

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

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

central dispatcher of emergency response teams and health experts, the need for mobile sampling and analytical equipment, training needs of local and state health and safety officials, onsite emergency decision-making procedures and advance planning for emergency response at specific locations.

3. Advisory group. To assist in the conduct of this study, the agencies mentioned in this section shall appoint a temporary advisory group composed of individuals from Department of Public Safety, Department of Transportation, the Maine State Council of Uniform Firefighters and the Maine State Fire Chiefs' Association, Legislature, municipal governments and other members of the public as appropriate.

Sec. 5. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1985-86</u>	<u>1986-87</u>
<u>HUMAN SERVICES, DEPARTMENT OF</u>		
Bureau of Health		
Positions	(1/2)	(1/2)
Personal Services	\$ 8,341	\$12,050
All Other	7,500	10,000
Total	<u>\$15,841</u>	<u>\$22,050</u>

Funds will provide for a half-time research associate and related expenses to develop and provide information on health implications of chemicals in use in the home and workplace.

Effective September 19, 1985.

CHAPTER 495

H.P. 969 - L.D. 1386

AN ACT to Protect Abused Children.

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

Sec. 1. 15 MRSA §1205, sub-§§1 and 2, as enacted by PL 1983, c. 411, are repealed and the following enacted in their place:

1. Mental or physical well-being of a person. On motion of the attorney for the State and at an in camera hearing, the court finds that the mental or physical well-being of that person will more likely than not be harmed if that person were to testify in open court; and

2. Examination and cross-examination. Pursuant to order of court made on such a motion, the statement is made under oath, subject to all of the rights of confrontation secured to an accused by the Constitution of Maine or the United States Constitution and the statement has been recorded by any means approved by the court, and is made in the presence of a judge or justice.

Sec. 2. 17 MRSA §2921, sub-§1, as enacted by PL 1977, c. 628, §1, is repealed.

Sec. 3. 17 MRSA §2922, sub-§1, ¶¶A and B, as enacted by PL 1977, c. 628, §1, are amended to read:

A. Knowing or intending that the conduct will be photographed ~~for commercial~~ use, he intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not his spouse, who is in fact a minor, to engage in sexually explicit conduct; or

B. Being a parent, legal guardian or other person having care or custody of another person, who is in fact a minor, he knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed ~~for commercial~~ use.

Sec. 4. 17-A MRSA §207, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. Assault is a Class D crime, except in instances of bodily injury to another who has not attained his 6th birthday, provided that the actor has attained his 18th birthday, in which case, it is a Class C crime.

Sec. 5. 17-A MRSA §251, sub-§1, ¶C, as amended by PL 1975, c. 740, §44, is repealed and the following enacted in its place:

C. "Sexual act" means:

(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the

genitals of one and the genitals of the other;

(2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

(3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

Sec. 6. 17-A MRSA §251, sub-§1, ¶D, as enacted by PL 1975, c. 499, §1, is amended to read:

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

Sec. 7. 17-A MRSA §253, sub-§2, as amended by PL 1983, c. 326, §§1 to 3, is further amended to read:

2. If he engages in sexual intercourse or a sexual act with another person, ~~not his spouse~~, and:

A. He has substantially impaired the other person's power to appraise or control his sex acts by administering or employing drugs, intoxicants, or other similar means; ~~or~~

B. He compels or induces the other to engage in such sexual intercourse or sexual act by any threat; ~~or~~

C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other substantially incapable of appraising the nature of the contact involved; ~~or~~

D. The other person is unconscious or otherwise physically incapable of resisting and has not

consented to such sexual intercourse or sexual act;

E. The other person, not his spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over such other person; ~~or~~

F. The other person, not his spouse, has not in fact attained his 18th birthday and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student; or

G. The other person, not his spouse, has not attained his 18th birthday and is a resident in or attending a private or public nursery school, children's home, day-care facility, residential child-care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over that other person.

Sec. 8. 17-A MRSA §253, sub-§5, as amended by PL 1983, c. 326, §4, is further amended to read:

5. Violation of subsection 2, paragraph A, C or E is a Class B crime. Violation of subsection 2, paragraph B, D ~~or~~, F or G is a Class C crime.

Sec. 9. 17-A MRSA §254, sub-§1, as amended by PL 1975, c. 740, §50, is repealed and the following enacted in its place:

1. A person is guilty of sexual abuse of a minor if:

A. Having attained his 19th birthday he engages in sexual intercourse or a sexual act with another person, not his spouse, who has attained his 14th birthday but has not attained his 16th birthday, provided that the actor is at least 5 years older than the other person; or

B. He engages in sexual intercourse or a sexual act with another person who has not attained his 18th birthday and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person.

Sec. 10. 17-A MRSA §254, sub-§2, as enacted by PL 1975, c. 499, §1, is amended to read:

2. It is a defense to a prosecution under ~~this section~~ subsection 1, paragraph A, that the actor reasonably believed the other person to have attained his 16th birthday.

Sec. 11. 19 MRSA §764, sub-§1, as amended by PL 1983, c. 583, §26, is further amended to read:

1. Filing. Any adult who has been abused by a family or household member may seek relief by filing a sworn petition in an appropriate court alleging that abuse.

When any minor child in the care or custody of a family or household member has been abused by a family or household member, a person responsible for the child as defined in Title 22, section 4002, subsection 9, or a representative of the Department of Human Services may seek relief by filing a petition alleging that abuse.

Sec. 12. 19 MRSA §765, sub-§2, as amended by PL 1983, c. 583, §26, is further amended to read:

2. Temporary orders. The court may enter any temporary orders authorized under subsection 4 as it deems necessary to protect the plaintiff or minor child from abuse, on good cause shown in an ex parte proceeding. Immediate and present danger of physical abuse to the plaintiff or minor child shall constitute good cause. Any order shall remain in effect pending a hearing pursuant to subsection 1.

Sec. 13. 19 MRSA §765, sub-§3, ¶A, as amended by PL 1983, c. 583, §26, is further amended to read:

A. When the courthouse is closed and no other provision can be made for the shelter of an abused family or household member or minor child, a complaint may be filed before any District Court Judge or Superior Court Justice. Upon a showing of good cause, as defined in subsection 2, the court may enter any temporary orders ~~authorized~~ authorized under subsection 4 as it deems necessary to protect the plaintiff or minor child from abuse.

Sec. 14. 19 MRSA §766, sub-§2, as amended by PL 1983, c. 583, §26, is further amended to read:

2. Duration. Any protective order or approved consent agreement shall be for a fixed period not to

exceed one year. At the expiration of that time, the court may extend an order, upon motion of the plaintiff, for such additional time as it deems necessary to protect the plaintiff or minor child from abuse. Upon motion by either party, for sufficient cause, the court may modify the order or agreement from time to time as circumstances require.

Sec. 15. 19 MRSA §766-A, as amended by PL 1983, c. 583, §26, is further amended to read:

§766-A. Confidentiality of plaintiff's address

To protect the plaintiff or minor child, the court may order the omission or deletion of his address from any papers available to the public.

Sec. 16. 22 MRSA §4002, sub-§6-A is enacted to read:

6-A. Licensed mental health professional. "Licensed mental health professional" means a psychiatrist, licensed psychologist, licensed clinical social worker or certified social worker.

Sec. 17. 22 MRSA §4007, sub-§1, as enacted by PL 1979, c. 733, §18, is amended to read:

1. Procedures. All child protection proceedings shall be conducted according to the rules of civil procedure and the rules of evidence, except as provided otherwise in this chapter. ~~At the request of a party, all~~ All the proceedings shall be recorded. All proceedings and records shall be closed to the public, unless the court orders otherwise.

Sec. 18. 22 MRSA §4008, sub-§3, ¶B, as enacted by PL 1979, c. 733, §18, is amended to read:

B. A court on its finding that access to those records may be necessary for the determination of any issue before the court or a court requesting a report from the department pursuant to Title 19, section 533 or 751. Access to such a report shall be limited to counsel of record unless otherwise ordered by the court. Access to actual records shall be limited to in camera inspection, unless the court determines that public disclosure of the information is necessary for the resolution of an issue pending before it;

Sec. 19. 22 MRSA §4011, sub-§1, as amended by PL 1983, c. 354, §3, is further amended to read:

1. Reasonable cause to suspect. When, while acting in his professional capacity, a medical or osteopathic physician, resident, intern, emergency medical technician, medical examiner, physician's assistant, dentist, dental hygienist, dental assistant, chiropractor, podiatrist, registered or licensed practical nurse, Christian Science practitioner, teacher, guidance counselor, school official, social worker, homemaker, home health aide, medical or social service worker, psychologist, child care personnel, mental health professional or law enforcement official knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected, he shall immediately report or cause a report to be made to the department.

A. Whenever a person is required to report in his capacity as a member of the staff of a medical or public or private institution, agency or facility, he shall immediately notify the person in charge of the institution, agency or facility, or his designated agent, who shall then cause a report to be made. The staff may also make a report directly to the department.

B. Any person may make a report if that person knows or has reasonable cause to suspect that a child has been or is likely to be abused or neglected.

~~C. A person shall not be required to report when the factual basis for knowing or suspecting abuse or neglect comes from treatment of a person responsible for the child, the treatment was sought by that person for a problem of abuse or neglect and there is little threat of serious harm to the child.~~

D. When, while acting in his professional capacity, any person required to report under this section knows or has reasonable cause to suspect that a child has been abused or neglected by a person not responsible for the child, he shall immediately report or cause a report to be made to the appropriate district attorney's office, except as provided in subsection 1-A.

Sec. 20. 22 MRSA §4011, sub-§1-A is enacted to read:

1-A. Mental health treatment. When a licensed mental health professional is required to report under subsection 1, and his knowledge or reasonable cause to suspect that a child has been or is likely to be abused or neglected comes from treatment of a

person responsible for the abuse or neglect, the licensed mental health professional shall report to the department in accordance with subsection 1 and under the following conditions.

A. The department shall consult with the licensed mental health professional who has made the report and shall attempt to reach agreement with the professional as to how the report is to be pursued. If agreement is not reached, the licensed mental health professional may request a meeting under paragraph B.

B. Upon the request of the licensed mental health professional who has made the report, after the department has completed its investigation of the report under section 4021 or has received a preliminary protection order under section 4034 and where the department plans to initiate or has initiated a final protection action under section 4035 or plans to refer or has referred the report to law enforcement officials, the department shall convene at least one meeting of the licensed mental health professional who made the report, at least one representative from the department, a licensed mental health professional with expertise in child abuse or neglect and a representative of the district attorney's office having jurisdiction over the report, unless that office indicates that prosecution is unlikely.

C. The persons meeting under paragraph B shall make recommendations regarding treatment and prosecution of the person responsible for the abuse or neglect. The persons making the recommendations shall take into account the nature, extent and severity of abuse or neglect, the safety of the child and the community and needs of the child and other family members for treatment of the effects of the abuse or neglect and the willingness of the person responsible for the abuse or neglect to engage in treatment. The persons making the recommendations may review or revise these recommendations at their discretion.

The department shall, after consultation with the Maine Prosecutors Association, the Maine Psychological Association and other affected groups, report on the effects of this subsection to the joint standing committee of the Legislature having jurisdiction over the judiciary by February 15, 1987.

The intent of this subsection is to encourage offenders to seek and effectively utilize treatment, at the

same time providing any necessary protection and treatment for the child and other family members.

Sec. 21. 22 MRSA §4015, as amended by PL 1983, c. 781, §2, is further amended to read:

§4015. Privileged or confidential communications

The husband-wife and physician and psychotherapist-patient privileges under the Maine Rules of Evidence and the confidential quality of communication under Title 20-A, sections 4008 and 6001, to the extent allowed by applicable federal law; Title 24-A, section 4224; and Title 32, sections 1092-A and 7005; and Title 34-B, section 1207, are abrogated in relation to required reporting, cooperating with the department or a guardian ad litem in an investigation or other child protective activity or giving evidence in a child protection proceeding. Information released to the department pursuant to this section shall be kept confidential and may not be disclosed by the department except as provided in section 4008.

Statements made to a licensed mental health professional in the course of counseling, therapy or evaluation where the privilege is abrogated under this section may not be used against the client in a criminal proceeding except to rebut the client's testimony contradicting those statements. Nothing in this section may limit any responsibilities of the professional pursuant to this Act.

Sec. 22. 30 MRSA §509 is enacted to read:

§509. Investigation of child abuse cases

Unless a written agreement exists between a law enforcement agency and a district attorney concerning primary responsibility for investigating any of the following offenses, the district attorneys may direct the investigation of any offense under Title 17, chapter 93-B, and Title 17-A, chapter 11, or Title 17-A, sections 207, 208 and 556, wherein a victim may not have attained his 18th birthday, and may designate, by geographical boundaries or otherwise, a particular law enforcement agency to have primary responsibility for that investigation.

Any case involving the sexual or physical abuse of children which is discovered by or reported to any law enforcement department or officer shall be immediately reported by that department or officer to the appropriate district attorney or assistant district

attorney or, in their absence, to the Attorney General or one of his assistants.

Sec. 23. 34-B MRSA §1207, sub-§1, ¶B-1 is enacted to read:

B-1. Information shall be disclosed to the Department of Human Services for the purpose of cooperating in an investigation or any other activity pursuant to Title 15, chapter 507, or Title 22, chapter 1071, pursuant to an agreement between the department and the Department of Human Services. The agreement, specifying the circumstances and conditions by which disclosure shall be made, shall be promulgated as rules by the department in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375;

Effective September 19, 1985.

CHAPTER 496

S.P. 641 - L.D. 1655

AN ACT to Amend Certain Provisions of the Oil Discharge Prevention and Pollution Control Act and to Establish a New Act Relating to Underground Oil Storage Facilities.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the 90-day period may not terminate until after the beginning of the next fiscal year; and

Whereas, regulating the installation and operation of existing, new and replacement underground oil storage tanks and facilities is important in order to prevent contamination of valuable ground water and well water resources and to provide the means to clean-up contamination by leaking underground tanks; and

Whereas, certain obligations and expenses incident to the operation of departments and agencies will become due and payable on or immediately after July 1, 1985; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of