

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

SECOND REGULAR SESSION
January 6, 2010 to April 12, 2010

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 12, 2010

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

Augusta, Maine
2010

mitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service.

Sec. 5. 19-A MRSA §4006, sub-§6, ¶B is enacted to read:

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order.

Sec. 6. 19-A MRSA §4007, sub-§6, ¶A is enacted to read:

A. Notwithstanding any other provision of law, service of an order may be made pursuant to this section through the use of electronically transmitted printed copies of orders that have been transmitted directly from the court to the law enforcement agency or correctional facility making service. Return of proof of service may be made by electronic transmission of the proof of service directly to the court from the law enforcement officer making service or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility making service.

Sec. 7. 19-A MRSA §4007, sub-§6, ¶B is enacted to read:

B. In any subsequent criminal prosecution for violation of this section when the service of an order was made through the use of an electronically transmitted printed copy of the order, with 10 days' advance written notice to the prosecution, the defendant may request that the prosecution call as a witness the law enforcement officer who served the order or the chief administrative officer, or the chief administrative officer's designee, of the correctional facility that served the order.

See title page for effective date.

CHAPTER 556 H.P. 1129 - L.D. 1591

An Act To Amend the Maine Certificate of Need Act of 2002 Concerning Right of Entry and Investigation

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

Whereas, it is imperative for the Department of Health and Human Services to have authority to enter and inspect a health care facility or other entity to investigate if the facility or entity has violated the Maine Certificate of Need Act of 2002; 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 §349-A is enacted to read:

§349-A. Compliance investigation

To ensure compliance with this chapter or rules adopted under this chapter, the department may investigate a health care facility or other entity subject to this chapter when the department has a reasonable basis to suspect that a violation has occurred. The health care facility or other entity subject to this chapter may not interfere with or impede the investigation.

1. Right of entry. The department may enter and inspect the premises of a health care facility or other entity subject to this chapter with the permission of the owner or person in charge, or with an administrative inspection warrant issued pursuant to the Maine Rules of Civil Procedure, Rule 80E by the District Court authorizing entry and inspection, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated. The right of entry extends to any premises that the department has reason to believe is operated and maintained in violation of this chapter or rules adopted under this chapter. A letter of intent or an application for a certificate of need made pursuant to this chapter and rules adopted under this chapter constitutes permission for entry or inspection of the premises for which the certificate of need is sought in order to facilitate verification of the information submitted on or in connection with a letter of intent or an application for a certificate of need.

2. Access to information. The department, at any reasonable time, upon demand, has the right to inspect and copy books, accounts, papers, records and other documents or information, whether stored electronically, on paper or in other forms, including, but not limited to, documents and information regarding total capital expenditures and operating costs for a project, ownership or control of a health care facility or other entity subject to this chapter or health services provided, when the department has a reasonable basis to suspect that a provision of this chapter or a rule adopted under this chapter has been violated.

3. Findings of fact. Upon completion of an investigation pursuant to this section, the department shall prepare findings of fact and make a recommendation to the commissioner as to whether a provision of this chapter or a rule adopted under this chapter has been violated. If the commissioner determines that a violation has occurred, the commissioner may pursue one or more of the remedies authorized under this Act.

4. Rules. The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

Effective March 26, 2010.

CHAPTER 557

H.P. 1151 - L.D. 1623

An Act To Expand Options in Child Protection Proceedings for Children in Foster Care

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

Sec. 1. 22 MRSA §4005, sub-§3 is enacted to read:

3. Wishes of child. The District Court shall consider the wishes of the child, in a manner appropriate to the age of the child, including, but not limited to, whether the child wishes to participate or be heard in court. In addition, when a child's expressed views are inconsistent with those of the guardian ad litem, the court shall consider whether to consult with the child directly, when the child's age is appropriate.

Sec. 2. 22 MRSA §4038-B, sub-§4, ¶D is enacted to read:

D. The permanency plan must ensure that all in-state and out-of-state placements are considered to provide the child with all possible permanency options.

Sec. 3. 22 MRSA §4038-B, sub-§5, as enacted by PL 2005, c. 372, §6, is amended to read:

5. Wishes of child. The District Court shall consider, ~~but is not bound by,~~ the wishes of a child, in a manner appropriate to the age of the child, in making a determination under this section.

Sec. 4. 22 MRSA §4055, sub-§3, as amended by PL 1997, c. 715, Pt. A, §12, is further amended to read:

3. Wishes of child. The court shall consider, ~~but is not bound by,~~ the wishes of a child ~~12 years of age or older,~~ in a manner appropriate to the age of the child, in making an order under this section.

Sec. 5. 22 MRSA §8101, sub-§1, as amended by PL 2009, c. 211, Pt. B, §19, is further amended to read:

1. Children's home. "Children's home" means any residence maintained exclusively or in part for the board and care of one or more children under the age of 18, ~~by anyone other than a relative by blood, marriage or adoption.~~ "Children's home" does not include:

- A. A facility established primarily to provide medical care;
- B. A youth camp licensed under section 2495; or
- C. A school established solely for educational purposes except as provided in subsection 4.

See title page for effective date.

CHAPTER 558

S.P. 609 - L.D. 1602

An Act To Clarify the Child Abuse or Neglect Substantiation Process

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

Sec. 1. 22 MRSA §4004, sub-§2, ¶C, as amended by PL 2001, c. 559, Pt. CC, §1, is repealed.

Sec. 2. 22 MRSA §4004, sub-§2, ¶C-1 is enacted to read:

C-1. Determine in each case investigated under paragraph B whether or not a child has been harmed and the degree of harm or threatened harm by a person responsible for the care of that child by deciding whether allegations are unsubstantiated, indicated or substantiated. Each allegation must be considered separately and may result in a combination of findings.

The department shall adopt rules that define "unsubstantiated," "indicated" and "substantiated"