed and the following enacted in its place:

§5-304. Findings; order of appointment

(a) The court shall exercise the authority conferred in Parts 3 and 6 so as to encourage the development of maximum self reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's actual mental and adaptive limitations or other conditions warranting the procedure.

(b) The court may appoint a guardian as requested if it is satisfied that the person for whom a guardian is sought is incapacitated, that the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person and, if the allegedly incapacitated person has not attended the hearing, that an inquiry has been made as to whether he wished to attend the hearing. Alternatively, the court may dismiss the proceeding or enter any other appropriate order.

(c) In its order, the court may make separate findings of fact and conclusions of law. If a party requests separate findings and conclusions, within 5 days of notice of the decision, the court shall make them.

Sec. 3. 18-A MRSA §5-309, sub-§(a), ¶(3), as enacted by PL 1979, c. 540, §1, is amended to read:

(3) In case no other person is notified under paragraph (1), at least one of his closest adult relatives or, if none, an adult friend, if any can be found.

Sec. 4. 18-A MRSA §5-309, sub-§(b), as enacted by PL 1979, c. 540, §1, is amended to read:

(b) Notice shall be served personally on the alleged allegedly incapacitated person, and, if they can be found within the State, on the spouse of the alleged incapacitated person, or on an adult child of the alleged incapacitated person if no spouse can be found within the State, or on a parent of the incapacitated person if no spouse or adult child can be found within the State. Notice to the spouse, adult child, or parent, if they cannot be found within the

State, shall be given as provided by court rule under section 4-401. Waiver of notice by the person alleged to be incapacitated is not effective unless he attends the hearing or his waiver of notice is confirmed in an interview with the visitor. Representation of the alleged allegedly incapacitated person by a guardian ad litem is not mandatory. The court may order that the petition and hearing notice be served by the visitor.

Sec. 5. 18-A MRSA §5-309, sub-§(c) is enacted to read:

(c) If they can be found within the State, notice shall be served personally on the spouse of the allegedly incapacitated person and on all the adult children of the allegedly incapacitated person, on a parent if no spouse or adult children can be found within the State or on the closest adult relative or, if none, friend if no spouse, adult children or parent can be found within the State. Notice to the spouse, adult children, parent or adult relative or friend if they cannot be found within the State, shall be given as provided by court rule under section 1-401.

Sec. 6. 18-A MRSA §5-312, sub-§(a), ¶(5), as enacted by PL 1979, c. 540, §1, is amended to read:

(5) A guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule.

The court on its own motion, or on the petition of any interested person, may appoint a visitor to review the guardian's report and determine if appropriate provisions for the care, comfort and maintenance of his ward and for the care and protection of his ward's property have been made. The visitor shall report his findings to the court in writing.

Sec. 7. 18-A MRSA §5-405, sub-§(a), as enacted by PL 1979, c. 540, §1, is amended to read:

(a) On a petition for appointment of a conservator or other protective order, the person to be protected, and, if they can be found within the State, his spouse or, if none, an and all adult child children of the person, or if no spouse or adult

child children of the person, the person's parents or closest adult relative or, if none, friend, must be served personally with notice of the proceeding at least 14 days before the date of the hearing if they can be found within the State, or, if they cannot be found within the State, they must be given notice as prescribed by court rule under section 1-401. Waiver by the person to be protected is not effective unless he attends the hearing or, unless minority is the reason for the proceeding, waiver is confirmed in an interview with the visitor. The court may order that the petition and hearing notice be served by the visitor on the protected person.

Sec. 8. 18-A MRSA §5-407, sub-§(b), as amended by PL 1983, c. 241, §2, is further amended to read:

(b) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than minority, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, unless it is indicated on the petition that the person to be protected will attend the hearing or unless it is demonstrated that the appointment will serve no useful purpose, the court may shall appoint one or more of the following: A visitor; a guardian ad litem or a lawyer to represent him who then has the powers and duties of a guardian ad litem the person to be protected in the proceedings. The cost of this appointment shall be paid from the estate of the person to be protected if the court is satisfied sufficient funds are available. If the alleged disability is physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court may direct that the person to be protected be examined by a physician acceptable to the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. If the alleged disability is mental illness or mental deficiency, the court may direct that the person to be protected be examined by a physician or by a licensed psychologist acceptable to the court; preferably the physician or psychologist shall not be connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court. The physician or psychologist shall submit his report in writing to the court, providing diagnoses, a description of the person's actual mental and functional limitations and prognoses.

Sec. 9. 18-A MRSA §5-407, sub-§§(b-1) and (b-2) are enacted to read:

(b-1) If appointed, the visitor shall interview the person to be protected. The visitor shall explain the meaning and possible consequences of the requested appointment to the person to be protected and inquire if he wishes to attend the hearing, to contest any aspect of the proceedings or to seek any limitation of the proposed conservator's powers. If the visitor determines that the person wants to contest any issue or seek a limited appointment and that the person does not have counsel of his own choice, the visitor shall so indicate in his written report to the court. The person to be protected is entitled to be present at the hearing in person and to see and hear all evidence bearing upon his condition. He is entitled to be represented by counsel, to present evidence, to cross examine witnesses, including the physician and the visitor. The issue may be determined at a closed hearing if the person to be protected or his counsel so request.

(b-2) The person nominated to serve as conservator shall file a plan which, where relevant and to the extent pertinent information is reasonably available to the nominee, shall include, but not be limited to, how the protected person's financial needs will be met, as well as a plan for the management of the protected person's estate.

Sec. 10. 18-A MRSA §5-407, sub-§(d) is enacted to read:

(d) Except as otherwise provided by law, all reports and plans required by this section shall be submitted to the court and all parties of record at least 10 days before any hearing on the petition.

Sec. 11. 18-A MRSA §5-408, as enacted by PL 1979, c. 540, §1, is amended by adding before the first paragraph a new paragraph to read:

The court shall exercise the authority conferred in Parts 4 and 6 to encourage the development of maximum self reliance and independence of the protected person and make protective orders only to the extent necessitated by the protected person's actual mental and adaptive limitations and other conditions warranting the procedure.

Sec. 12. 18-A MRSA §5-419, as enacted by PL 1979, c. 540, §1, is repealed and the following enacted in its place:

§5-419. Accounts

(a) Every conservator must account to the court for his administration of the trust as specified by the court at the time of the initial order or at the time of a subsequent order or as provided by court rule and upon his resignation or removal. On termination of the protective person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(b) Subject to appeal or vacation within the time permitted, an order, made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order, made upon notice and hearing, allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship. In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

(c) The court may appoint a visitor to review the conservator's accounts and determine if appropriate provision for the use, care and protection of the protected person's property has been made. The visitor shall report his findings to the court in writing.

Sec. 13. Effective date. This Act shall take effect January 1, 1986.

Effective January 1, 1986.

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## CHAPTER 441

H.P. 832 - L.D. 1176

AN ACT Relating to the Establishment of a  
Maine Children's Trust Fund.

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

Sec. 1. 3 MRSA §507-B, sub-§4, ¶B, as enacted by PL 1983, c. 176, Pt. A, §1, is amended to read: