

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

SECOND SPECIAL SESSION

December 12, 1991 to January 7, 1992

SECOND REGULAR SESSION

January 8, 1992 to March 31, 1992

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1992

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

J.S. McCarthy Company
Augusta, Maine
1992

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION

of the
ONE HUNDRED AND FIFTEENTH LEGISLATURE

1991

fiscal year 1992-93 general purpose subsidy for public schools.

A. For each unit, the total amount provided to the unit in fiscal year 1992-93 as state subsidy and as described in section 15610, subsection 1-C and sections 15612 and 15613 must be the same as the amount calculated for fiscal year 1991-92 for these purposes, including the calculations described in section 15602, subsections 5 and 6, except as described below.

(1) Debt service must be the costs attributable to fiscal year 1992-93.

(2) The Public Law 81-874 federal impact aid reduction must be calculated pursuant to federal requirements and section 15612, subsection 5.

(3) Reductions to the total amount provided to Maine Indian education schools must be in accordance with Title 30, section 6211, subsection 2.

(4) The amounts provided for the costs of state agency clients and for state wards, as specified in section 15607, subsection 9 and section 15613, subsection 5 must be in accordance with actual fiscal year 1992-93 costs.

(5) For any school administrative unit whose fiscal year 1992-93 foundation and minimum subsidy, as calculated in other parts of this subsection, would be less than the amount that would be calculated on the department's printout presented to the Joint Standing Committee on Appropriations and Financial Affairs dated February 19, 1992, the greater amount on that printout must be provided.

B. To provide for maximum subsidy stability between fiscal year 1991-92 and fiscal year 1992-93, the state share percentage for each school administrative unit, the per pupil operating rates, the program millage limit and debt service millage limit must be the same as those used for fiscal year 1991-92.

See title page for effective date.

CHAPTER 803

H.P. 359 - L.D. 513

An Act Requiring the Provision of Information to Victims of Gross Sexual Assault

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

Sec. 1. 5 MRSA §19203, sub-§10, as repealed and replaced by PL 1987, c. 811, §3, is repealed and the following enacted in its place:

10. Court ordered disclosure. To:

A. A person authorized by section 19203-C to receive test results following an accidental exposure; or

B. A victim-witness advocate authorized by section 19203-E to receive test results of a person convicted of gross sexual assault who shall disclose to a petitioner under section 19203-E.

Sec. 2. 5 MRSA §19203-A, sub-§5 is enacted to read:

5. Exposure from gross sexual assault. Consent need not be obtained when a victim of gross sexual assault has been exposed to the blood or body fluids of the convicted offender and the exposure creates a significant risk of infection, provided that a court order has been obtained under section 19203-E. The fact that an HIV test was given as a result of the exposure and the results of that test may not appear in a convicted offender's medical record. Counseling on risk reduction must be offered, but the convicted offender may choose not to be informed about the result of the test.

Sec. 3. 5 MRSA §19203-E is enacted to read:

§19203-E. HIV test after conviction for sexual assault

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

A. "Convicted offender" means the person convicted for a gross sexual assault, or, in the case of a juvenile, the person who has been adjudicated as having committed the juvenile crime of gross sexual assault.

B. "Petitioner" means a person who is the victim of gross sexual assault who allegedly has been exposed to the blood or body fluids of the convicted offender and who files a petition with the District Court under subsection 2.

2. Petition. A person who is the victim of gross sexual assault who allegedly has been exposed to the blood or body fluids of the convicted offender may petition the District Court with jurisdiction over the convicted offender to require the convicted offender to submit to HIV Testing, provided that the following conditions have been met:

A. The petitioner has consented to and obtained an HIV test within 6 weeks following the alleged

exposure to the blood or body fluids of the convicted offender;

B. The exposure to blood or body fluids as alleged creates a significant risk of HIV infection, as defined by the Department of Human Services, Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act;

C. The authorized representative of the petitioner, the prosecuting attorney or the court has sought to obtain written informed consent from the convicted offender; and

D. Written informed consent was not given by the convicted offender.

3. Prehearing duties of the court. Upon receipt of the petition, the court shall:

A. Schedule a hearing to be held as soon as practicable;

B. Cause a written notice of the petition and hearing to be given, in accordance with the Maine Rules of Civil Procedure, to the convicted offender who is the subject of the proceeding;

C. Appoint counsel, if requested, for any indigent convicted offender not already represented; and

D. Furnish counsel with copies of the petition.

4. Hearing. The hearing is governed by the following.

A. The hearing must be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

B. The hearing must be confidential and be electronically or stenographically recorded.

C. The report of the hearing proceedings must be sealed. No report of the hearing proceedings may be released to the public, except by permission of the convicted offender and with the approval of the court.

D. The court may order a public hearing at the request of the convicted offender.

5. Determination. The court may require the convicted offender to obtain HIV Testing only if the petitioner proves by a preponderance of the evidence that:

A. The alleged exposure to blood or body fluids of the convicted offender created a significant risk

of HIV infection as defined by the Department of Human Services, Bureau of Health through the adoption of rules in accordance with the Maine Administrative Procedure Act;

B. An authorized representative of the petitioner, the prosecuting attorney or the court has sought to obtain written informed consent from the convicted offender; and

C. Written informed consent was not given by the convicted offender.

6. Consent. The court may not order a convicted offender to obtain HIV Testing unless the petitioner has consented to and obtained an HIV test within 6 weeks following the gross sexual assault.

7. Appeals. A convicted offender who is required to undergo an HIV test may appeal the order to Superior Court. The appeal is limited to questions of law. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

8. Reporting and counseling. The health care facility in which any person is tested pursuant to this section shall report to the Bureau of Health. The health care facility in which a convicted offender required to undergo an HIV test is tested shall disclose the results of the convicted offender's test to the victim-witness advocate who shall disclose the results to the petitioner. The convicted offender's HIV test results may not be disclosed to the petitioner until the petitioner has received counseling regarding the nature, reliability and significance of the convicted offender's HIV test and the confidential nature of the test. All counseling must be provided by a Department of Human Services certified HIV antibody counselor. All tests conducted pursuant to this section must be accompanied by pretest and posttest counseling as defined in section 19204-A.

9. Subsequent testing. Subsequent testing arising out of the same incident of exposure must be conducted in accordance with this section. Other testing of the convicted offender may not be required except as provided by this section.

Sec. 4. 5 MRSA §19204-A, first ¶, as repealed and replaced by PL 1987, c. 811, §8, is amended to read:

Except as otherwise provided by this chapter, persons who obtain an HIV test ~~shall~~ **must** be offered pretest and post-test counseling. Persons who are authorized by section 19203-C or 19203-E to receive test results after ~~accidental~~ exposure ~~shall~~ **must** be offered counseling regarding the nature, reliability and significance of the HIV test and the confidential nature of the test.

See title page for effective date.