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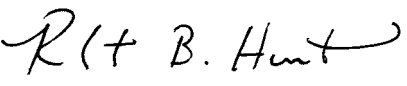
**An Act Allowing Access by State Agencies and Hospitals to Certain
Confidential Probate Court Records If the Access Is in the Public
Interest**

(AFTER DEADLINE)

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Received by the Clerk of the House on March 7, 2025. Referred to the Committee on Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.


ROBERT B. HUNT
Clerk

Presented by Representative KUHN of Falmouth.
Cosponsored by Senator CARNEY of Cumberland.

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

3 **Whereas,** individuals in probate court proceedings involving adult guardianship,
4 conservatorship and special arrangements have acute issues that need addressing; and

5 **Whereas,** state agencies and hospitals have limited ability to address these issues due
6 to the inability to access confidential information and records involved in the proceedings;
7 and

8 **Whereas,** the public interest requires prompt attention to these issues or the
9 individuals and public interest may suffer harm or other adverse consequences; and

10 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
11 the meaning of the Constitution of Maine and require the following legislation as
12 immediately necessary for the preservation of the public peace, health and safety; now,
13 therefore,

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

15 **Sec. 1. 18-C MRSA §5-308, sub-§2,** as enacted by PL 2017, c. 402, Pt. A, §2 and
16 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

17 **2. Access to court records.** An adult subject of a proceeding for a guardianship,
18 whether or not a guardian is appointed, any attorney designated by the adult ~~and~~ or
19 appointed by the court to represent the adult, a person entitled to notice under section 5-310,
20 subsection 5 and a person listed under subsection 3-A are entitled to access court records
21 of the proceeding and resulting guardianship, including a guardian's report or plan. In
22 addition, a person for good cause may petition the court for access to court records of the
23 guardianship, including an annual report or guardian's plan. The court shall grant access if
24 access is in the best interest of the respondent or adult subject to guardianship or furthers
25 the public interest and does not endanger the welfare or financial interest of the adult.

26 **Sec. 2. 18-C MRSA §5-308, sub-§3, ¶D,** as enacted by PL 2017, c. 402, Pt. A, §2
27 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

28 D. An agent appointed under a power of attorney for health care or advance health
29 care directive, or power of attorney for finances in which the respondent is identified
30 as the principal, unless the court orders otherwise; ~~and~~

31 **Sec. 3. 18-C MRSA §5-308, sub-§3, ¶D-1** is enacted to read:

32 D-1. A person listed under subsection 3-A; and

33 **Sec. 4. 18-C MRSA §5-308, sub-§3-A** is enacted to read:

34 **3-A. Access for public interest purposes; confidentiality extended.** An employee
35 or legal counsel of the following may access and review a probate court record related to
36 an adult guardianship proceeding under this Article to carry out an official function, duty
37 or responsibility in the public interest:

38 A. The Department of Health and Human Services;

39 B. The Office of the Attorney General;

1 C. An agency designated by the Governor to provide protection and advocacy for
2 persons with disabilities pursuant to Title 5, section 19502; and

3 D. A hospital licensed under Title 22, chapter 404 or 405.

4 A person that receives information or a record under this subsection may use the
5 information or record only for the purpose for which accessing the information or record is
6 intended and shall comply with any confidentiality law, rule or regulation limiting further
7 disclosure of the information or record.

8 **Sec. 5. 18-C MRSA §5-409, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2 and
9 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

10 **2. Access to records.** An individual subject to a proceeding for a conservatorship,
11 whether or not a conservator is appointed, an attorney designated by the individual ~~and~~ or
12 appointed by the court to represent the individual, a person entitled to notice under section
13 5-411 or a subsequent order and a person listed under subsection 3-A are entitled to access
14 court records of the proceeding and resulting conservatorship, including the conservator's
15 plan and report. In addition, a person for good cause may petition the court for access to
16 court records of the conservatorship, including the conservator's plan and report. The court
17 shall grant access if access is in the best interest of the respondent or individual subject to
18 conservatorship or furthers the public interest and does not endanger the welfare or
19 financial interests of the respondent or individual.

20 **Sec. 6. 18-C MRSA §5-409, sub-§3, ¶D**, as enacted by PL 2017, c. 402, Pt. A, §2
21 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

22 D. An agent appointed under a power of attorney for finances in which the respondent
23 is identified as the principal, unless the court orders otherwise; ~~and~~

24 **Sec. 7. 18-C MRSA §5-409, sub-§3, ¶D-1** is enacted to read:

25 D-1. A person listed under subsection 3-A; and

26 **Sec. 8. 18-C MRSA §5-409, sub-§3-A** is enacted to read:

27 **3-A. Access for public interest purposes; confidentiality extended.** An employee
28 or legal counsel of the following may access and review a probate court record related to a
29 conservatorship proceeding under this Article to carry out an official function, duty or
30 responsibility in the public interest:

31 A. The Department of Health and Human Services;

32 B. The Office of the Attorney General;

33 C. An agency designated by the Governor to provide protection and advocacy for
34 persons with disabilities pursuant to Title 5, section 19502; and

35 D. A hospital licensed under Title 22, chapter 404 or 405.

36 A person that receives information or a record under this subsection may use the
37 information or record only for the purpose for which accessing the information or record is
38 intended and shall comply with any confidentiality law, rule or regulation limiting further
39 disclosure of the information or record.

40 **Sec. 9. 18-C MRSA §5-511, sub-§2**, as enacted by PL 2017, c. 402, Pt. A, §2 and
41 affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

2. Access to records. A respondent, an individual subject to a proceeding for one or more protective arrangements instead of guardianship or conservatorship, an attorney designated by the respondent or individual, an attorney appointed by the court to represent the respondent or individual, a parent of a minor subject to one or more protective arrangements, a person listed under subsection 3-A and any other person the court determines are entitled to access court records of the proceeding and resulting protective arrangement. A person not otherwise entitled to access to court records under this subsection may petition the court for access. The court shall grant access if access is in the best interest of the respondent or individual subject to the protective arrangements or furthers the public interest and does not endanger the welfare or financial interests of the respondent or individual.

Sec. 10. 18-C MRSA §5-511, sub-§3, ¶E, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

E. If the order is for one or more protective arrangements instead of guardianship and unless the court directs otherwise, an agent appointed under a power of attorney for health care in which the respondent is identified as the principal; and

Sec. 11. 18-C MRSA §5-511, sub-§3, ¶E-1 is enacted to read:

E-1. A person listed under subsection 3-A; and

Sec. 12. 18-C MRSA §5-511, sub-§3-A is enacted to read:

3-A. Access for public interest purposes; confidentiality extended. An employee or legal counsel of the following may access and review a probate court record related to a protective arrangement under this Article to carry out an official function, duty or responsibility in the public interest:

A. The Department of Health and Human Services;

B. The Office of the Attorney General;

C. An agency designated by the Governor to provide protection and advocacy for persons with disabilities pursuant to Title 5, section 19502; and

D. A hospital licensed under Title 22, chapter 404 or 405.

A person that receives information or a record under this subsection may use the information or record only for the purpose for which accessing the information or record is intended and shall comply with any confidentiality law, rule or regulation limiting further disclosure of the information or record.

Sec. 13. Rules. The Supreme Judicial Court shall adopt rules to carry out the provisions of this Act.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect April 1, 2025 except for that section of this Act that requires rulemaking by the Supreme Judicial Court, which takes effect when approved.

SUMMARY

This bill allows employees and legal counsel of the Department of Health and Human Services, the Office of the Attorney General, agencies designated by the Governor to provide protection and advocacy for persons with disabilities, private mental hospitals and

1 hospitals access to confidential probate court records in adult guardianship, conservatorship
2 and protective arrangement proceedings if the access is to carry out an official function,
3 duty or responsibility in the public interest.