



mecasa
MAINE COALITION AGAINST
SEXUAL ASSAULT

MECASA Legislative Report

**130th Legislature
Second Regular Session**

2022 Legislative Session

Dear Public Policy Partners:

The 130th Second Regular Session was exciting, labor intensive, and ultimately, hugely impactful. As is always the case, the best policies were crafted in collaboration with a range of stakeholders and subject matter experts. Some of the highlights from the session include:

- The passage of a **complete rewrite of Maine’s protection from abuse statutes**, the result of countless hours of work by our friends at Pine Tree Legal Assistance and the Maine Coalition to End Domestic Violence, which will improve access to these protections for survivors of sexual violence. Particular thanks to Judiciary Committee Chairs Carney and Harnett for their tireless work to shepherd this 30+ page bill through the process.
- A **prohibition against non-disclosure agreements (NDAs) as a term of employment**, which will keep employers from preventing survivors from sharing and seeking redress for sexual harassment and assault that happened in workplace settings. Many thanks to Rep. Harnett for his many years of work to make this happen.
- The **right for people subject to guardianship to engage advocates and legal supports**, even if their guardian does not want to allow them access to these critical services. It was a pleasure working alongside advocates from Disability Rights Maine and Speaking Up for Us who are deeply committed to enabling Maine to do a better job of preventing and responding to sexual violence against individuals with disabilities. (Oh, and guess who sponsored this one? Rep. Harnett. Beginning to look like we have a session MVP.)
- The brave **testimony by current and former National Guard members** about their experiences with sexual harassment and sexual assault within the Guard, which captured the attention of the Legislature and Governor. Their stories resulted in significant statutory changes as well as a standing commission appointed by the Governor to focus on the prevention of and response to sexual violence in the Maine National Guard. Many thanks to Rep. Reilly and Chairman Hickman for their extraordinary support of the survivor advocates. You rock.
- A wide range of initiatives, sponsored by Senate President Jackson on behalf of Every Voice, to **improve the prevention of and response to sexual violence at Maine’s colleges and universities**. These measures are sweeping changes that will be implemented over the course of the next couple of years and will have a major impact on the way these institutions address sexual violence. We are really excited about the work that we did in partnership with the UMaine System, Maine’s community colleges,

Maine Maritime Academy, and Maine's private colleges to work through this complex legislation and to build the foundation for the implementation of the new law.

Many thanks to all of you who helped make this session such a successful one, named and unnamed. And a big thank you to MECASA's Special Projects Coordinator, the one and only Marion Hylan Barr, for her new law summaries and for this report being issued at the earliest date in its long history.

And, on a personal note, I am mourning the retirement of one of the Legislature's greatest treasures, long-time Judiciary Committee analyst Peggy Reinsch. So many of us will miss her extraordinary mind, her consummate professionalism, and her deep patience and kindness.

Looking forward to working with you next session.

Stay in touch,



Elizabeth Ward Saxl
Executive Director

2022 New Laws

Public Law Chapter 738

LD 811, An Act To Protect the Reproductive Rights and Freedoms of Maine People

Sponsored by Representative Breen

Public Law 2021, chapter 738 provides reimbursement to sexual and reproductive health care providers for activities and services to address the health of MaineCare members. Beginning July 1, 2022, the Department of Health and Human Services must pay each sexual and reproductive health care provider primarily providing family planning services for each MaineCare-covered patient encounter to compensate for the additional services delivered by these providers in providing the family planning services. The payment must cover the difference between total operating costs and the payments made for billed services, and the Department must pursue all opportunities to maximize available federal matching funds to support this additional payment.

Chapter 738 also directs the Department of Health and Human Services to propose routine technical rules to implement the comprehensive sexual and reproductive health care services payment no later than October 1, 2022, and to make the payment effective retroactively for services provided on or after July 1, 2022.

Resolve Chapter 126

LD 842, Resolve, To Create the Commission To Examine Reestablishing Parole

Sponsored by Representative Evangelos

Resolve 2021, chapter 126 establishes the Commission To Examine Reestablishing Parole, consisting of 13 members, five of whom are Legislators. Other members include: a representative each from the Department of Corrections, the Office of the Attorney General, an association representing prosecutors in the State, an organization advocating for the interests of people who are incarcerated, and an organization advocating for the interests of racial minorities; a person with experience in the fields of criminal sentencing or criminology or in administering parole; a person who is an expert in criminal procedure; and an active or retired judge or justice. The Commission must examine parole as it currently operates in Maine and in other states, with a specific focus on the parole law in Colorado, the benefits and drawbacks of parole, different models of parole, how parole fits in with the overall framework of the Maine Criminal Code, the effect of parole on parolees, the costs and savings of instituting parole, and the elements of a plan to implement parole.

Resolve 2021, chapter 126 authorizes the Commission to request persons with specific expertise in parole and parole systems, including but not limited to the current members of the

Department of Corrections, State Parole Board, to serve as consultants to the Commission. The Commission must report its findings and recommendations, including suggested legislation, to the joint standing committee having jurisdiction over judiciary matters by December 1, 2022.

Public Law Chapter 760

LD 965, An Act Concerning Nondisclosure Agreements in Employment

Sponsored by Representative Harnett

Public Law 2021, chapter 760 prohibits an employer from requiring an employee, intern, or applicant for employment to enter into a contract or agreement that waives or limits any right to report or discuss unlawful employment discrimination occurring in the workplace or at work-related events. Chapter 760 also prohibits an employer from requiring an employee, intern, or applicant for employment to enter into a settlement, separation, or severance agreement that limits an individual's right to report, testify, or provide evidence to a federal or state agency that enforces employment or discrimination laws, prevents an individual from testifying or providing evidence in federal and state court proceedings in response to legal process, or prohibits an individual from reporting conduct to a law enforcement agency.

Under certain circumstances, Chapter 760 allows a settlement, separation, or severance agreement to include a provision that prevents the subsequent disclosure of factual information relating to a claim of unlawful employment discrimination. Inclusion of such a provision is permitted only if the agreement expressly provides for separate monetary consideration for the provision in addition to anything of value to which the employee, intern, or applicant is already entitled; the provision applies to all parties to the agreement to the extent otherwise permitted by law; the agreement clearly states that the individual retains the right to report, testify, or provide evidence to federal and state agencies that enforce employment or discrimination laws and to testify and provide evidence in court proceedings; and the employer retains a copy of the agreement for six years following the execution of the agreement or the end of employment, whichever is later.

Public Law 2021, chapter 760 directs the Department of Labor to enforce these provisions and permits the Attorney General to bring an action to impose a fine or seek an injunction for a violation. An employer who violates a provision commits a civil violation for which a fine of up to \$1,000 may be adjudged.

Public Law Chapter 674

LD 1310, An Act Regarding a Post-judgment Motion to Seal the Criminal History Record Information for Certain Criminal Convictions

Sponsored by Representative Talbot Ross

Public Law 2021, chapter 674 reestablishes a special process to seal certain criminal records that was created by Public Law 2015, chapter 354 in a statute that was repealed by its own terms on October 1, 2019. Chapter 674 uses the same process to seal criminal records of an

eligible criminal conviction as in the repealed law but expands the eligibility for record sealing by increasing the age at which the crime was committed.

"Eligible criminal conviction" includes all current and former Class E crimes except for sexual assault crimes contained in the Maine Revised Statutes, Title 17-A, chapter 11. A person with an eligible criminal conviction may file a motion to seal the criminal history record information for the eligible criminal conviction if at least four years have passed since the person fully satisfied each of the sentencing alternatives imposed for the conviction; the person has not been convicted of another crime in Maine and has not had a criminal charge dismissed as a result of a deferred disposition since satisfying the sentencing alternatives; the person has not been convicted of a crime in another jurisdiction since satisfying the sentencing alternatives; the person does not have any presently pending criminal charges in Maine or in another jurisdiction; and the person was at least 18 years of age, but less than 28 years of age, at the time of the commission of the underlying crime.

Public Law 2021, chapter 674 provides that the court must hold a hearing on the motion and, if the court determines all the requirements have been met, the court must issue an order sealing the criminal history record information. Notice of the order must be provided to the person; the prosecutorial office that prosecuted the person; and the Department of Public Safety, Bureau of State Police, State Bureau of Identification, which must promptly amend its records relating to the sealed criminal history record information.

Chapter 674 further provides that if the person is convicted of a crime after the court's order, the person's criminal history record information must be unsealed. The person is required to notify the court of the new conviction, but if the person does not do so, the court must notify the person of the new conviction and offer the person an opportunity to request a hearing to contest the fact of the new conviction. If the court determines that there is a new criminal conviction or if the person fails to request a hearing, the court must issue an order unsealing the person's criminal history record information and notify the State Bureau of Identification.

When a person's criminal history record information related to the eligible conviction is sealed, the sealed criminal history record information must be treated as confidential criminal history record information for the purposes of dissemination to the public under Title 16, section 705 and may not be disseminated by a criminal justice agency, whether directly or through any intermediary, except as provided in Title 16, section 705. A criminal justice agency may also disseminate information to the person, a criminal justice agency for the administration of criminal justice, the Secretary of State to ensure compliance with motor vehicle laws, victims, certain professional licensing agencies, financial institutions that are required to conduct criminal history record checks, and others required to conduct fingerprint-based background checks. Dissemination of sealed criminal history record information to a criminal justice agency for the purpose of the administration of criminal justice includes dissemination and use of the criminal history record information relating to the criminal history record information by an attorney for the State or for another jurisdiction as part of a prosecution of the person for a new crime, including use in a charging instrument or other public court document and in open court. Dissemination of sealed criminal history record information to a criminal justice agency for the purpose of the administration of criminal justice also includes dissemination and use of

the criminal history record information as permitted by the Maine Rules of Evidence and as required by discovery requirements of the Maine Rules of Civil Procedure and the Maine Rules of Unified Criminal Procedure.

A person whose criminal conviction is sealed may respond to inquiries, other than from criminal justice agencies and those authorized to obtain the sealed criminal history record information, by not disclosing the existence of the sealed criminal history record information without being subject to any state sanctions. Not disclosing the existence of the sealed criminal history record information is not perjury, false swearing, or unsworn falsification, except if not disclosed to a criminal justice agency or those authorized to obtain the sealed record.

Public Law 2021, chapter 674 also provides that the restrictions on the dissemination of records under Title 15, former chapter 310 under orders issued before October 1, 2019, continue to apply to the relevant criminal history records and that the process for unsealing a record based on a subsequent criminal conviction created in this law applies when a person for whom the dissemination of the record was restricted under former chapter 310 is subsequently convicted of a crime.

Chapter 674 specifies that a person who intentionally disseminates criminal history record information that has been sealed under this law in violation of the confidentiality provisions of this law, knowing it to be in violation, is guilty of the Class E crime of unlawful dissemination as provided in Title 16, section 707.

Public Law Chapter 647

LD 1696, An Act To Clarify and Recodify Maine's Protection from Abuse Process

Sponsored by Representative Bailey

Public Law 2021, chapter 647 clarifies and recodifies Maine's protection from abuse statutes to make the process more accessible to the public, the legal community, and the judiciary. Established case law is incorporated for judicial economy and clarity for self-represented litigants and the legal community. Chapter 647 does not make any substantive changes to existing law and is intended solely as reorganization of the existing statutes. Chapter 647 takes effect January 1, 2023.

Public Law Chapter 733

LD 1727, An Act Concerning Interpersonal Violence on College Campuses

Sponsored by Senator Jackson

Public Law 2021, chapter 733 enacts a new chapter Title 20-A, chapter 445, "Sexual Violence, Intimate Partner Violence and Stalking at Institutions of Higher Education," which includes provisions to address sexual violence, intimate partner violence, and stalking at Maine's institutions of higher education.

Specifically, chapter 733 directs institutions of higher education to take steps to address sexual violence, intimate partner violence, and stalking, and it establishes the Higher Education Interpersonal Violence Advisory Commission, which is charged with providing the Department of Education with an interpersonal violence climate survey and ongoing recommendations.

Under chapter 733, the duties of institutions of higher education include the following.

No later than July 1, 2023, each institution of higher education must adopt a policy and related procedures on sexual violence, intimate partner violence, and stalking, which must be publicly available on each institution's campus website and in student handbooks and must be updated annually. Institutions must post at locations where students regularly congregate information about where the full policy is available and where outreach for victims of sexual violence, intimate partner violence, and stalking are available. Chapter 733 also specifies how the policy must be developed and that it must include, but not be limited to, procedures for reporting alleged incidents of sexual violence; information where a reporting party may receive emergency assistance; descriptions of the types of and contact information for counseling and other support services; student and employee rights; the process for requesting supportive measures at the institution; contact information for local law enforcement; a summary of the institution's procedures for informal resolution, investigating, adjudicating, and resolving sexual violence; and the range of sanctions or penalties that the institution may impose for violations of the policy.

Institutions must ensure the identities of a reporting party and a responding party, and all information related to an incident of sexual violence, intimate partner violence, or stalking remain confidential and may be disclosed by the institution only as necessary to carry out a disciplinary process or as otherwise permitted under state or federal law.

Each institution must provide a reporting party and a responding party with written notice of the institution's decision to hold a disciplinary proceeding regarding an allegation of sexual violence, intimate partner violence, or stalking sufficiently in advance of a disciplinary proceeding to provide the reporting and responding parties with the opportunity to meaningfully exercise their rights.

Each institution of higher education must designate at least one confidential resource advisor to provide emergency and ongoing support to students reporting sexual violence, intimate partner violence, and stalking. The confidential resource advisor must be designated based on the advisor's experience in advocating on behalf of victims of sexual assault or domestic violence and must have a demonstrated ability to effectively provide victim services. The confidential resource advisor must maintain a physical presence on campus that provides the advisor a place to meet discreetly and privately with students or employees in-person or remotely. An institution may contract or partner with a local, state, or national victim advocacy organization to provide the confidential resource advisor. Chapter 733 sets specific requirements for the confidential resource advisor's training, coordination with on-campus and off-campus sexual assault support centers and domestic violence resource centers, and responsibilities that include providing resources and information to students and employees about reporting, counseling services, medical and mental health services, campus security,

other supportive measures, the institution's investigatory and disciplinary process, the legal process of law enforcement agencies, and confidentiality issues.

Each institution of higher education, with guidance from Title IX coordinators, must provide mandatory prevention and awareness programming on sexual violence, intimate partner violence, and stalking for all incoming students and all employees of the institution. Programming must include information about affirmative consent; options for reporting; the institution's procedures for resolving reports of sexual violence, intimate partner violence, and stalking and sanctions or penalties; contact information for the advisor and for sexual assault support centers and domestic violence resource centers and information about their services; strategies for bystander intervention and risk reduction; opportunities for ongoing prevention and awareness programming; and an approach to training that recognizes and is sensitive to the disproportionate impacts and rates of occurrence of sexual violence, intimate partner violence, and stalking on members of marginalized groups.

Each institution of higher education must provide annual training in awareness of sexual violence, intimate partner violence, and stalking and trauma-informed responses for all Title IX coordinators, campus police and safety personnel, and individuals involved in related disciplinary processes at institutions of higher education.

Beginning October 1, 2023, and annually thereafter, an institution of higher education must prepare and submit to the Commissioner of Education, the Commissioner of Health and Human Services, and the joint standing committee of the Legislature having jurisdiction over higher education matters the annual security report required under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 United States Code, Section 1092(f).

Institutions of higher education must ensure that a reporting party or witness who requests an investigation of sexual violence, intimate partner violence, or stalking may not be subject to a disciplinary proceeding or sanction for a violation of the institution's student conduct policy related to drug or alcohol use, trespassing, or unauthorized entry that comes to the attention of the institution as part of the report, unless it is determined that the report was not made in good faith or the violation placed the health and safety of another person at risk.

Each institution of higher education must enter into and maintain a memorandum of understanding with a sexual assault support center and domestic violence resource center that is funded by the Department of Health and Human Services to provide an off-campus option for students and employees to receive confidential and free sexual assault crisis services or free and confidential domestic violence crisis services, ensure students and employees have free and confidential advocacy services on or off campus, ensure cooperation of training between the institutions and sexual assault support centers and domestic violence resource centers, ensure students and employees have access to mental health services either on or off campus, and make referrals for civil legal representation to assist with civil protections.

In addition to the new duties for institutions of higher education, Public Law 2021, chapter 733 also establishes the Higher Education Interpersonal Violence Advisory Commission, which is an

ongoing statutory commission of 22 whose membership includes: representatives from the Department of Education and the Department of Health and Human Services; students; representatives from institutions of higher education, including a representative of an on-campus health center with experience dealing with sexual violence, intimate partner violence, and stalking; a representative from a statewide coalition of sexual assault support centers; a representative from an organization promoting racial equity and justice; a representative from a tribal coalition against sexual assault and domestic violence; a representative from a statewide organization for disability rights; a representative from a statewide organization for LGBTQ people; a representative from a national advocacy organization focused on passing state legislation written by students and survivors addressing campus sexual violence; a representative from a statewide coalition of domestic violence resource centers; a representative from an organization that advocates for immigrant communities; a civil legal services provider representing sexual assault survivors; and two researchers, one with experience developing and designing interpersonal violence climate surveys and one with experience in higher education survey analysis.

Beginning July 1, 2023, and biennially thereafter, chapter 733 directs the Commission to meet at least four times per year and to provide the Commissioner of Education the interpersonal violence climate survey and any related recommendations, including how to achieve statistically valid response rates. In developing the survey, the Commission must use best practices from peer-reviewed research, review interpersonal violence climate surveys developed and used by other institutions of higher education, ensure the adequacy and appropriateness of content by providing opportunities for written comment from organizations who work with victims and survivors, consult with institutions on strategies for optimizing effectiveness of the survey, and account for the diverse needs and differences among the institutions.

Chapter 733 also requires that the interpersonal violence climate survey be disseminated biennially to each institution and that each institution conduct the survey on each campus of that institution and report a summary of the results of the survey to the Commissioner of the Department of Education.

Public Law Chapter 500

LD 1774, An Act Clarifying the Rights to Legal Representation and to Communicate with Others for Individuals Subject to Guardianship

Sponsored by Representative Harnett

Public Law 2021, chapter 500 provides that, under the Maine Probate Code, an adult subject to guardianship is entitled to retain counsel or seek court-appointed counsel in a proceeding to terminate a guardianship. Chapter 500 specifies that an adult subject to guardianship is entitled to retain counsel and to communicate with other advocates and the court for any reason.

Chapter 500 also provides that the provision of the Maine Probate Code preventing a guardian for an adult from restricting the adult's ability to communicate, visit, or interact with others

unless certain statutory conditions are met applies to all adult guardianships, including adult guardianships established before September 1, 2019.

Public Law Chapter 577

LD 1888, An Act To Amend Laws Affecting Sex Offenders and Petitions for the Determination of Parental Rights and Responsibilities

Sponsored by Representative Gramlich

Public law 2021, chapter 577 provides express authority for a court to order a forensic risk assessment in a parental rights and responsibilities or divorce proceeding. The assessment must be performed by a licensed clinical social worker, psychologist, or psychiatrist qualified to perform psychosexual evaluations. In determining whether to order an assessment, the court may consider the existence of court findings, including convictions for child-related sexual offenses, dissemination of sexually explicit material or possession of sexually explicit material, substantiated findings of child abuse or neglect involving child-related sexual offenses or sexual exploitation of a minor, a recommendation for the assessment by a guardian ad litem, and any other factor the court considers relevant.

Public Law 2021, chapter 577 specifies that the court may order that the person performing the forensic risk assessment may interview certain parents and have access to court documents, records of any interview with the child, and other relevant documents. The court must order the parent who is ordered to complete the forensic risk assessment to pay all the fees associated with the assessment unless another parent agrees to pay for the assessment. If the parent has already completed a forensic risk assessment in the past year, the court may order the parent to release the assessment to the court, the guardian ad litem, or another party and may require the parent to complete a new assessment only if the court determines a new assessment is necessary.

Public Law Chapter 608

LD 1903, An Act To Update Criminal and Related Statutes and Respond to Decisions of the Law Court

Reported by Representative Warren for the Criminal Law Advisory Commission pursuant to Maine Revised Statutes, Title 17-A, section 1354, subsection 2

Part E of Public Law 2021, chapter 608 amends the law to respond to the issue identified by the Law Court in *State v. Asaad*, 2020 ME 11, specifically the absence of a mens rea requirement in the Class C crime of gross sexual assault under Title 17-A, section 253, subsection 2, paragraph M. Part E of chapter 608 changes the mens rea to criminal negligence, specifying that a person is guilty of gross sexual assault if that person engages in a sexual act with another person and the other person has not expressly or impliedly acquiesced to the sexual act and the actor is criminally negligent with regard to whether the other person acquiesced. Part E also makes the same change to require criminal negligence as the culpable mental state in the corresponding Class C and Class D crimes of unlawful sexual contact and the corresponding Class D crime of unlawful sexual touching.

Public Law Chapter 649

LD 1943, An Act To Expand the Address Confidentiality Program to Victims of Certain Human Trafficking Crimes

Sponsored by Senator Diamond

Public Law 2021, chapter 649 expands the Address Confidentiality Program to victims of human trafficking and minor victims of kidnapping and standardizes the use of terms referring to domestic violence and sexual assault.

Public Law 2021, chapter 649 was enacted as an emergency measure effective April 21, 2022.

Resolve Chapter 182

LD 1946, Resolve, Establishing the Committee To Ensure Constitutionally Adequate Contact with Counsel

Sponsored by Representative Harnett

Resolve 2021, chapter 182 establishes the 16-member Committee To Ensure Constitutionally Adequate Contact with Counsel. Members include five Legislators and a representative from the Department of Corrections, the Department of Public Safety, the Office of the Attorney General, the Maine Commission on Indigent Legal Services, a statewide association of sheriffs, a statewide association of criminal defense lawyers, a statewide association of prosecutors, a civil rights organization whose primary mission includes the advancement of racial justice, a civil liberties organization whose primary mission is the protection of civil liberties, a statewide prisoners' rights organization, and a statewide organization whose mission includes advocating for victims and survivors of domestic violence.

The Committee is established to ensure that residents of Department of Corrections correctional and detention facilities, persons who are incarcerated in county jails and other county correctional facilities, and criminal defendants in court facilities have adequate contact with counsel. Specific duties include: reviewing federal and state constitutional and statutory requirements for communications with counsel for those in the criminal justice system; reviewing recent policies and practices that have resulted in reported violations of requirements in the State; reviewing how other jurisdictions ensure all forms of confidential communications; reviewing how other jurisdictions ensure opportunities for document review by incarcerated persons without interception, review, or other actions by anyone acting on behalf of a correctional facility, jail, or the State; reviewing remedies used by other jurisdictions when requirements are not met; and developing recommendations to implement to ensure that those who are incarcerated, detained, or are criminal defendants in court facilities have constitutionally adequate contact with counsel.

The Committee must submit a report that includes its recommendations and suggested legislation to the joint standing committee having jurisdiction over judiciary matters by November 2, 2022.

Resolve 2021, chapter 182 was enacted as an emergency measure effective May 8, 2022.

Public Law Chapter 527

LD 1953, An Act To Fix Inconsistencies within the Sex Offender Registration and Notification Act of 2013

Reported by Senator Deschambault for the Sex Offender Management and Risk Assessment Advisory Commission pursuant to Maine Revised Statutes, Title 34-A, section 11403, subsection 3

Public Law 2021, chapter 527 amends the Sex Offender Registration and Notification Act of 2013 to fix inconsistencies in the law introduced when that Act was recently amended. Chapter 527 also provides that a violation of the statute prohibiting the promotion of prostitution of certain minors, added in 2021, is a Tier III offense.

Public Law 2021, chapter 527 was enacted as an emergency measure effective March 31, 2022.

Public Law Chapter 609

LD 1954, An Act To Ensure Access to Prescription Contraceptives

Sponsored by Senator Jackson

Public Law 2021, chapter 609 requires health insurance policies to cover all contraceptive drugs, devices, and products approved by the federal Food and Drug Administration (FDA) without any deductible, coinsurance, copayment, or other cost-sharing requirement. If the FDA has approved one or more therapeutic equivalents of a contraceptive supply, an insurer or a health maintenance organization is not required to cover all those therapeutically equivalent versions, if at least one is covered without any deductible, coinsurance, copayment, or other cost-sharing requirement. Chapter 609 also requires all individual and group nonprofit hospital and medical services plan policies and contracts and all nonprofit health plan policies and contracts that provide coverage for prescription drugs or outpatient services to provide coverage for the furnishing or dispensing of prescribed contraceptive drugs, devices, and products intended to last for a 12-month period, as is required of other types of health insurance policies.

Public Law 2021, chapter 609 provides that the law's requirements apply to all health plans issued or renewed on or after January 1, 2023. Chapter 609 also includes language that exempts the law's requirements from review and evaluation by the Department of Professional and Financial Regulation, Bureau of Insurance and includes a legislative finding that the changes are a clarification of existing law and not an addition to the State's essential health benefits that would require the State to defray costs pursuant to the federal Affordable Care Act.

Public Law Chapter 634

LD 2029, An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard

Reported by Representative Caiazzo for the Joint Standing Committee on Veterans and Legal Affairs pursuant to Resolve 2021, chapter 21, section 2

Public Law 2021, chapter 634 directs the Attorney General to review the manner in which law enforcement agencies and prosecutors within the State investigated and prosecuted allegations of sexual assault or the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A, section 506-A, by members of the Maine National Guard against other members of the Maine National Guard during the 5-year period ending on March 31, 2022. The review must include at least the following: the nature of each allegation, whether the allegation was properly investigated by the law enforcement agency, whether the results of the agency's investigation were communicated to the appropriate prosecutorial office and whether appropriate action was taken by that prosecutorial office, and whether the results of the agency's investigation and the prosecution, if any, were communicated to the relevant officials within the Maine National Guard.

By February 15, 2023, the Attorney General must submit a report to the joint standing committee of the Legislature having jurisdiction over veterans affairs summarizing the results of the review and making recommendations for improving the process by which law enforcement agencies and prosecutors investigate and prosecute allegations of sexual assault and the crime of harassment between members of the Maine National Guard in the future. The Committee may report out legislation regarding the subject matter of the report to the 131st Legislature in 2023.

Public Law 2021, chapter 634 amends the crime of harassment to provide that a person is guilty of harassment if the person engages in any course of conduct with the intent to harass, torment, or threaten another person and during the previous year the person, while a member of the Maine National Guard, was notified, in writing or otherwise, not to engage in such conduct by a commanding officer, regardless of whether the person remains a member of the state military forces when the conduct occurs and regardless of where the conduct occurs. Chapter 634 provides that a cease harassment notice issued to a member of the Maine National Guard by a commanding officer may, to the same extent as a cease harassment notice issued by a law enforcement officer, satisfy the requirements for initiating a court proceeding for protection from harassment.

Public Law 2021, chapter 634 directs the Governor to appoint a member of the military community with experience in sexual assault response to serve on the Commission on Domestic and Sexual Abuse. The number of at-large members appointed by the Governor to serve on the Commission is reduced from four to three, but all currently appointed Commission members may continue to serve for the remainder of their terms.

The Adjutant General must provide current and former members of the Maine National Guard who were victims of sexual assault or sexual harassment while members of the Maine National Guard with financial assistance to cover the expenses of traveling to and from and participating

in administrative or Maine Code of Military Justice proceedings related to the sexual assault or sexual harassment.

Chapter 634 adds the crime of harassment, as defined in the Maine Revised Statutes, Title 17-A, section 506-A, as a military offense for which discipline may be imposed under the Maine Code of Military Justice.

By February 15, 2023, and annually thereafter, the Adjutant General must submit to the joint standing committee of the Legislature having jurisdiction over veterans affairs a report that contains specific data regarding all reported incidents of sexual assault or sexual harassment within the Maine National Guard in each of the preceding 10 years, including information on the current status of victims and the outcomes of any proceedings arising out of those incidents, to the extent permitted by federal law and in a manner that does not reveal the identity of victims; a description of all sexual assault and sexual harassment prevention training provided during the previous year; a description of the current practices and procedures for the prevention of sexual assault and sexual harassment and investigation of and disciplinary actions taken in response to reports of sexual assault and sexual harassment in the Maine National Guard; and a summary of the activities of the Advisory Council on Military Sexual Trauma in the Maine National Guard.

Additionally, when the Adjutant General submits the above-mentioned report, the Adjutant General must also submit to the Committee a copy of any report submitted to the Governor by the Advisory Council on Military Sexual Trauma, which was established by the Governor in Executive Order 1 FY 21/22. LD 2029, An Act To Enhance the Prevention of and Response to Sexual Assault and Sexual Harassment in the Maine National Guard, included a provision that established the Advisory Council on Military Sexual Trauma in the Maine National Guard; however the Committee Amendment removed the provision and instead relied on the Executive Order to establish the Advisory Council. The Executive Order was issued after receipt of the report of the Maine National Guard to the Legislature pursuant to Resolve 2021, chapter 21 (former LD 625, Resolve, Directing a Review of Crucial Needs and Lapses in Responding to and Preventing Sexual Trauma in the Maine National Guard). The Executive Order outlines that the Advisory Council on Military Sexual Trauma membership includes a representative from: the Department of Veterans and Emergency Management, the Department of Public Safety, the Office of the Attorney General, the Maine Prosecutors Association, the Maine Sheriffs' Association, the Maine Commission on Domestic and Sexual Abuse, and an organization that works with survivors of military sexual trauma; also an advocate for survivors or a survivor of military sexual trauma who participated in the military justice or state court system, the Executive Director of MECASA, and a representative of the Judicial Branch appointed by the Chief Justice of the Supreme Judicial Court who serves in an advisory capacity.

The duties of the Advisory Council on Military Sexual Trauma include identifying best practices in reporting and preventing sexual trauma in the Maine National Guard; identifying barriers to reporting sexual trauma in the Maine National Guard; identifying state resources available to respond to and prevent sexual trauma within the Maine National Guard; improving communications between the Maine National Guard, state, county and local law enforcement, and prosecutors regarding investigation and prosecution of criminal acts between members of

the Maine National Guard; ensuring the relevant violations of the Military Code of Justice are communicated to Maine Authorities; proposing an amendment to Title 17-A, section 506-A, the crime of harassment, in order for the courts to recognize military orders to cease harassment (this change has been codified in Public Law 2021, chapter 634); identifying resources available within the state of Maine to support survivors of sexual assault and harassment and making sure these resources are promptly provided to members of the Maine National Guard; identifying a process that will ensure survivors have an opportunity to communicate problems they have experienced during the reporting and investigative process and ensuring this input from survivors is incorporated into any Maine National Guard policy changes or actions; improving communication between survivors of military sexual trauma, state prosecutors, and state, county, and local law enforcement; identifying ways the Department of Defense Veterans and Emergency Management can increase its involvement in the state's response to sexual trauma in order to better inform its internal policies; identifying federal policies and resources, including those of the U.S. Department of Defense and the National Guard Bureau, available to support efforts to respond to and prevent sexual trauma in the Maine National Guard; and making recommendations to the Governor as appropriate to enhance the prevention, reporting, and timely prosecution of sexual assault and sexual harassment within the Maine National Guard. By December 1, 2022, the Advisory Council must submit its recommendations to the Governor, and the Advisory Council must continue to meet annually to ensure response efforts continue to meet the needs of survivors.

Finally, in addition to the two reports noted above, the Adjutant General must also submit to the Committee a copy of any report prepared by the United States National Guard Bureau, Office of Complex Investigations regarding any evaluation of the Maine National Guard's policies and procedures with respect to sexual assault prevention and response, sexual assault investigations, and sexual harassment and equal opportunity programs, or, if no report is available, an update on the progress of any related evaluation that is in the process of being conducted by the Office of Complex Investigations.