



Maine's New Laws &  
Implications For Advocates:  
2016 Legislative Session

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**MAINE COALITION AGAINST  
SEXUAL ASSAULT**

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Throughout the year, and especially during the legislative session, the Maine Coalition Against Sexual Assault works to initiate and support victim-centered public policy for quality sexual violence prevention and response. Below are explanations of public laws enacted during the last legislative session and related implications for the work of sexual assault advocates in Maine.

## Public Law 381: An Act To Align the Child and Family Services and Child Protection Act with the Federal Preventing Sex Trafficking and Strengthening Families Act

### What does it do?

This law requires the Department of Health and Human Services (DHHS) to disclose certain information on missing or abducted children or youth who are in care to the National Crime Information Center (NCIC) database of the Federal Bureau of Investigation and to the National Center for Missing and Exploited Children (NCMEC). It will help Maine align with requirements under the Federal Protecting Victims of Trafficking and Strengthening Families Act, HR4980.

It also requires DHHS to provide notification of the removal of a child from the custody of a parent or custodian to all parents of a sibling of the child who have legal custody of the sibling.

### What do advocates need to know?

If you work on a multidisciplinary team, it is important to know what DHHS's role is regarding screening and supporting youth at risk for trafficking. Additionally, youth you work with who are in state care should be reported to NCIC and NCMEC (by DHHS) when they are missing or they run away.

If you work on a multidisciplinary team, it is important to know what DHHS's role is regarding screening and supporting youth at risk for trafficking.

## Public Law 394: An Act Regarding Sexual Exploitation of Children

### What does it do?

This law extends the protections regarding the unauthorized distribution of sexually explicit photos to 16 and 17 year olds, and ensures that 14 and 15-year-old people can engage in consensual sharing or dissemination of sexually explicit photos with individuals who are fewer than 5 years older.

1. It makes it a crime to entice or persuade someone "under 16 years of age" to share sexually explicit photographs (a change from previous language, in which the protected minors were "under 18 years of age"). It should be noted that the usual protections continue to exist for individuals who are coerced or exploited into sharing photos continue to apply, regardless of age. The law also does not apply to a minor who is 14 or 15 years old who is persuaded to engage in sexually explicit conduct by a person who is less than 5 years older than the minor (unless the person is the minor's parent or legal guardian or has care or custody of the minor).
2. It amends the law on dissemination or sharing of sexually explicit material by changing the age of protected persons from "under 18 years of age" to "under 16 years of age". It also ensures that the

law does not apply to a person depicted in the material if they are 14 or 15 years old, and the person disseminating the material is less than 5 years older.

3. It amends the law on possession of sexually explicit material to exempt possession of material in which the depicted person is 14 or 15 years of age and the actor is less than 5 years older than the depicted person.
4. It amends the law on unauthorized dissemination of “certain private images,” which can now apply even when the depicted person is less than 18 years of age.

### **What do advocates need to know?**

This change ensures that laws about image-related sexual exploitation (sending sexually explicit pictures electronically, or sexting) align with age-of-consent laws about sexual activity. For example, if two 16-year-olds are consensually sending sexually explicit images to one another, that is not illegal. Being charged in such a circumstance was unlikely to begin with, but it is now less likely to occur under Maine law.

It also ensures that those under 18 can access protections from the law when their sexually explicit photographs are shared without their permission.

## **Public Law 407: An Act to Require Training of Mandated Reporters under the Child Abuse Laws**

### **What does it do?**

This law requires all mandated reporters of suspected child abuse or neglect to complete training aligned with or approved by DHHS at least once every four years.

### **What do advocates need to know?**

Community partners who do not have a formal plan for mandated reporter training may reach out to you, their local sexual assault program, for training. It is recommended that they access the online training available for free through the DHHS mandatory reporting website. It is also worth mentioning within a training for any audience which includes mandated reporters. You might point out, “As you are probably aware, there’s now a requirement that mandated reporters are trained every four years. If you don’t have a plan in place for that, I’d be happy to connect you with someone who can help.”

## **Public Law 410: An Act to Amend the Law on Protection from Abuse, Protection from Harassment and Unauthorized Dissemination of Certain Private Images**

### **What does it do?**

This law allows access to Protection From Harassment (PFH) and Protection From Abuse (PFA) orders for victims of “revenge porn”/image exploitation.

1. In Part A it amends the laws concerning “unauthorized dissemination of certain private images” (sharing

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explicit photos without consent) by ensuring that accessing and sharing these images, or any written information describing images contained in court record, is governed by rule or administrative order of the Supreme Judicial Court.

2. It amends PFA and PFH laws by including the “unauthorized dissemination of certain private images” – sharing explicit photos without consent – in the definition of abuse. As part of interim relief, it allows a court to tell a defendant not to continue engaging in the dissemination of the photos; to order the defendant to remove, destroy or return the photos, or to direct others to do so (such as a website or third party); and to prohibit the defendant from disseminating the private images further. It allows the court the discretion to enter any other orders determined necessary or appropriate, including but not limited to ordering the defendant to pay costs associated with removal, destruction or return of private images. PFA laws are addressed in Part B, PFH laws are addressed in Part C.

### **What do advocates need to know?**

This law was passed in 2015, but was amended in 2016 to correct several sections. The same implications are true this year; it ensures that victims/survivors can access protection orders when their explicit images are shared without their consent, and that courts may order defendants to destroy, remove, or return photos that they disseminated without consent.

## **Public Law 411: An Act Regarding the Disclosure of Intelligence and Investigation Record Information**

### **What does it do?**

This law allows law enforcement officers to disclose certain intelligence and investigative record information to a sexual assault or domestic violence counselor or advocate. Previous law required that a specific agreement (such as a Memorandum of Understanding) exist between the advocate and the law enforcement agency, and that the agreement contain terms provided in the statute. The new law repeals these provisions and instead places into law a list of requirements (such as meeting the statutory definition of an advocate) that must be met by a sexual assault advocate to receive intelligence and investigative record information from a criminal justice agency.

Law enforcement officers may disclose certain intelligence and investigative record information to a sexual assault advocate.

### **What do advocates need to know?**

This law essentially aligns the policy with the practice that may have already existed in many areas of the state. Advocates will most likely not see a change in practice with the implementation of the law, but they may find that there is confusion about the terms of the law at partner agencies.

## **Public Law 427: An Act to Protect Victims of Sexual Assault**

### **What does it do?**

This law reduces the burden of proof required to terminate the parental rights of a person who committed

a sexual assault, when the assault resulted in the birth of a child. It applies the same standard that currently exists in the child protection laws.

### **What are the implications for advocates?**

This law expands the options for sexual violence victims by allowing for the termination of parental rights and responsibilities, when it can be shown by clear and convincing evidence that the child was conceived because of a sexual assault committed by that party. Prior to this law, the court could only terminate parental rights when there was a conviction of sexual assault in a criminal court (which requires evidence beyond a reasonable doubt).

## **Public Law 443: An Act to Protect Victims of Human Trafficking**

### **What is it?**

This law allows any individuals who are victims of sex trafficking, aggravated sex trafficking, and some forms of immigration document tampering to access protection orders. Additionally, it enables probation to become part of the sentence for individuals convicted of sex trafficking and aggravated sex trafficking.

### **What are the implications for advocates?**

When working with a victim of human trafficking your client may access PFA and PFH orders if they have experienced sex trafficking or document tampering, without having to allege other behaviors that might have previously been required (such as sexual assault or a relationship with the offender).

## **Public Law 444: An Act to Ensure Children in the Care of Caretaker Relatives Can Access Fundamental Services**

### **What does it do?**

This law identifies situations in which certain adults who provide care for a minor can provide consent for that minor's health care.

When parents are temporarily absent from a minor's life, minors may live with adults who act in the role of a surrogate, an individual who may not be a parent, legal guardian or have a power of attorney authorizing health care treatment for the minor. These surrogates may include adults related to a minor by blood, marriage or adoption, or an adult with whom the minor lives, and who has provided the minor with the ongoing care and support expected of a parent. The existence of a surrogate does not remove the ability of a minor to give consent under any other existing law.

Human trafficking victims may access PFA and PFH orders if they have experienced sex trafficking or document tampering, without having to allege other behaviors that might have previously been required (such as sexual assault or a relationship with the offender).

If a minor needs health care, a surrogate must make a good faith attempt to notify the minor's parents or legal guardian of their right to make those decisions, unless other provisions of law do not require parental notification. If they do not receive a response, the surrogate may make most health care decisions on behalf of the minor without parental consent. A surrogate may not make decisions withholding or withdrawing life sustaining treatments or denying consent for treatments that are life-saving and medically necessary. A surrogate giving consent on behalf of the minor must attempt to make a good faith effort to notify the absent parents or legal guardian of any health care received by the minor unless parental notification is not required by other provisions of law.

A minor may consent to health services associated with a sexual assault forensic examination regardless of whether a surrogate exists.

#### **What do advocates need to know?**

This law will probably not have substantial implications for advocates, as minors may already consent to their own access to a sexual assault forensic exam, as well as other important health care, such as birth control. However, in cases when minors would need parental consent, this allows consent to be given by someone who is not a parent, as long as that person is providing a home and all the care that a parent typically would, if that parent is absent and does not respond to outreach by the surrogate adult.

## **Public Law 497: An Act to Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes**

#### **What does it do?**

This law instructs the DHHS to require criminal background checks for all staff members of child care facilities and family child care providers, to be effective September 1, 2017.

#### **What do advocates need to know?**

Advocates who may work with young children or early childhood educators should know that childcare facilities and early childhood educators must submit to a background check with fingerprinting beginning in fall 2017.

## **Public Law 509: An Act to Protect All Students in Elementary or Secondary Schools from Sexual Assault by School Officials**

#### **What does it do?**

This law ensures that all students in elementary, secondary, or special education schools are protected from unlawful sexual contact, unlawful sexual touching, or gross sexual assault when the perpetrator is a person at the school who has authority over the student (such as a coach). Previously, this was only true when the individual was under 18.

It also specifies that when a parent is convicted of a sex crime and was also in a position of authority over the victim/student at a school, the court can apply stricter scrutiny when it determines residence for and contact with a child of the parent.

**What do advocates need to know?**

This law acknowledges that the same power differential exists between school officials and high school students who are 18 and older as with those who are under.

For example, if you are working with a student who is 18, but experienced sexual violence by a teacher, school staff, coach, tutor or anyone who has authority over the student while at school, it is illegal for them to engage in any type of sexual contact despite the fact that the student is legally an adult. If that adult is also a parent, you might hear discussions about how that conviction could impact family matters/ custody arrangements.

**As always, please let MECASA staff know if you have any questions! Look for our full legislative report at [mecasa.org](http://mecasa.org).**