

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST REGULAR SESSION**

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
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PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1989

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

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

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**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**1989**

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**Sec. 2. 5 MRSA §17056, sub-§2**, as enacted by PL 1985, c. 801, §§5 and 7, is repealed.

**Sec. 3. 5 MRSA §17056, sub-§3, ¶B**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. Creditable service for former employees of any Superior Court ~~within a county which elects to adopt this section~~ who retired after July 1, 1976, shall be determined as if all their service had been rendered as state employees.

**Sec. 4. 5 MRSA §17056, sub-§4, ¶B**, as enacted by PL 1985, c. 801, §§5 and 7, is amended to read:

B. The counties ~~which have elected to adopt this section~~ shall provide funds necessary to fulfill this obligation from the retirement allowance funds of those counties.

**Sec. 5. Effective date.** The higher rate of retirement benefits due employees under the provisions of this Act shall commence October 1, 1989.

See title page for effective date.

## CHAPTER 400

H.P. 1024 - L.D. 1425

### An Act to Establish the Child Welfare Advisory Committee and to Redesignate the Bureau of Social Services as the Bureau of Child and Family Services

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

**Sec. 1. 5 MRSA §940, sub-§1, ¶C**, as enacted by PL 1983, c. 729, §4, is amended to read:

C. Director, Bureau of ~~Social~~ Child and Family Services;

**Sec. 2. 5 MRSA §12004-I, sub-§37-A** is enacted to read:

<u>37-A. Human</u>	<u>Child Welfare</u>	<u>Expenses Only</u>	<u>22 MRSA</u>
<u>Services: Child</u>	<u>Advisory</u>		<u>§4089</u>
<u>and Family Services</u>	<u>Committee</u>		

**Sec. 3. 22 MRSA §1, 3rd ¶**, as amended by PL 1985, c. 785, Pt. B, §82, is further amended to read:

The commissioner may employ any bureau and division heads, deputies, assistants and employees who may be necessary to carry out the work of the department. All personnel of the department shall be under the immediate supervision, direction and control of the commissioner. These personnel shall be employed subject to the Civil Service Law, except the: Deputy Commissioner; Director,

Bureau of ~~Social~~ Child and Family Services; Director, Bureau of Maine's Elderly; Director, Bureau of Health; Director, Bureau of Rehabilitation; Director, Bureau of Income Maintenance; Director, State Health Planning and Development Agency; Director, Bureau of Medical Services; and Assistant Deputy Commissioners.

**Sec. 4. 22 MRSA §9, sub-§2**, as repealed and replaced by PL 1983, c. 292, is amended to read:

**2. Sliding fee scale.** The department may establish a sliding fee scale for the provision of community-based purchased services administered by the Bureau of ~~Social~~ Child and Family Services.

A. The sliding fee scale shall be based on gross family income and family size.

B. Any fees charged as a result of implementing this subsection shall be paid to the provider of the service and shall be used by the provider for additional services of the same or related type for which the fees were paid.

**Sec. 5. 22 MRSA §3291, sub-§§1 and 4**, as amended by PL 1989, c. 175, §4, are further amended to read:

**1. Bureau.** "Bureau" means the Bureau of ~~Social~~ Child and Family Services with respect to chapters 958-A and 1071, and the Bureau of ~~Social~~ Child and Family Services or the Bureau of Medical Services with respect to section 7703 and the Bureau of Medical Services with respect to section 1828.

**4. Director.** "Director" means the Director of the Bureau of ~~Social~~ Child and Family Services with respect to confidential information derived from chapters 958-A and 1071, and the Director of the Bureau of Medical Services or the Director of the Bureau of ~~Social~~ Child and Family Services with respect to confidential information derived from section 7703 and the Director of the Bureau of Medical Services with respect to confidential information derived from section 1828.

**Sec. 6. 22 MRSA c. 1071, sub-c. X**, as enacted by PL 1987, c. 511, Pt. A, §4 is repealed.

**Sec. 7. 22 MRSA c. 1071, sub-c. X-A** is enacted to read:

### SUBCHAPTER X-A

#### CHILD WELFARE SERVICES

##### §4087. Child welfare services ombudsman

**1. Office established.** The Office of Child Welfare Services Ombudsman is established within the Executive Department and is autonomous from any other state agency. Its purpose is to represent the best interests of individuals involved in the State's child welfare system as a class and to investigate and resolve complaints against state agencies that

may be infringing on the rights of individuals involved in the State's child welfare system.

**2. Appointment of child welfare services ombudsman.** The child welfare services ombudsman shall be appointed by the Governor, subject to review by the joint standing committee of the Legislature having jurisdiction over human resource matters and to confirmation by the Legislature and shall serve at the pleasure of the Governor. Any vacancy shall be filled by similar appointment.

**3. Powers and duties.** The ombudsman may:

**A.** Provide ombudsman services to individual citizens in matters relating to those child welfare services provided by and under the jurisdiction of the State;

**B.** Advise, consult and assist the executive and legislative branches of State Government, especially the Governor, on activities of State Government related to child welfare. The ombudsman shall be solely advisory in nature, shall not be delegated any administrative authority or responsibility nor supplant existing avenues for recourse or appeals. The ombudsman may make recommendations regarding any function intended to improve the quality of child welfare services in State Government. If findings, comments or recommendations of the ombudsman vary from, or are in addition to, those of the bureau, department or other state agency, the statements of the ombudsman shall be sent to the respective branches of State Government as attachments to those submitted by the bureau, department or other state agency. Recommendations may take the form of proposed budgetary, legislative or policy actions;

**C.** Review and evaluate, on a continuing basis, state and federal policies and programs relating to the provision of child welfare services conducted or assisted by any state departments or agencies for the purpose of determining the value and impact on individuals involved in the State's welfare system;

**D.** Receive and address inquiries, complaints, problems or requests for information and assistance regarding the State's child welfare services;

**E.** Conduct research, gather facts and evaluate procedures and policies regarding the State's child welfare services;

**F.** Consult with and advise state agencies on operational and management issues or specific or special situations regarding child welfare services and recommend remedial actions when necessary through direct oral communication, memoranda, reports or meetings;

**G.** Serve as a coordinator of communication and cooperation for all components of the State's child welfare services system, especially among state agencies, whenever desirable or necessary;

**H.** Make referrals for service to relevant state agencies when appropriate;

**I.** Set priorities to effectively carry out the purposes of this subchapter; and

**J.** Inform the public to encourage a better public understanding of the current status of the State's child welfare system by collecting and disseminating information, conducting or commissioning studies and publishing the results, and by issuing publications and reports.

**4. Confidentiality of records.** No information or records maintained by the office relating to a complaint or investigation may be disclosed unless the ombudsman authorizes the disclosure and the disclosure is otherwise permitted pursuant to section 4008. The ombudsman shall not disclose the identity of any complainant unless:

**A.** The complainant or a legal representative consents in writing to the disclosure; or

**B.** A court orders the disclosure.

A complainant or a legal representative, in providing the consent, may specify to whom the identity may be disclosed and for what purposes, in which event no other disclosure is authorized.

**5. Administration.** The ombudsman shall administer, in accordance with current fiscal and accounting rules of the State and in accordance with the philosophy, objectives and authority of this subchapter, any funds appropriated for expenditure by the ombudsman or any grants or gifts which may become available, accepted and received by the ombudsman; make an annual report which shall be submitted directly to the commissioner, the Governor and the joint standing committee of the Legislature having jurisdiction over human resource matters, not later than March 1st of each year, concerning its work, recommendations and interests of the previous fiscal year and future plans; and make such interim reports as the ombudsman deems advisable. Copies of these reports shall be available to all Legislators and other state agencies upon request.

**6. Expenses of ombudsman.** The ombudsman, within established budgetary limits and as allowed by law, shall authorize and approve travel, subsistence and related necessary expenses of the ombudsman or members of the office, incurred while traveling on official business.

**7. Information from state agencies.** State agencies shall provide to the ombudsman copies of all reports and other information required for the fulfillment of this chapter pursuant to section 4008, subsection 3, paragraph D.

**8. Legal services.** The Department of the Attorney General shall provide legal services as necessary to carry out the purposes of this subchapter.

**9. Location.** Office space shall be made available for the ombudsman within the Capitol Complex.

10. Review. This office shall be reviewed by July 1, 1989, by the joint standing committee of the Legislature having jurisdiction over human resource matters and the joint standing committee of the Legislature having jurisdiction over audit and program review matters.

Sec. 8. 22 MRSA c. 1071, sub-c. XI, as enacted by PL 1987, c. 511, Pt. B, §2, is repealed.

Sec. 9. 22 MRSA c. 1071, sub-c. XI-A is enacted to read:

### SUBCHAPTER XI-A

#### OUT-OF-HOME ABUSE AND NEGLECT

##### INVESTIGATING TEAM

#### §4088. Out-of-home abuse and neglect investigating team

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

A. "Bureau" means the Bureau of Child and Family Services within the Department of Human Services.

B. "Department" means the Department of Human Services.

C. "License" shall be defined in accordance with Title 5, section 8002, and shall include approval and registration.

D. "Out-of-home abuse and neglect" means abuse and neglect of a child which occurs in a facility or by a person subject to licensure or inspection by this department, the Department of Educational and Cultural Services, the Department of Corrections and the Department of Mental Health and Mental Retardation or in a facility operated by these departments.

E. "Team" means the out-of-home abuse and neglect investigating team.

1-A. Applicability of other definitions. Any terms defined or used in subchapter II, section 4002, have the same meaning when used in this subchapter.

2. Team established. The out-of-home abuse and neglect investigating team is established to investigate reports of suspected abuse and neglect of children by persons or in facilities subject to licensure pursuant to this Title. The team is also authorized to assist other persons or agencies to investigate suspected abuse and neglect by persons or in facilities providing services to children that are subject to licensure pursuant to other Titles and to assist in investigations of suspected abuse and neglect in state-operated facilities providing services for children.

3. Authority and responsibility. The team shall have the following authority and responsibilities regarding investigation of out-of-home abuse and neglect. The team:

A. Shall receive all reports of out-of-home abuse and neglect;

B. Shall investigate all reports received by the department regarding alleged out-of-home abuse and neglect occurring in facilities or by persons subject to licensure by the department;

C. Shall conduct a single investigation sufficient to determine not only if abuse or neglect has occurred but also to determine whether a licensing violation has occurred in order to protect children from further harm and establish a basis upon which to take licensing action. This procedure minimizes duplicative or redundant investigations to the extent possible in response to the same or related allegations of out-of-home abuse or neglect in facilities or by persons subject to licensure by the department;

D. Shall coordinate and consult with the bureau staff performing general licensing functions to eliminate duplicative or redundant investigations to the extent possible and to prevent, correct or eliminate the abuse or neglect or threat of abuse or neglect in out-of-home settings;

E. Shall provide the results of the investigation to the bureau's licensing staff for appropriate action;

F. Shall include relevant professionals outside the department as members of the team for all investigations of residential treatment centers, group homes or day care centers mandated by this subchapter and for other child care facilities as warranted;

G. When a report alleges out-of-home abuse and neglect in facilities or by persons not subject to licensure by the department, shall immediately refer the report to the agency or department charged with the responsibility to investigate such a report or, if applicable, to the state department operating the facility;

H. With respect to reports described in paragraph G, may, on its own initiative or upon request of another department or agency charged with the responsibility to investigate, participate in the out-of-home abuse and neglect investigation of persons or facilities subject to licensure or operated by the Department of Educational and Cultural Services, the Department of Corrections or the Department of Mental Health and Mental Retardation;

I. Shall refer to the office of the district attorney or office of the Attorney General, when appropriate, any case in which criminal activity is alleged and shall coordinate its investigation with that office to minimize the trauma to the children involved; and

J. Shall consult and train law enforcement personnel, advocates and others in the identification, reporting, prevention and investigation of out-of-home abuse and neglect as time allows.

4. Training. The team shall be trained in techniques of investigating out-of-home abuse and neglect of children, as well as child development; identification of abuse and neglect; interview techniques; treatment alternatives for perpetrators, victims and their families; licensing regulations applicable to facilities or persons licensed pursuant to Subtitle 6; and other statutory and regulatory remedies available to prevent, correct or eliminate abuse and neglect in out-of-home settings.

5. Records; confidentiality; disclosure. Records created pursuant to this subchapter shall be maintained in accordance with section 4008 and shall not be disclosed except as provided by that section or by section 7703, subsections 2 to 4.

6. Assistance. Staff performing general licensing functions may assist the team in conducting out-of-home investigations upon the request of the Director of the Bureau of Child and Family Services, provided that the licensing staff member has neither currently licensed nor monitored for compliance the subject of the investigation.

Sec. 10. 22 MRSA c. 1071, sub-c. XII is enacted to read:

### SUBCHAPTER XII

#### CHILD WELFARE ADVISORY COMMITTEE

##### §4089. Child Welfare Advisory Committee

1. Composition. The Child Welfare Advisory Committee, as established by Title 5, section 12004-I, subsection 37-A, shall be constituted as follows.

A. Members shall serve on the committee at the invitation of the Commissioner of Human Services. In making the appointments, the commissioner shall give due consideration to the following:

- (1) Private citizens interested in child welfare service programs;
- (2) Past or present recipients of department services to children and families or their representatives;
- (3) Representatives of professional, civic or other public or private organizations; and
- (4) Representatives of state agencies concerned with child welfare services.

B. The committee shall consist of not fewer than 10 nor more than 30 members.

C. The commissioner shall designate one member as chair of the committee.

D. The commissioner shall appoint members of the committee for terms of 3 years, except that:

(1) Of the first members 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 the predecessor was appointed shall be appointed only for the remainder of the term.

2. Duties. The committee shall have the following duties:

A. To advise the department on the development of policies and programs which affect the well-being of children and their families for whom the department has responsibility under chapter 1071, as well as those programs which prevent the maltreatment of children in the State;

B. To reinforce the department's awareness of the needs of Maine's children and their families;

C. To increase the department's awareness of the impact of its activities on Maine's children and their families; and

D. To assist in communicating the activities and goals of the department to the public.

3. Compensation. Members of the committee shall serve without pay, but shall be reimbursed for expenses incurred in the performance of their duties pursuant to Title 5, chapter 379.

Sec. 11. 22 MRSA §5308, first ¶, as amended by PL 1981, c. 10, §2, is further amended to read:

There shall be within the Department of Human Services the Bureau of ~~Social~~ Child and Family Services. It shall be a separate, distinct administrative unit, which shall not be integrated in any way as a part or function of any other administrative unit of the department. It shall be equal in organizational level and status with other major organizational units within the department or its successors. The bureau shall be under the immediate and full supervision of the commissioner or the chief officer of whatsoever unit shall succeed the department.

Sec. 12. 22 MRSA §5311, sub-§1, as enacted by PL 1985, c. 476, is amended to read:

1. Establishment. There is established, within the Bureau of ~~Social~~ Child and Family Services, the Office of Child Care Coordination.

**Sec. 13. 22 MRSA §7802, sub-§1-A**, as enacted by PL 1987, c. 511, Pt. B, §3, is amended to read:

**1-A. Consolidation of functions.** All staff performing general licensing functions within the Bureau of ~~Social~~ Child and Family Services, including the out-of-home abuse and neglect investigating team when investigating pursuant to section 5005, subsection 3, paragraph C, shall be consolidated as a single organizational unit.

**Sec. 14. Transition provision.** The Bureau of Child and Family Services shall be the successor in every way to the powers, duties and functions of the former Bureau of Social Services and its predecessor, the Bureau of Resource Development.

See title page for effective date.

## CHAPTER 401

H.P. 763 - L.D. 1067

### An Act to Amend the Laws Relating to Sex Offenses

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

#### PART A

**Sec. 1. 17-A MRSA c. 11, first 2 lines**, as amended, are repealed and the following enacted in their place:

#### CHAPTER 11

#### SEXUAL ASSAULTS

**Sec. 2. 17-A MRSA §251, sub-§1, ¶B**, as enacted by PL 1975, c. 499, §1, is repealed.

**Sec. 3. 17-A MRSA §252**, as amended by PL 1987, c. 255, §1, is repealed.

**Sec. 4. 17-A MRSA §253**, as amended by PL 1987, c. 255, §2, is repealed and the following enacted in its place:

#### §253. Gross sexual assault

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E; or

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years.

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The actor has substantially impaired the other person's power to appraise or control the other

person's sexual acts by administering or employing drugs, intoxicants or other similar means;

B. The actor compels or induces the other person to engage in the sexual act by any threat;

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

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act;

E. The other person, not the actor's 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 the other person;

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years 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;

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a 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 the other person;

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person; or

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse.

3. It is a defense to a prosecution under subsection 2, paragraph A, that the other person voluntarily consumed or allowed administration of the substance with knowledge