

126th LEGISLATURE — FIRST REGULAR SESSION



## 2013 SEXUAL ASSAULT LEGISLATION IN REVIEW



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## Session Highlights

The 126<sup>th</sup>, First Regular Session was a successful one for the Maine Coalition Against Sexual Assault (MECASA) and for the service providers whom we represent. The following document provides summaries of some of the bills on which we worked this session. Though all of the following bills represent significant changes, we want to highlight a few changes in particular.

One of the high points was the passage of LD 1159, “An Act to Address Human Trafficking, Sex Trafficking, and Prostitution” which made significant changes. The resulting law changed the name of the crime “Aggravated Promotion of Prostitution” to “Sex Trafficking,” to better reflect the nature of the crime; it increased penalties for offenders (both pimps and johns); it made victim supports and resources available to victims of this crime; and included ‘mental disability’ as a factor in exploitation. Maine’s previous statute was too narrowly defined to apply to much of the sex trafficking perpetrated in Maine; this law increases the chance that offenders will be held accountable for sex trafficking and that victims can access the resources they deserve. Perhaps most importantly, it signals the shift in how our communities view sexual exploitation and prostitution, and moves Maine forward in its effort to address human trafficking in all its forms.

Over many years, we have advocated for the expansion or outright removal of the statutes of limitation which apply to sex crimes. During this session, we took another step in the right direction with the passage of two bills: L.D. 1491, “An Act to Strengthen the Laws Regarding Certain Crimes Committed by a Person in a Position of Authority,” and L.D. 744, “An Act to Extend the Statute of Limitations on Certain Civil Professional Negligence Suits.” The first provides an across the board increase of the statute of limitations for most sex crimes from six to eight years. The second relates to the civil statute of limitations and extends the statute of limitations to six years for most sex crimes committed by psychiatrists, psychologists, social workers, professional counselors, pastoral counselors, marriage and family therapists and clinical professional counselors against clients or patients. However, it’s worth noting, that this law comes with a sunset provision of July 1, 2017, requiring that it be passed again in order to continue to be in effect beyond that date.

Over the past year, MECASA has become increasingly engaged in providing technical assistance and support to Maine’s Children’s Advocacy Centers (CACs). This past session, we were pleased with the passage of L.D. 1334, “An Act to Create Child Advocacy Centers in Maine” which provides for a statutory framework for existing and emerging CACs consistent with national standards and best practices.

L.D. 1373 “An Act to Update the Polygraph Examiner Licensing Law,” overhauled the primary statute which regulates polygraph examiners. A small, but important part of the resulting law makes polygraph examiners mandated reporters, under limited circumstances. It requires a report to the Department of Health and Human Services when a polygraph examiner “knows or has reasonable cause to suspect that a person 14 years of age or younger will be the victim of a sexual assault crime as provided under Title 17-A, chapter 11 or is in imminent danger of substantial bodily injury or death.”

Sometimes the success of a legislative session is defined as much by what didn’t pass as what did. That was certainly true this session. We count among our major successes that parole was not reinstated in Maine, that goodtime for offenders has not increased, and that probation periods were not automatically cut in half for sex offenders. In addition, there were a range of other bills we opposed which did not pass or which were amended significantly to address our concerns, including a bill which would have eliminated criminal histories for some sex offenders.

In addition, there was one bill of note which was carried over to the next session as a result of its fiscal note. L.D. 1445 “An Act to Facilitate Children’s Testimony” would provide for closed circuit testimony in court by certain children in some sexual assault cases. We have been working closely with the Administrative Office of the Courts to chart a path forward for this bill during the next session.

As always, we are grateful for the many statewide partners who helped inform the legislative process and for the many legislators who sponsored these bills and were supportive of our policy agenda. If you have questions about any of these bills, please feel free to contact us.

# Bills Passed

## L.D. 498/Public Law Chapter 161: An Act To Allow a Municipality To Prohibit a Sex Offender from Residing within 750 Feet of a Recreational Facility

*Sponsor: Representative Matthew Pouliot*

### Enacted Law Summary

Public Law 2013, chapter 161 authorizes a municipality to prohibit a sex offender from residing within 750 feet of state-owned property that is leased to a nonprofit organization for purposes of a park, athletic field or recreational facility that is open to the public where children are the primary users.

## L.D. 609/Public Law Chapter 53: An Act to Increase Suicide Awareness and Prevention in Maine Public Schools

*Sponsor: Representative Paul Gilbert*

### Enacted Law Summary

Public Law 2013, chapter 53 requires the Department of Education to adopt rules on standards for schools and school administrative units for suicide prevention education and training. The training and education will include suicide prevention awareness education for all personnel and more advanced suicide prevention and intervention training for at least 2 persons per school district. The law also provides that rules adopted by the department on standards for suicide awareness education and suicide prevention and intervention training for school personnel are routine technical rules, but that, beginning July 1, 2014, any subsequent changes to rules are major substantive rules.

## L.D. 744/Public Law Chapter 329: An Act to Extend the Statute of Limitations on Certain Civil Professional Negligence Suits

*Sponsor: Senator Linda Valentino*

### Enacted Law Summary

Public Law 2013, chapter 329 extends to six years the statute of limitations for professional negligence actions against specific professionals when the action is based on a sexual act or sexual contact. It applies the extension of the statute of limitations to professional negligence actions against psychiatrists, psychologists, social workers, professional counselors, pastoral counselors, marriage and family therapists and clinical professional counselors. It also provides that the sexual act or sexual contact must have occurred during the period of time the person was a patient or client of the professional. The extension of the statute of limitations is repealed July 1, 2017.

**L.D. 882/Public Law Chapter 289: An Act to Amend the Laws Governing Confidentiality of Health Care Information to Enhance Public Safety**

*Sponsor: Senator Margaret Craven*

**Enacted Law Summary**

Public Law 2013, chapter 289 allows disclosure of protected health information to appropriate persons, law enforcement officials and other governmental entities in accordance with federal law and regulation.

**L.D. 883/Public Law Chapter 68: An Act Regarding the Sexual Assault Forensic Examiner Advisory Board**

*Sponsor: Senator Stanley Gerzofsky*

**Enacted Law Summary**

Public Law 2013, chapter 68 allows the Sexual Assault Forensic Examiner Advisory Board the authority to establish prerequisites applicable to persons who wish to participate in sexual assault forensic examiner training and issue certificates to those who complete the training.

**L.D. 1024/Public Law Chapter 293: An Act To Enhance Enforcement of the Mandatory Reporting of Abuse and Neglect**

*Sponsor: Senator Margaret Craven*

**Enacted Law Summary**

Public Law 2013, chapter 293 requires the Department of Health and Human Services to make a report, which may include confidential child protection information, to the licensing board of a professional who appears from the record or relevant circumstances to have failed to make a mandated report concerning child abuse or neglect. The licensing board and licensee are required to keep the information confidential, and its use in a disciplinary proceeding are governed by the existing procedures in the Maine Revised Statutes, Title 5, section 9057, subsection 6.

**L.D. 1159/ Public Law Chapter 407: An Act To Address Human Trafficking, Sex Trafficking and Prostitution**

*Sponsor: Representative Mark Dion*

**Enacted Law Summary**

Public Law 2013, chapter 407 broadens the definition of "human trafficking offense" to include the Maine Criminal Code crimes of aggravated sex trafficking, sex trafficking and all other crimes in the Maine Revised Statutes, Title 17-A, chapters 11, 12 and 13 if accompanied by the withholding of government-issued immigration or identification documents or committed as part of a scheme to compel participation in prostitution or labor using specific types of threats.

It also makes changes in the Maine Criminal Code to address human trafficking and the subcategory of sex trafficking. Specifically, it:

1. Renames the crimes of aggravated promotion of prostitution and promotion of prostitution "aggravated sex trafficking" and "sex trafficking," respectively, in order to more accurately describe the defined criminal conduct;
2. Adds a provision to the crime of aggravated sex trafficking to include a victim who suffers from a mental disability;
3. Updates language in statute concerning aggravated sex trafficking regarding the terms "narcotic" and "alcoholic liquor;"
4. Amends the crime of sex trafficking to provide that a new violation after having been twice previously convicted of sex trafficking, engaging in prostitution, engaging a prostitute or patronizing prostitution of a minor, or attempts to commit those crimes or engaging in substantially similar conduct in another jurisdiction, constitutes a Class C crime;
5. Amends the crime of engaging in prostitution to permit the trial court at the time of sentencing to employ any sentence alternative authorized for a Class E crime rather than solely a fine; and
6. Amends the crime of patronizing prostitution of a minor to include the Class C crime of patronizing prostitution of a mentally disabled person.

**L.D. 1316/Public Law Chapter 297: An Act Regarding Computers Used to Commit a Crime or Facilitate the Commission of a Crime**  
*Sponsor: Representative Thomas Tyler*

**Enacted Law Summary**

Public Law 2013, chapter 297 amends the law regarding the disposition of computers used to commit crimes as follows.

1. It adds a definition of "data storage device," as it is used in the definition of "computer."
2. It provides that computer data stored on a computer in the possession of the State that was used to commit or facilitate the commission of a crime may be permanently destroyed or caused to be permanently destroyed by the State through the removal and destruction of any parts of the computer on which the computer data are stored.
3. It provides that a finding of the defendant's guilt, the court's acceptance of a plea of guilty or nolo contendere or a finding by the court that the person is not criminally responsible for the crime is a trigger for the destruction of computer data or the disposal of a computer.
4. It permits the release of specifically identifiable computer data to persons requesting that computer data if certain conditions are met. If an agency cannot provide the requested data, the chief officer of

the agency subject to the request may consider whether there is a 3rd-party vendor that can accommodate the request and if so, refer the request to the 3rd-party vendor for processing upon receipt of full payment from the requestor for the amount to be charged by the vendor.

5. It permits the State to either destroy or assume ownership of a computer under certain circumstances and provides that the State may, if it assumes ownership of a computer, permanently destroy, or cause to be permanently destroyed, all computer data stored on that computer.

6. It allows a person having a bona fide property interest in a computer in the custody of the State to take possession of that computer, but only after computer data on the computer have been permanently destroyed. If the computer was used to commit or facilitate the commission of a crime involving sexual exploitation of a minor, that computer, and all computer data on that computer, may be permanently destroyed.

7. It requires that, before a criminal justice agency permanently destroys any computer data or disposes or assumes ownership of a computer in the custody of the agency prior to October 9, 2013, the agency must post on its publicly accessible website a notice stating that, unless written notification is given to the criminal justice agency within 90 days after October 9, 2013, all such computer data and computers must be disposed of in accordance with the provisions of this Act.

## L.D. 1334/Public Law Chapter 364: An Act to Create Child Advocacy Centers in Maine

*Sponsor: Representative Margaret Craven*

### **Enacted Law Summary**

Public Law 2013, chapter 364 provides for the establishment of child advocacy centers throughout the State. One center may be established in each of the State's nine public health districts, and each center is responsible for coordinating the investigation and prosecution of child sexual abuse and other child abuse and neglect as well as referral of victims of child sexual abuse for treatment in that district. The intake of the centers is limited to children and their families referred to the centers from the Department of Health and Human Services, law enforcement and district attorneys.

The law requires that an advisory board govern each center. Board members must be from the district and must include representatives from a county sheriff's office and District Attorney's office; the Department of Health and Human Services, Office of Child and Family Services; the State and municipal police; a sexual assault support center; and a county mental health organization. Each board is required to prepare a written protocol for interagency notification and dispute resolution for involved agencies when a conflict arises in how to proceed with the investigation of the case.

Upon the execution of a Memorandum of Understanding, a center may be established. A center must assess victims of child sexual abuse and their families to determine their needs for services relating to the investigation of child sexual abuse; provide those services; provide a facility at which a multidisciplinary team can meet to facilitate the disposition of child sexual abuse cases through the civil and criminal justice systems; and coordinate the activities of governmental entities relating to investigations and services to victims and families. Multidisciplinary teams must include employees of the participating

agencies who are professionals involved in the investigation or prosecution of child sexual abuse cases. The teams may also include professionals involved in the delivery of services to victims and families.

The law specifies that a person is immune from civil liability for a recommendation or an opinion given in good faith while acting in the official scope of the person's duties as a member of a center's multidisciplinary team or as a staff member or volunteer of a center. It also specifies that the files, reports, records, communications and working papers used or developed in providing services are confidential and are not public records.

Beginning January 2015, the Department of Health and Human Services must annually report to the joint standing committee of the Legislature having jurisdiction over health and human services matters regarding the centers. The report must include the number of centers and an overview of the protocols adopted by the centers and the effectiveness of the centers in coordinating the investigation and prosecution of child sexual abuse and referral of victims of child sexual abuse for treatment. The committee may submit legislation related to the report.

### **L.D. 1373/Public Law Chapter 316: An Act to Update the Polygraph Examiner Licensing Laws**

*Sponsor: Senator Anne Haskell*

#### **Enacted Law Summary**

Public Law 2013, chapter 316 repeals and replaces the polygraph examiner licensing statutes effective April 1, 2014. It provides that the Commissioner of Public Safety is responsible for administering the laws governing polygraph examiners and establishes the Polygraph Examiners Advisory Board to provide advice to the commissioner on licensing issues related to polygraph examiners and the administration of the polygraph examiner licensing laws. The law requires a polygraph examiner to report to the Department of Health and Human Services when the examiner knows or has reasonable cause to believe that a person 14 years of age or younger will be the victim of a sexual assault crime as provided in the Maine Revised Statutes, Title 17-A, chapter 11 or is in imminent danger of substantial bodily injury or death and makes failure to report under these circumstances a Class E crime. The requirement to report to the Department of Health and Human Services does not abrogate any other duty to report the examiner has by virtue of the examiner's profession. In addition, the law prohibits a polygraph examiner from asking certain questions pertaining to sexual behavior or political or religious beliefs, as well limits the use of polygraph examinations in employment.

### **L.D. 1491/Public Law Chapter 392: An Act to Strengthen the Laws Regarding Certain Crimes Committed by a Person in a Position of Authority**

*Sponsor: Senator Stanley Gerzofsky*

#### **Enacted Law Summary**

Public Law 2013, chapter 392 extends the statute of limitations period from six years to eight years for Class A, Class B and Class C sex crimes involving unlawful sexual contact or gross sexual assault.

**L.D. 1504/Resolve 66: Resolve, Directing the Adjutant General of the State to  
Ensure the Maine Code of Military Justice Addresses Sexual Trauma in the  
Military**

*Sponsor: Senator Linda Valentino*

**Enacted Law Summary**

Resolve 2013, chapter 66 directs the Adjutant General of the State to conduct an assessment of the Maine Code of Military Justice and other provisions of Maine law that deal with military personnel to ensure that these laws are comparable to federal laws in addressing the adequate investigation, prosecution and adjudication of sexual assault by members of the Maine National Guard and the appropriate treatment of Maine National Guard members who are victims of sexual assault.

*The chapter law summaries included in this report (unless otherwise noted) were obtained through the Maine Legislature's Office of Policy and Legal Analysis. More information can be found at <http://www.maine.gov/legis/opla>.*