



2021-2022 New Maine Laws Implications for Advocates

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MAINE COALITION AGAINST
SEXUAL ASSAULT

During the First and Second Regular and Special Sessions of the 130th Legislature, the Maine Legislature passed many bills which may have implications for your work.

For a more complete list and the statutory language for each selection, please refer to our [2021](#) and [2022](#) MECASA Legislative Reports.

If you have any questions about public policy and legislation, please feel free to reach out to Public Policy and Legal Director, Melissa Martin (martin@mecasa.org, work cell 207-228-4019); Special Projects Coordinator Marion Hylan Barr (marion@mecasa.org); or Executive Director, Elizabeth Ward Saxl (director@mecasa.org).

[Public Law 2021, Chapter 116](#)

An Act To Enable Electronic Reporting of Suspected Child Abuse and Neglect for Certain Mandated Reporters

What does it do?

This new law expands the types of mandated reporters who may report electronically to include school personnel. School policies may vary regarding how reports are to be made by school personnel, but this seeks to make reporting as easy as possible. Other mandated reporters who can report electronically include medical professionals, hospitals and hospital staff, and law enforcement personnel.

What does it mean for your work?

Although sexual assault advocates are not currently able to submit reports of child abuse and neglect electronically to the Department of Health and Human Services, they can remind and advocate for school personnel to consider this streamlined approach when discussing mandated reporting. Additionally, advocates should be aware that the above mandated reporters will be able to submit these electronic reports through a portal, which can be found [here](#).

Public Law 2021, Chapter 176

An Act To Ensure That Definitions in the Child and Family Services and Child Protection Act Comply with State and Federal Law

What does it do?

This law amends the definition of "abuse or neglect" and adds a definition for "child sex trafficking" within the Child and Family Services and Child Protection Act which opens the door for the Department of Health and Human Services (DHHS) to intervene with children who are victims of commercial sexual exploitation regardless of the relationship to the child of the person responsible for the exploitation.

What does it mean for your work?

Mandated reporters, including advocates, must make a report to DHHS when a child is at risk of, or suspected to be the victim of, trafficking or exploitation regardless of the relationship to the child.

Public Law 2021, Chapter 263

An Act To Protect the Rights of Certain Incarcerated Individuals

What does it do?

This law requires county and regional jails and correctional facilities and detention facilities to respect and acknowledge a person's consistently held gender identity subject to exceptions for significant management or security problems or threats to the person's health or safety.

What does it mean for your work?

Survivors who are incarcerated now have the legal right to be respected and acknowledged by their consistently held gender identity. Survivors also have the right to access commissary items, clothing, personal property, programming, and educational materials that are reflective of their gender identity. If an individual who is incarcerated feels this right is not being upheld, they may file a complaint or grievance with the Maine Department of Corrections.

Public Law 2021, Chapter 265

An Act To Improve Access to HIV Prevention Medications

What does it do?

This law makes the following changes to improve access to HIV prevention drugs:

The law requires that any drug list used in the MaineCare program must ensure that HIV prevention drugs are available to members covered by MaineCare.

The law requires health insurance carriers to provide coverage for an enrollee for HIV prevention drugs that have been determined to be medically necessary by a health care provider. Health insurance carriers are not required to cover all of the drugs approved by the federal Food and Drug Administration for HIV prevention as long as the carrier covers at least one approved drug for each method of administration with no out-of-pocket cost to the enrollee. Carriers are also required to provide coverage with no out-of-pocket cost for laboratory testing related to the ongoing monitoring of an enrollee taking an HIV prevention drug. The law prohibits a carrier from imposing prior authorization or step therapy requirements on any HIV prevention drug, except that, if the federal Food and Drug Administration has approved one or more methods of administering HIV prevention drugs, a carrier is not required to cover all of the approved drugs without step therapy or prior authorization requirements as long as the carrier covers at least one approved drug for each method of administration without prior authorization or step therapy requirements. If step therapy or prior authorization requirements are met with regard to a particular HIV prevention drug, the carrier is required to cover that drug with no out-of-pocket cost to the enrollee. The requirements with regard to health insurance carriers apply to health plans issued or renewed on or after January 1, 2022.

The law also authorizes a pharmacist to prescribe, dispense and administer HIV prevention drugs pursuant to a standing order or collaborative practice agreement or when there is no prescription drug order from a health care provider, subject to rules and protocols adopted by the board.

What does it mean for your work?

HIV prevention drug access has been improved for those covered by MaineCare and other health insurance plans. If you are working with individuals who are currently using, discussing using, or beginning to use an HIV prevention drug, it may be helpful to talk with them about these new health insurance requirements and the new authorizations for pharmacists.

Public Law 2021, Chapter 301

An Act To Provide Access to Justice for Victims of Child Sexual Abuse

What does it do?

This law allows civil actions based upon sexual acts toward minors regardless of the date of the sexual act and revives actions that may previously have been barred by a statute of limitations in force prior to the effective date of Public Law 1999, chapter 639.

What does it mean for your work?

Survivors who experienced sexual violence as children may bring a civil suit against the people or institutions that harmed them with no matter when the abuse occurred.

Public Law 2021, Chapter 307

An Act to Ensure the Appropriate Allocation of Victim Restitution

What does it do?

This law prohibits a deceased victim's restitution from being paid to an offender if the offender is an heir, beneficiary or recipient of funds from the victim's estate. Instead, the restitution must be distributed to any other heir, beneficiary or recipient of the estate as if the distribution of the estate did not include the offender. If a victim's estate has only the offender as an heir, beneficiary, or recipient, the restitution must be paid to the Victims' Compensation Fund or the Victims' Property Compensation Fund, determined by whether the restitution is for underlying injury or property damage.

What does it mean for your work?

If a survivor is awarded financial restitution, upon their death it cannot be paid out to the person who harmed them. If there are no other beneficiaries, the money will go back to assist other victims of crime.

Public Law 2021, Chapter 315

An Act To Support Survivors of Sex Trafficking and Exploitation

What does it do?

This law amends the crime of prostitution by changing from an affirmative defense to a defense that a person engaged in prostitution because the person was compelled to do so. The law also adds a new defense when a person engaged in prostitution to prevent bodily injury, serious economic hardship, or another threat to the person or another person.

What does it mean for your work?

Survivors charged with the crime of prostitution now have stronger and broader defenses, and the burden of proof for these defenses are not on the defendant. This law protects a person who did not engage in prostitution by voluntary choice because they needed the money to survive, they were threatened physically, or they were threatened with other things, such as threats about their property or immigration documents. If the person charged with prostitution states one of these (or other) reasons apply in their case, the prosecutor must prove that the person engaged in prostitution by voluntary choice.

Public Law 2021, Chapter 360

An Act To Amend the Laws Prohibiting Teachers, Employees and Other Officials from Engaging in Sexual Activity with Students

What does it do?

This law prohibits sexual acts, sexual contact and sexual touching between a student and a substitute teacher who had instructional, supervisory, or disciplinary authority over the student at any time during the 12 months prior to the sexual act, sexual contact or sexual touching. The law amends the statute on parental rights and responsibilities to require the court to consider, in establishing the conditions of awards of parent-child contact and residence, a sexual offense by a substitute teacher.

What does it mean for your work?

This law clarifies that it is a criminal violation for a substitute teacher to engage in a sexual act, contact, or touching with a student. If a person is criminally convicted under this section, the law also requires the court to consider this conviction in a family matter case involving that substitute teacher's children.

Public Law 2021, Chapter 395

An Act To Facilitate Children's Testimony in Certain Sex Crime Cases

What does it do?

This law allows the court, if a prosecutor requests it, to allow a child 14 years of age or younger to provide direct testimony in certain sex crime cases outside the presence of the defendant from a children's advocacy center by video. It clarifies that the defendant's attorney must be provided an opportunity, in real time, to cross-examine the child after the child's direct testimony. It also requires that the defendant be able to observe the child's testimony while it is happening and be able to communicate with their attorney during the testimony.

What does it mean for your work?

Children aged 14 and younger may be able to provide testimony at a children's advocacy center (CAC) rather than in court. Currently, MECASA and Maine's CACs are working on protocols for how to comply with this law and working with Maine's prosecutors to determine in which cases this new law might be best used.

Public Law 2021, Chapter 432

An Act Regarding Violation of a Protective Order

What does it do?

Under current law a person who violates a protective order issued by a Maine court through conduct that is reckless and that creates a substantial risk of death or serious bodily injury to the person named in the protective order or who assaults that person commits a Class C crime. This law extends the prohibited conduct to a violation of an order that is similar to a protective order and that is issued by a court of the United States or of another state, territory, commonwealth or tribe.

What does it mean for your work?

This law extends protection for survivors in Maine if they have a protective order from another state, territory, commonwealth, or tribe. Pine Tree Legal will be able to inform and support individuals in their understanding of this new law.

Public Law 2021, Chapter 476

An Act to Prevent Discrimination against Domestic Violence Victims

What does it do?

This law amends the Maine Human Rights Act to provide protections against discrimination in employment and housing against a person who has sought and obtained a Protection from Abuse order. All remedies currently available under the Maine Human Rights Act, including a private right of action and attorney's fees, are available for people with Protection from Abuse orders who experience discrimination.

What does it mean for your work?

Survivors who seek out and receive a Protection from Abuse order are now protected from discrimination in situations of housing and employment. Pine Tree Legal will be able to inform and support individuals in their understanding of this amendment of the law.

Public Law 2022 Chapter 760

An Act Concerning Nondisclosure Agreements in Employment

What does it do?

This law comes from a growing awareness that employees were being asked to sign non-disclosure agreements (sometimes referred to as NDAs) as part of employment, which prohibited them from disclosing if they were sexually harassed or assaulted in their workplace.

The new law 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; or
- enter into a settlement, separation, or severance agreement that (1) limits a person's right to report, testify, or provide evidence to a federal or state agency that enforces employment or discrimination laws, (2) prevents an individual from testifying or providing evidence in federal and state court proceedings in response to legal process, or (3) prohibits an individual from reporting to a law enforcement agency.

There are some exceptions to these, which are designed to retain options for the employee, intern, or applicant in negotiating a settlement or the like.

There are penalties for non-compliance with this law.

What does it mean for your work?

If you have a survivor who was asked to sign an NDA or is currently being asked to sign an NDA related to sexual harassment or sexual assault, they may have legal recourse. You may want to connect them with an employment advocacy organization, such as the Southern Maine Workers Center at <https://maineworkers.org/>

Public Law 2022 Chapter 647

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

What does it do?

This law, which takes effect January 1, 2023, reorganizes Maine's protection from abuse statutes to make the process more accessible to the public, legal community, and judiciary, including through integrating established case law.

What does it mean for your work?

Some changes should make things much easier including making it clearer that victims of sexual violence can access these protections regardless of their relationship with the person who caused them harm.

The relief section has been reorganized so the order of available relief matches the order on the court's Protection from Abuse form, and language throughout the statute has been simplified. On the other hand, because many of us are familiar with the current statute, it may help to review the full new text [here](#).

Public Law 2022 Chapter 733

An Act Concerning Interpersonal Violence on College Campuses

What does it do?

This law makes a wide range of changes related to how colleges, community colleges, the Maine Maritime Academy, and Universities must respond to sexual violence. More information and implementation tools to come!

Amnesty provision:

This law requires 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.

Requirements for institutions:

In addition, no later than July 1, 2023, each institution of higher education (college, community college, university, and Maine Maritime Academy) must:

- adopt a policy and related procedures on sexual violence, intimate partner violence, and stalking, which must be publicly available and updated annually;
- administer a campus climate survey to measure a variety of topics related to sexual violence, intimate partner violence, and stalking;
- 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 are confidential and are disclosed by the institution only as necessary to carry out a disciplinary process (or as otherwise permitted under state or federal law);
- designate at least one confidential resource advisor to provide emergency and ongoing support to students reporting sexual violence, intimate partner violence, and stalking. (They may contract with local service providers to meet this requirement or have it be assigned to a staff person of the institution.);
- provide mandatory prevention and awareness programming on sexual violence, intimate partner violence, and stalking for all incoming students and all employees of the institution; and
- 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.

Memorandum of understanding with sexual assault support centers and domestic violence resource centers:

In addition, also no later than July 1, 2023, 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 to:

- provide an off-campus option for students and employees to receive victim 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; and
- 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.

Creation of Commission:

Finally, this law establishes the Higher Education Interpersonal Violence Advisory Commission with 22 members, including seats for MECASA, Wabanaki Women’s Coalition, a representative from a racial equity and justice organization, a representative from a disability rights organization, a representative from a LGBTQ+ organization, a representative from an immigrant advocacy organization, students from private and public institutions, Title IX coordinators from public and private institutions, and a civil legal services provider. This Commission is tasked with reviewing the results of the interpersonal violence climate survey and making recommendations using this data about potential future policy and legislative needs.

What does it mean for your work?

Because this law overlaps in some ways with existing Title IX regulations and other federal laws regarding climate surveys, some local institutions are concerned with how to comply with both state and federal requirements. MECASA is working closely with the University of Maine, the Maine Community College System, and private colleges and universities to provide support and monitor any potential issues for survivors. For example, we are particularly interested if any survivors are having difficulty accessing a confidential resource advisor or other support services, or if any survivors are being asked to participate in multiple processes due to the existence of this new law and Title IX.

Please contact Lisa Råvar (lisa@mecasa.org) or Melissa Martin (martin@mecasa.org) with any issues that you want us to be aware of from individual survivors.

Please remember that Pine Tree Legal Assistance can also represent survivors in Title IX proceedings. If the survivor would like legal representation, it is better to refer these cases as soon as possible, such as when a survivor is making a complaint or starting an investigation, to maximize their effectiveness. Referring survivors at the end of the process when they simply want help appealing can be done, but there are often more advocacy tools available to attorneys who start representation earlier in the process.

Public Law 2022 Chapter 500

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

What does it do?

MECASA worked closely with disability rights advocates on this law which states that adults subject to guardianship are entitled to:

- retain counsel or seek court-appointed counsel in a proceeding to terminate a guardianship; and
- retain counsel and to communicate with other advocates and the court for any reason.

What does it mean for your work?

If you are working with someone who is subject to a court order giving another person guardianship of them, they can still retain counsel and seek their own legal and advocacy advice. Reach out to [Disability Rights Maine](#) to learn more.

Public Law 2022 Chapter 577

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

What does it do?

This law allows a court to order a forensic risk assessment in a parental rights and responsibilities or divorce case. Forensic risk assessments are a clinical tool used to assess the risk of future child sexual assault.

It also requires that 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.

The court may also order that the person performing the forensic risk assessment may interview 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.

Finally, 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.

What does it mean for your work?

When a parent has been convicted or substantiated by DHHS for a child-related sexual offense, child abuse or neglect, or child pornography, or when there are other factors indicating that child sexual assault may have happened (such as a disclosure in a CAC interview), the protective parent should be able to either (1) get access to an existing forensic risk assessment done in response to a criminal case or child protective investigation or (2) ask that the parent ordered to complete the forensic assessment pay to have a forensic risk assessment completed. This information can be provided to a guardian ad litem or a judge to help the court make a determination about what, if any, contact between that parent and their child would be in the child's best interest.

Public Law 2022 Chapter 608

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

What does it do?

This law amends the crimes of gross sexual assault, unlawful sexual contact, and unlawful sexual touching when the victim has not expressly or impliedly acquiesced to the sexual act to comply with a decision from the Maine Supreme Court. In a recent gross sexual assault case, although the Maine Supreme Court affirmed the conviction, it asked the Legislature to pass legislation specifying the required state of mind for criminal convictions for certain sexual assaults. The Court outlined that the three possible options were knowingly, recklessly, or negligently. The Legislature passed this law to specify that the defendant need only be criminally negligent, the lowest intent requirement, in gross sexual assault, unlawful sexual contact and unlawful sexual touching cases where the question is whether the victim expressly or impliedly acquiesced.

What does it mean for your work?

This means it is possible for a defendant to be convicted when a survivor communicated a lack of consent, even if the defendant did not understand that communication because this could be seen as criminally negligent. In other words, the Maine Supreme Court's decision and the new law read together specify that a criminal defendant does not need to "knowingly" commit the nonconsensual sexual act, contact, or touching but needs only to fail to be aware of the risk that

the defendant's conduct will cause a certain result and the defendant should have known otherwise.

The law also clarifies that the defendant being voluntarily intoxicated is not a defense to show lack of intent for these specific crimes.

[Public Law 2022 Chapter 649](#)

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

What does it do?

This law expands the Address Confidentiality Program to include victims of human trafficking and minor victims of kidnapping.

What does it mean for your work?

If you are working with a survivor of trafficking, they can now use the Address Confidentiality Program.

[Public Law 2022 Chapter 609](#)

An Act To Ensure Access to Prescription Contraceptives

What does it do?

Starting January 1, 2023, this law requires health insurance policies issued or renewed after that date 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.

What does it mean for your work?

There are two important changes as a result of this law: (1) many more types of contraception are now required to be covered (before insurers were only required to cover one of each method, now they must cover different types within each method, for example birth control pills), and (2) patients must be able to access a 12-month supply at once.

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

Executive Order 1 FY21/22, An Order Establishing the Governor's Advisory Council on Military Sexual Trauma to More Effectively Prevent, Deter, and Prosecute Sexual Assault and Sexual Harassment (issued by Governor Mills's, March 24, 2022)

What do they do?

The Legislature required that the Attorney General investigate criminal investigations and prosecutions related to sexual assault or harassment in the Maine National Guard and report his findings.

In addition, the Governor, created the Advisory Council on Military Sexual Trauma to examine barriers and gaps for survivors and make recommendations to the Governor by December of 2022 about how to enhance the prevention, reporting, and timely prosecution of sexual assault and sexual harassment within the Maine National Guard. There are seats on this Council for MECASA and survivors, among others.

The law also broadens the crime of harassment (17-A M.R.S. §506-A) to include harassing behavior for which a National Guard member received a written warning and adds the crime of harassment as a military offense punishable under the Maine Code of Military Justice. It also allows a cease harassment order issued to a National Guard member by a commanding officer to have the same effect as a cease harassment order issued by law enforcement for purposes of allowing the filing of a Protection from Harassment complaint in court.

Finally, the National Guard is required to provide survivors of sexual harassment and sexual assault with financial assistance to cover travel expenses to allow them to participate in administrative or Maine Code of Military Justice proceedings.

What does it mean for your work?

In addition to the expansion of rights and resources for survivors in the National Guard, they also now have the opportunity to share with the Council their experiences with the criminal justice system and the military administrative system and to discuss what supports would have been and continue to be important for them. Advocates also may have de-identified, general information to share with the Council. Please reach out to Melissa Martin (martin@mecasa.org) if National Guard survivors would like to speak about their recent or past experiences, or if you have information to provide.