

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTIETH LEGISLATURE**  
**FIRST REGULAR SESSION**  
**December 6, 2000 to June 22, 2001**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 21, 2001**

**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**  
**2001**

such times and in such amounts as it determines necessary, and in consultation with the Finance Authority of Maine, shall direct the transfer of funds from the Underground Oil Storage Replacement Fund to the Groundwater Oil Clean-up Fund.

**Sec. 9. 38 MRSA §570-H, sub-§2,** as amended by PL 1999, c. 505, Pt. A, §14, is further amended to read:

**2. Adequacy of fund.** On or before February 15th of each year, the Fund Insurance Review Board, with the cooperation of the commissioner, shall report to the joint standing committee of the Legislature with jurisdiction over natural resources matters on the department's and the board's experience administering the fund, clean-up activities and 3rd-party damage claims. The report must also include an assessment of the adequacy of the fund to cover anticipated expenses and any recommendations for statutory change. The report must also include an assessment of the adequacy of the Underground Oil Storage Replacement Fund and the ~~Wells~~ Waste Oil Clean-up Fund to cover anticipated expenses and any recommendations for statutory change. To carry out its responsibility under this section, the board may order an independent audit of disbursements from the Groundwater Oil Clean-up Fund, the Underground Oil Storage Replacement Fund and the ~~Wells~~ Waste Oil Clean-up Fund.

**Sec. 10. PL 1999, c. 505, Pt. A, §16** is amended to read:

**Sec. A-16. Transfer to the Waste Oil Clean-up Fund.** After the State Controller closes the financial accounts of the State for the fiscal year ending June 30, 1999, an amount not to exceed \$3,100,000 must be transferred by the State Controller to the ~~Wells~~ Waste Oil Clean-up Fund established in the Maine Revised Statutes, Title 10, section 1023-L from the available balance in the General Fund as the next priority after the State Contingent Account established in Title 5, section 1507 is replenished, to be made available by financial order upon the recommendation of the State Budget Officer and approval of the Governor.

**Sec. 11. Transition.** Persons that received loans or have loans pending under the Maine Revised Statutes, Title 10, section 1023-M prior to the effective date of this Act are eligible to apply for loans pursuant to this Act for the total amount of their past cost settlement, costs of the Plymouth waste oil site remedial study and time-critical removal action costs, provided that the amount loaned pursuant to this Act is used to pay the remaining balance on the loan received under the previously authorized Plymouth loan program.

**Sec. 12. Authority to report out legislation.** The Joint Standing Committee on Natural Resources may report out legislation during the Second Regular Session of the 120th Legislature relating to clean-up costs and remedial activities at the Plymouth waste oil disposal site.

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

Effective June 4, 2001.

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## CHAPTER 357

### H.P. 1168 - L.D. 1568

#### **An Act to Amend the Laws Pertaining to Protection and Advocacy for Persons with Developmental or Learning Disabilities or Mental Illness**

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

**Sec. 1. 5 MRSA c. 511** is amended by repealing the chapter headnote and enacting the following in its place:

### CHAPTER 511

#### PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES

**Sec. 2. 5 MRSA §19501,** as enacted by PL 1989, c. 837, §1, is amended to read:

#### **§19501. Policy**

It is the policy of the State to ensure that the legal and human rights of all ~~developmentally disabled persons and mentally ill individuals~~ persons with disabilities residing in the State are protected through the establishment of a protection and advocacy system pursuant to 29 United States Code, Section 794(e), 42 United States Code, Section 6042 et seq., as recodified, and Section 10801 et seq.

**Sec. 3. 5 MRSA §19502,** as enacted by PL 1989, c. 837, §1, is amended to read:

#### **§19502. Designation**

The Governor shall designate an agency, independent of any state or private agency that provides treatment, services or habilitation to persons with ~~developmental disabilities or mental illness,~~ to serve as the protection and advocacy agency for persons with disabilities. ~~The agency shall also protect and~~

~~advocate for the rights of persons with learning disabilities.~~

**Sec. 4. 5 MRSA §19503, sub-§1**, as enacted by PL 1989, c. 837, §1, is amended to read:

**1. Abuse.** "Abuse" means the act or failure to act, knowingly, recklessly or intentionally, that causes, or may cause, injury or death. "Abuse" includes, but is not limited to, rape or sexual assault, the striking of an individual, the use of excessive force in the use of bodily restraints ~~and~~ the use of bodily or chemical restraints in a manner that is not in compliance with federal and state laws, regulations and rules ~~and~~ verbal, nonverbal, mental and emotional harassment.

**Sec. 5. 5 MRSA §19503, sub-§2-A** is enacted to read:

**2-A. Complaint.** "Complaint" means, but is not limited to, any report or communication, formal or informal, written or oral, including media accounts and telephone calls from any source, including anonymous calls, alleging abuse or neglect of a person with a disability.

**Sec. 6. 5 MRSA §19503, sub-§3, ¶C**, as enacted by PL 1989, c. 837, §1, is amended to read:

C. Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (1) Self care;
- (2) Receptive and expressive language;
- (3) Learning;
- (4) Mobility;
- (5) Self direction;
- (6) Capacity for independent living; and
- (7) Economic self-sufficiency; ~~and~~

A person from birth through 9 years of age who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting 3 of the criteria stated in this subsection if there is a high probability that the person will meet those criteria later in life if services and supports are not provided to the person; and

**Sec. 7. 5 MRSA §19503, sub-§5**, as enacted by PL 1989, c. 837, §1, is repealed and the following enacted in its place:

**5. Facility.** "Facility" means any foster home; boarding home; nursing home; group home; hospital; state mental health institute; state-operated psychiatric treatment facility; state, county or municipal correctional or detention facility; shelter; or any other facility licensed or funded by the State, or any subdivision of the State, for the provision of services, supports and other assistance or residential services or treatment. "Facility" includes any facility providing services, supports and other assistance or residential services or treatment that operates without a license that is required by law, ordinance or rule.

**Sec. 8. 5 MRSA §19503, sub-§9**, as enacted by PL 1989, c. 837, §1, is amended to read:

**9. Personnel.** "Personnel" means ~~salaried~~ staff employed by the agency.

**Sec. 9. 5 MRSA §19503, sub-§10**, as enacted by PL 1989, c. 837, §1, is repealed and the following enacted in its place:

**10. Person with a disability.** "Person with a disability" means a person with a physical or mental impairment that substantially limits one or more of the major life activities of that person and includes, but is not limited to, a person with a developmental disability, a learning disability or a mental illness.

**Sec. 10. 5 MRSA §19503, sub-§11** is enacted to read:

**11. Probable cause.** "Probable cause" means a reasonable ground for belief that a person with a disability has been or may be subject to abuse or neglect. The belief may be based on reasonable inferences drawn from experience or training regarding similar incidents, conditions or problems that are usually associated with abuse or neglect.

**Sec. 11. 5 MRSA §19504, sub-§2, ¶¶A and B**, as enacted by PL 1989, c. 837, §1, are amended to read:

A. The advisory council shall advise the agency on policies and priorities to be followed in carrying out the duties of the agency as the protection and advocacy agency for ~~mentally ill~~ individuals with mental illness.

B. Members of the advisory council must include attorneys, mental health professionals, individuals from the public who are knowledgeable about mental illness and the advocacy needs of persons with mental illness and who have demonstrated a substantial commitment to improving mental health services, a provider of mental health services, individuals who have received or who are receiving mental health services and family members of those individuals. At least

~~1/2 60%~~ of the membership must consist of individuals who have received or who are receiving mental health services and family members of those individuals.

**Sec. 12. 5 MRSA §19505, sub-§§6 and 7** are enacted to read:

**6. Goals and priorities.** The agency shall represent persons with disabilities and otherwise conduct its activities in accordance with goals and priorities annually established by the agency, with other requirements of applicable federal law and with the terms of any grants or contracts. The agency shall provide the public with an opportunity to comment upon the agency's goals and priorities.

**7. Monitoring.** The agency may monitor the delivery of services, supports and other assistance or residential services or treatment provided to persons with disabilities for the purpose of ensuring that services, supports and assistance meet the needs of those persons and are delivered in conformity with laws, regulations, rules and other standards regarding quality of care.

**Sec. 13. 5 MRSA §19506, sub-§1,** as enacted by PL 1989, c. 837, §1, is amended to read:

**1. Records.** Agency personnel must be granted access to all records, reports and supporting information, other than records, reports and supporting information created in the course of a an ongoing criminal investigation by the Attorney General, a district attorney's office or a law enforcement agency or records, reports and supporting information designated as confidential by Title 16, section 614, that:

A. Pertain to a person who is a client of the agency, if the person or the person's legal guardian or other legal representative has authorized the agency to have that access;

~~B. Pertain to an individual who is or was a person with disabilities and who is the subject of a complaint received by the agency or who the agency has probable cause to believe has been or is being abused, exploited or neglected, and who is:~~

~~(1) By reason of a mental or physical condition, unable to authorize the agency to have access; and~~

~~(2) Either under public guardianship or without a legal guardian or other representative who may authorize the agency to have access; or~~

C. Describe incidents of abuse, exploitation, neglect or injury, and the steps taken to investigate those incidents, prepared by any staff person of any facility serving persons with disabilities or by any agency charged with investigating allegations of abuse, exploitation, neglect and injury occurring at facilities that serve persons with disabilities; or

D. Pertain to an individual who is or was a person with a disability and who is the subject of a complaint received by the agency or who, as a result of monitoring or other activities resulting from a complaint or other evidence, the agency has probable cause to believe has been or is being abused, exploited or neglected and who:

(1) By reason of a mental or physical condition is unable to authorize the agency to have access and is either under public guardianship or without a legal guardian or other representative who may authorize the agency to have access;

(2) Has a legal guardian, conservator or other legal representative who has been contacted by the agency upon receipt of the name and address of the guardian, conservator or representative, and the agency has offered assistance to that person to resolve the situation, and that person has failed or refused to act on behalf of the individual; or

(3) Is deceased or whose whereabouts are unknown.

Agency personnel must be given access to the records of a person with a disability and other records relevant to conducting an investigation within 3 business days of the agency making a written request. When the agency determines there is probable cause to believe that the health or safety of the person is in serious or immediate jeopardy or in event of the death of a person with a disability, the agency must be given access to records within 24 hours of the agency making a written request.

**Sec. 14. 5 MRSA §19506, sub-§3,** as enacted by PL 1989, c. 837, §1, is amended to read:

**3. Facilities.** Any facility that serves ~~persons a~~ person with disabilities a disability shall permit entrance access to the premises of the facility by agency personnel performing duties pursuant to section 19505.

A. Access to the premises must include reasonable unaccompanied access to all residents of the facility at reasonable times, including normal working and visiting hours, for the following purposes:

(1) Providing information and training on and referral to programs addressing the needs of a person with a disability and information about the rights of a person with a disability and the protection and advocacy services of the agency, including the name, address and telephone number of the agency; and

(2) Monitoring the rights and safety of recipients of services from the facility.

B. If the agency is conducting an investigation of a complaint of abuse, neglect or exploitation, access to the premises must include:

(1) The opportunity to interview any recipient of services from the facility, facility employee or other person, including the person suspected to be the victim of abuse, neglect or exploitation, who the agency reasonably believes may have knowledge of the incident under investigation; and

(2) The opportunity to view, inspect and photograph all areas of the facility's premises that the agency reasonably believes may be connected to the incident under investigation.

**Sec. 15. 5 MRSA §19507, sub-§3, ¶¶F and G** are enacted to read:

F. The person has a legal guardian, conservator or other legal representative and:

(1) The legal guardian, conservator or legal representative has been contacted by the agency upon receipt of the name and address of the legal guardian, conservator or legal representative;

(2) The agency has offered assistance to the legal guardian, conservator or legal representative to resolve the situation; and

(3) The legal guardian, conservator or legal representative has failed or refused to act on behalf of the person.

G. The person is deceased or the person's whereabouts are unknown.

**Sec. 16. 5 MRSA §19509** is enacted to read:

**§19509. Notice of death or injury**

Notwithstanding any provision of law to the contrary, the following provisions apply to psychiatric hospitals, hospital units that are equipped to provide inpatient care and treatment for persons with mental illness, state mental health institutes and state-operated

psychiatric treatment facilities. Notice provided under this section must be provided within 7 days of the date of the death, attempted suicide or the incident resulting in injury. Notice provided under this section must include the name of the person with a disability; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parent if that person is a minor; a detailed description of the occurrence and any injuries sustained; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice.

**1. Psychiatric hospitals; hospital units.** A psychiatric hospital or a hospital unit that is equipped to provide inpatient care and treatment for persons with mental illness shall provide the agency with access to information relating to the death of any person with a disability who died while in the facility in seclusion or restraint, whose death occurred within 24 hours of being in seclusion or restraint in the hospital or when it is reasonable to conclude that the death is a result of having been in seclusion or restraint in the hospital.

**2. State mental health institutes; state-operated psychiatric treatment facilities.** A state mental health institute or state-operated psychiatric treatment facility shall notify the agency and provide access to information relating to a person with a disability if that person, while in the hospital, has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this subsection, significant impairment includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person.

See title page for effective date.

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**CHAPTER 358**

**H.P. 256 - L.D. 300**

**An Act Making Unified Appropriations and Allocations for the Expenditures of State Government, General Fund and Other Funds, and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 2001, June 30, 2002 and June 30, 2003**

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