

# MAINE STATE LEGISLATURE

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

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
OCTOBER 9, 1991

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  
1991

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

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**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FIFTEENTH LEGISLATURE**

**1991**

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- (9) A violation of a condition of probation when requested by an official of the Division of Probation and Parole;
- (10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3, section 1051, subsection 2, section 1051, subsection 9 and section 1092; or
- (11) Theft involving a detention under Title 17, section 3521; and

Sec. 2. 17-A MRSA §506-A, sub-§2, as enacted by PL 1975, c. 740, §67, is amended to read:

2. Harassment is a Class E crime, except that when the defendant has 2 or more prior Maine convictions for violations of this section in which the victim was the same person or a member of that victim's immediate family, violation of this section is a Class C crime. For purposes of this subsection, the dates of both of the prior convictions must precede the commission of the offense being enhanced by no more than 5 years, although both prior convictions may have occurred on the same day. The date of a conviction is deemed to be the date that sentence is imposed, even though an appeal was taken. The date of a commission of prior offenses is presumed to be that stated in the complaint, information or indictment, notwithstanding the use of the words "on or about" or the equivalent.

Sec. 3. 17-A MRSA §506-A, sub-§3 is enacted to read:

3. For the purposes of this section, "immediate family" means spouse, parent, child, sibling, stepchild and stepparent.

See title page for effective date.

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## CHAPTER 567

S.P. 282 - L.D. 741

### An Act to Amend the Laws Governing the Bath Children's Home

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

Sec. 1. 34-B MRSA §1204, sub-§2, ¶C, as amended by PL 1985, c. 503, §3, is further amended to read:

C. The commissioner shall appoint the following officials to serve at his the commissioner's 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) 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; and
- (12) Director, Bath Children's Home.

Sec. 2. 34-B MRSA §6253-A, sub-§1, as enacted by PL 1989, c. 749, §2 and affected by §3, is amended to read:

1. Chief administrative officer. The chief administrative officer of the Bath Children's Home is the director. The commissioner shall, with the advice of the Board of Visitors, appoint and set the salary for the director. The director is appointed for an indefinite term and serves at the pleasure of the commissioner until the director's successor is appointed and qualified. The director must have sufficient education and experience to administer a facility providing services to children in need of treatment.

Sec. 3. Transition. The current director of the Bath Children's Home may, at the director's option, remain in the classified service and a member of the same collective bargaining unit and retain all rights, privileges and benefits provided by collective bargaining agreements as long as the director remains in the current position.

See title page for effective date.

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## CHAPTER 568

H.P. 1257 - L.D. 1825

### An Act to Amend the Laws Relating to the Collection of Debts by the Department of Human Services

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

**Whereas**, Public Law 1991, chapter 9 deappropriated funds to the Department of Human Services based upon an anticipated collection of debts owed the department; and

**Whereas**, this legislation is needed to facilitate the collection of those debts; 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. 22 MRSA §1714-A, sub-§§2 and 3**, as enacted by PL 1991, c. 9, Pt. G, §4, are amended to read:

**2. Establishment of debt.** A debt is established by the department when it notifies a provider of debt, or when the Maine Health Care Finance Commission notifies a hospital that the hospital owes the department pursuant to a final reconciliation decision and order. A debt is collectible by the department 31 days after exhaustion of all administrative appeals and any judicial review available under Title 5, chapter 375.

**3. Notice of debt.** Any notice of debt issued to a provider by the department; must include the following:

- A. A statement of the debt accrued;
- B. A statement of the time period during which the debt accrued;
- C. The basis for the debt;
- D. The debtor's right to request a fair hearing within 30 days of receipt of the notice; and
- E. A statement that after a debt is established, the department may proceed to collect that debt through administrative offset, lien and foreclosure, or other collection action.

**Sec. 2. 22 MRSA §1714-A, sub-§4, ¶¶C and E**, as enacted by PL 1991, c. 9, Pt. G, §4, are amended to read:

C. The department shall provide written notice of the requirements of this ~~law~~ section to the transferee in a letter acknowledging receipt of a request for a certificate of need or waiver of the certificate of need for a nursing home or hospital transfer or in response to a request for an application for a license to operate a boarding home.

E. Nothing in this subsection may limit the liability of the former provider to the department for any debts whether or ~~not~~ not they are identified at the time of sale. In addition, a transferee has a cause of action against a former provider to the extent that debts of the former provider are paid by the transferee, unless the transferee has waived the right to sue the former provider for those debts.

**Sec. 3. 22 MRSA §1714-A, sub-§4, ¶F** is enacted to read:

F. The commissioner may waive all or part of a transferee's liability under this subsection if the commissioner finds that a waiver of liability is in the public interest.

**Sec. 4. 22 MRSA §1714-A, sub-§§5 to 8** are enacted to read:

**5. Department may offset.** The department may offset against current reimbursement owed to a provider or any entity related by ownership or control to that provider any debt it is owed by that provider after the debt becomes collectible.

**6. Liens.** Collection by lien is as follows.

A. After a debt is collectible, the amount stated in the notice of debt or overpayment is a lien in favor of the department against all real or personal property of the provider or any entity related by ownership or control to the provider.

B. The lien attaches to all real and personal property of the responsible party when the department files in the registry of deeds of any county, or with any office appropriate for a notice with respect to personal property, a certificate that states the name of the responsible party, that party's address, the amount of debt accrued, the date of the underlying audit or decision and the name and address of the authorized agent of the department who issues the lien.

C. When a lien has been filed and the person having notice of the lien possesses any property that may be subject to the lien, that property may not be paid over, released, sold, transferred, encumbered or conveyed unless:

(1) A release or waiver signed by the commissioner has been delivered to the person in possession of the property; or

(2) A court has ordered the release of the lien. A court may order a release only when alternative security has been provided for the debt owed the department.

D. The commissioner may hold title to real or personal property for the purpose of foreclosure on filed liens. Foreclosure must proceed as follows.

(1) Actions to foreclose liens on real property filed under this subsection may be brought in the county where the lien is filed pursuant to the procedures of Title 14, chapter 713, subchapter VI. For purposes of foreclosure by civil action as described in Title 14, chapter 713, subchapter VI, a lien filed in accordance with this subsection constitutes a mortgage claim of the department on any real property owned by the debtor. Failure to pay the debt owed the department constitutes a breach of condition in the mortgage.

(2) Actions to foreclose liens on personal property filed under this subsection may be brought, pursuant to Title 14, chapter 509, subchapter III, in the county where the lien is filed.

7. Other collection actions. In addition to the other remedies provided in this section, the department may seek collection of any debt established under subsection 2 pursuant to Title 14, chapter 502.

8. Rulemaking. The department may adopt or amend any rule as necessary to implement this section.

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

	1991-92	1992-93
<b>HUMAN SERVICES, DEPARTMENT OF</b>		
<b>Medical Care - Payments to Providers</b>		
All Other	(\$200,000)	(\$200,000)
Provides for the deappropriation of funds from the anticipated collection of unpaid debts owed to the department from health care providers.		

**Sec. 6. Allocation.** The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1991-92	1992-93
<b>HUMAN SERVICES, DEPARTMENT OF</b>		
<b>Medical Care - Payments to Providers</b>		
All Other	\$200,000	\$200,000
Provides for the allocation of funds received from collection of unpaid debts owed to the department from health care providers.		

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective July 14, 1991.

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**CHAPTER 569**

**S.P. 274 - L.D. 733**

**An Act Relating to the Definition of Gross Sexual Assault under the Maine Criminal Code**

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

**17-A MRSA §253, sub-§5**, as repealed and replaced by PL 1989, c. 401, Pt. A, §4, is amended to read:

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

See title page for effective date.

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**CHAPTER 570**

**S.P. 554 - L.D. 1458**

**An Act Relating to Court Security Personnel**

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

**Whereas**, this legislation is necessary in order to clarify the responsibility for providing and paying for the security of the courts and the safety of the public with regard to prisoners; and

**Whereas**, Androscoggin County has not entered into an agreement with the Judicial Department for court security services pursuant to the provisions of Public Law 1989, chapter 722, section 1; and

**Whereas**, a transfer of court officers from county to state employment provides the most effective means of controlling court security costs in Androscoggin County; and

**Whereas**, a transfer of available funds and an increase in the Judicial Department position count are necessary to carry out the purposes of this Act; 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 legisla-