

# 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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# CHAPTER 503

H.P. 1045 - L.D. 1523

AN ACT to Create the Bureau of Children With Special Needs in the Department of Mental Health and Mental Retardation.

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

Sec. 1. 5 MRSA 12004, sub-§10, ¶A, sub-¶(48-A) is enacted to read:

<u>(48-A)</u>	<u>Mental Health</u>	<u>Maine Advisory</u>	<u>Expenses</u>	<u>34-B MRSA</u>
	<u>and Retard-</u>	<u>Committee on</u>	<u>Only</u>	<u>§6241</u>
	<u>tion</u>	<u>Children with</u>		
		<u>Special Needs</u>		

Sec. 2. 34-B MRSA §1203, sub-§6, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 3. 34-B MRSA §1204, sub-§2, ¶C, as amended by PL 1983, c. 816, Pt. C, §2, is further amended to read:

C. The commissioner shall appoint the following officials to serve at his pleasure:

- (1) Associate Commissioners;
- (2) Director, Bureau of Mental Health;
- (3) Superintendent, Augusta Mental Health Institute;
- (4) Superintendent, Bangor Mental Health Institute;
- (5) Director, Bureau of Mental Retardation;
- (6) Superintendent, Pineland Center;
- (7) Children's Services, Executive Director  
Director, Bureau of Children with Special  
Needs;
- (8) Director, Mental Retardation Facility;
- (9) Director, Elizabeth Levinson Center;
- (10) Assistant to the Commissioner for Public Information; and

(11) Assistant to the Commissioner.

Sec. 4. 34-B MRSA §1206, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 5. 34-B MRSA §1412, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 6. 34-B MRSA §5401, as enacted by PL 1983, c. 459, §7, is amended to read:

§5401. Maintenance of facilities

The department shall maintain the following <sup>3</sup> 2 residential facilities for the care and treatment of mentally retarded persons:

1. Pineland Center; and
2. Aroostook Residential Center, and
- 3- ~~Elizabeth Levinson Center~~

Sec. 7. 34-B MRSA §5404, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 8. 34-B MRSA §5468, sub-§3, as enacted by PL 1983, c. 580, §19, is repealed.

Sec. 9. 34-B MRSA §5474, sub-§1, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 10. 34-B MRSA §5475, first ¶, as enacted by PL 1983, c. 459, §7, is amended to read:

If the chief administrative officer of a facility or his designee, or the director of the Elizabeth Levinson Center or his designee, has determined that a client is not capable of giving informed consent to admission, the client may be admitted for extended care and treatment only after judicial certification pursuant to the following procedures.

Sec. 11. 34-B MRSA c. 6, first 2 lines are repealed and the following enacted in their place:

CHAPTER 6

CHILDREN WITH SPECIAL NEEDS

Sec. 12. 34-B MRSA c. 6, sub-c.c. II, III and IV are enacted to read:

SUBCHAPTER IIBUREAU OF CHILDREN WITH SPECIAL NEEDS§6201. Definitions

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

1. Bureau. "Bureau" means the Bureau of Children with Special Needs.

2. Child in need of treatment. "Child in need of treatment" means:

A. A child age 0 to 5 years who is developmentally disabled or who demonstrates developmental delays; and

B. A child age 6 to 20 years who has treatment needs related to mental illness, mental retardation, developmental disabilities or emotional or behavioral needs that are not under current statutory authority of existing state agencies.

3. Treatment. "Treatment" means the provision of services to children in need of treatment and their families, the services consisting primarily of:

A. Psychiatric, psychological, counseling, developmental and other therapeutic modalities; and

B. Social, interpersonal and other living skills, related supportive services and habilitative training.

§6202. Policy

1. Services. It is the policy of the State to provide an efficient, coordinated statewide system of services to children in need of treatment and their families, insofar as resources permit.

2. Spiritual treatment. Nothing in this subchapter may replace or limit the right of any child to treatment in accordance with a recognized religious method of healing, if the treatment is requested by the person or by his parent or guardian.

3. Setting. It is the policy of the State that the setting for the services described in this subchapter shall, consistent with the availability of appropriate resources:

A. Impose the fewest possible restrictions on the liberty of children in need of treatment; and

B. Be as close as possible to the patterns and norms of the mainstream of society, recognizing regional, cultural and ethnic characteristics.

4. Other agencies. Nothing in this subchapter may be construed to constrain or impair the Department of Corrections, Department of Educational and Cultural Services, Department of Human Services or any other state agency in carrying out statutorily mandated responsibilities to children and their families or to alter or diminish any services, benefits or entitlements received by virtue of the statutory responsibilities.

§6203. Commissioner's duties

1. System. In order to facilitate the development and operation of a coordinated, statewide system of services to children in need of treatment and their families, the commissioner, through the bureau, shall:

A. Provide a decentralized administrative structure for the provision of services to children in need of treatment and their families;

B. Work toward the provision of normalized services through the establishment of in-home, community-based, family-oriented programs for the child in need of treatment. If treatment in an out-of-home or out-of-community setting becomes necessary, it should be in the least restrictive setting consistent with needs of the child, commensurate with the resources available to the bureau and in coordination with services and resources of other state agencies serving children and their families;

C. Continue coordination and linkage with other agencies, programs and systems that serve children and their families on a state, regional and local level, so as to encourage effective and efficient procedures and practice in the delivery of services to children in need of treatment and their families;

D. Place a high priority on continued participation with the Department of Educational and Cultural Services and the Department of Human Services in preventive intervention services to families of children in need of treatment;

E. Strive to ensure that all services and programs are adequately staffed by persons appropriately qualified by training and experience;

F. Publicize the availability of services to children in need of treatment to ensure that these services are accessible to the greatest possible number of children and their families;

G. Ensure that all children in need of treatment and their families are notified of their rights to advocacy services available in this State; and

H. Assure that rules are promulgated which specify the procedures by which a parent or guardian of a child in need of treatment may appeal decisions made relative to services provided by the bureau.

2. Plan. The commissioner, through the bureau, shall serve as an advocate for children in need of treatment; shall monitor, review and evaluate not less than annually the allocation and adequacy of services provided by the department; and shall prepare and maintain a plan that meets the following criteria.

A. The plan shall indicate the most effective and efficient manner in which to implement services and programs for children in need of treatment and their families, while safeguarding and respecting the legal and human rights of these children and families.

B. The plan shall specifically indicate how gaps in services for children in need of treatment and their families can best be met.

C. The plan shall establish a procedure for setting priorities among the various services required by children in need of treatment and their families, in cooperation with other agencies of State Government that provide services to children and families, including, but not limited to, the Department of Corrections, Department of Educational and Cultural Services and Department of Human Services.

D. The plan shall specifically indicate the department's efforts in assuring that services to children in need of treatment and their families are effectively coordinated with existing resources and procedures of all Department of Mental Health and Mental Retardation institutions and programs.



E. The plan shall be prepared in the even-numbered years for submission to the joint standing committee of the Legislature having jurisdiction over human resources and the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs no later than January 30th of the odd-numbered years beginning in 1987.

F. The plan shall assure that children with divergent treatment needs are not inappropriately mixed while in residence at state operated facilities for children with special needs.

§6204. Establishment of bureau

1. Duties. There is established, within the Department of Mental Health and Mental Retardation, the Bureau of Children with Special Needs. The bureau shall:

A. Strengthen the capacity of families, natural helping networks, self-help groups and other community resources to support and serve children in need of treatment;

B. Facilitate the planning, promoting, coordination, delivery and evaluation of a complete and integrated statewide system of services to children in need of treatment and their families; and

C. Support those services appropriate to children in need of treatment and their families, including, but not necessarily limited to, the following:

- (1) Advocacy;
- (2) Assessment and diagnosis;
- (3) Child development;
- (4) Consultation and education;
- (5) Crisis intervention;
- (6) Family guidance and counseling;
- (7) Preventive intervention;
- (8) Professional consultation and training;
- (9) Respite care; and
- (10) Treatment.

2. Powers. The bureau may perform the duties described in subsection 1 and may provide services to children in need of treatment through state-operated facilities and programs or through contracts and grants to public and private agencies. In all cases, the bureau shall ensure that services are provided in the least restrictive setting consistent with the child's needs, commensurate with the resources available to the bureau and in coordination with services and resources of other state agencies serving children and families. Emphasis shall be placed on maintaining each child in his natural home or in an alternative placement within the community whenever possible.

3. Appointment of director. The commissioner shall, with the advice of the Maine Advisory Committee on Children with Special Needs, appoint and set the salary for the director of the bureau, subject to the approval of the Governor. Notwithstanding any other law, the commissioner may delegate any employee of the department to serve, for a period not to exceed 180 days, as acting director of the bureau, if the office of the director is vacant. Service as acting director shall be considered a temporary additional duty for the person so delegated.

4. Qualifications of director. To be eligible for appointment as director, a person must have:

A. A graduate degree in child development, social welfare or a related field; and

B. At least 5 years of experience in the administration of children's services programs or satisfactory experience in work of a comparable nature.

5. Term. The director shall serve at the pleasure of the commissioner.

6. Duties and powers of director. In addition to other duties and powers set out in this chapter, the director:

A. Shall report directly to the commissioner;

B. Shall carry out the duties and responsibilities of the bureau; and

C. May promulgate, amend or repeal rules governing the administration of this chapter in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER III

ADVISORY COMMITTEE

§6241. Maine Advisory Committee on Children with Special Needs

1. Composition. The Maine Advisory Committee on Children with Special Needs, as established by Title 5, section 12004, subsection 10, shall be constituted as follows.

A. The committee shall consist of 15 members appointed by the Governor. In making the appointments, the Governor shall give due consideration to including parents or relatives of children in need of treatment, providers of services to these children and representatives of state agencies concerned with children.

B. The Governor shall designate one member as chairman of the committee.

C. Members of the committee shall serve for terms of 3 years, except that:

(1) Of the members first appointed, 1/3 shall be appointed for terms of 3 years, 1/3 for terms of 2 years and 1/3 for terms of one year; and

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of the term.

2. Duties and compensation. The committee shall act in an advisory capacity to the commissioner and to the Director of the Bureau of Children with Special Needs in assessing present programs, planning future activities and developing the means to meet the needs of children in need of treatment and their families. Members of the committee shall serve without pay, but shall be reimbursed for expenses incurred in the performance of their duties on the same basis as state employees, but including child care services.

SUBCHAPTER IV

STATE-OPERATED FACILITIES FOR CHILDREN WITH SPECIAL NEEDS

§6251. Maintenance of facilities

The department shall maintain and the bureau shall be responsible for the supervision of services in the following 2 facilities for children in need of treatment:

1. Elizabeth Levinson Center; and
2. Military and Naval Children's Home.

§6252. Elizabeth Levinson Center

1. Establishment. There is established the Elizabeth Levinson Center at Bangor, which shall be maintained for the training, education, treatment and care of persons who are mentally retarded or children in need of treatment.

2. Director. The chief administrative officer of the Elizabeth Levinson Center shall be the director.

A. The commissioner shall, with the advice of the Maine Committee on Children with Special Needs, appoint and set the salary for the director.

B. The director shall be appointed for an indefinite term and shall serve at the pleasure of the commissioner until his successor is appointed and qualified.

C. In order to qualify for appointment as the director, a person must have sufficient education and experience to administer a facility providing services to children in need of treatment.

3. Duties of the director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Elizabeth Levinson Center;

B. Be responsible for the discharge of all persons received into the Elizabeth Levinson Center; and

C. Have direct supervision, management and control of the grounds, buildings, property, officers and employees of the Elizabeth Levinson Center, subject to the approval of the commissioner.

4. Admission to the center. Mentally retarded persons or children in need of treatment may be admitted to the center in any of the following ways.

A. When considered necessary by an interdisciplinary team and with the consent of the director, persons may be admitted to the Elizabeth Levinson Center short-term evaluation program for a period of 40 program days, excluding weekends, without certification.

B. Respite care may be provided to any person by the center without full compliance with the procedures for admission by judicial certification under section 5475, if:

(1) The purpose of the respite care is for evaluation, diagnosis or other clearly stated and broadly defined therapeutic purposes of the person or his family;

(2) Respite care may be provided, upon application to the bureau by the person, his guardian or his parent, for not more than 21 days at a time and not more than 60 days during any 12-month period; or

(3) Continuing placement in the center beyond the time periods stated in subparagraph 2, if indicated, may be accomplished only upon full compliance with section 5475.

C. Admission to the center by judicial certification may be accomplished according to the procedures in section 5475.

5. Applicability of laws. If a child in need of treatment who is mentally retarded is admitted to the center, all provisions in chapter 5 that are applicable to state institutions shall apply to the center with respect to that child.

#### §6253. Military and Naval Children's Home

1. Departmental control. The department shall have charge of the operations of the Military and Naval Children's Home.

2. Chief administrative officer. The chief administrative officer of the Military and Naval Children's Home shall be the superintendent.

3. Purpose. The purpose of the Military and Naval Children's Home is the shelter and care of children of this State who are in need of shelter and care for one or more of the following reasons:

A. Lack of appropriate alternative shelter and care;

B. Potential or actual abuse and neglect; or

C. Family crisis and upheaval.

4. Veterans' preference. Preference in admission to the Military and Naval Children's Home shall be given to the children of veterans of this State who have served in the various wars in which the United States has been engaged.

5. Educational or vocational training programs. Any child in residence at the Military and Naval Children's Home who, at the expiration of his minority, is a participant in an educational or vocational training program, the interruption or cessation of which will be caused by discharge from the home, may, with the approval of the superintendent, voluntarily elect to remain in residence at the home until completion of all or part of the educational or vocational training program.

6. Board of visitors. There is established a Board of Visitors for the Military and Naval Children's Home which shall provide advice and direction to the commissioner concerning the changes necessary to ensure maximum utilization of the facility.

A. The board shall consist of 9 members and shall include:

(1) The Associate Commissioner of Programs of the department;

(2) A representative from the Bath community;

(3) The Bath Elementary School principal or a similar school official;

(4) A representative from an alcohol treatment center;

(5) A social worker assigned to the home;

(6) A designee of a veterans' organization;

(7) Two citizens from outside the Bath area; and

(8) One member appointed from the Department of Human Services, Division of Child and Family Services.

B. The commissioner, with the advice and consent of the joint standing committee of the Legisla-

ture having jurisdiction over audit and program review, shall appoint the members of the board, except that the Commissioner of Human Services shall appoint the member from the Division of Child and Family Services.

C. Members shall be appointed for terms not to exceed 3 years.

D. Terms of members shall be staggered so that no more than 3 terms expire in any one year.

E. The board shall be responsible for:

(1) Assisting in the development of policy and program changes regarding the use of the home;

(2) Monitoring the progress made toward the objectives outlined and presented during the home's current transition; and

(3) Providing continuing oversight of the home, its programs and policies.

F. By the first day of each January and July in the year 1986, the department shall report to the joint standing committee of the Legislature having jurisdiction over audit and program review on its efforts to improve the operation of the home, and the committee shall work with the department and board in ensuring that efficient use is made of the home.

#### §6254. Services in institutions

1. Policy direction. All programs and services provided to children and adolescents at Augusta Mental Health Institute and Bangor Mental Health Institute or Pineland Center shall be coordinated with the Bureau of Children with Special Needs and shall be operated in concert with general policy of the bureau as outlined in this chapter.

2. Report to commissioner. By July 1st of even-numbered years, the superintendent of the facilities referred in subsection 1 shall report to the commissioner as to the number of children and adolescents served in each program of their respective institutions and as to the purposes of those services provided. The Director of the Bureau of Children with Special Needs shall be consulted as part of the preparation of this report. The report shall also include plans for proposed services to children in need of treatment which shall be reflective of needs ex-

pressed regionally by other state and governmental agencies, private providers and parents of children in need of treatment.

Effective September 19, 1985.

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## CHAPTER 504

H.P. 671 - L.D. 954

### AN ACT Relating to Taxation of Aircraft.

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

Whereas, the Legislature recognized the importance of resolving the disparity that existed in taxation treatment between leased and purchased aircraft; and

Whereas, the current tax exemption for leased aircraft is due to expire on July 1, 1985; and

Whereas, the tax exemption provided by the Revised Statutes, Title 36, section 1760, subsection 46, has allowed Maine's airline industry to compete effectively with other states; and

Whereas, the repeal of the tax exemption on leased aircraft will place the airline industry in Maine at a severe competitive disadvantage with other states; and

Whereas, the repeal of the tax exemption will place the repair and maintenance of aircraft in Maine at an economic disadvantage because of Maine's sales and use tax laws; and

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

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

Sec. 1. 36 MRSA §1760, sub-§46, as enacted by PL 1983, c. 854, is repealed.