

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FIVE

—
H.P. 626 - L.D. 966

**An Act Allowing Access by State Agencies and Hospitals to Certain
Confidential Probate Court Records**

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

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

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

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

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

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

Sec. 1. 18-C MRSA §5-205, sub-§11 is enacted to read:

11. Access for public interest purposes; confidentiality extended. Notwithstanding any provision of law to the contrary, an authorized employee or legal counsel of the following may access and review a probate court record related to a minor guardianship proceeding 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. 2. 18-C MRSA §5-308, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

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

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

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

Sec. 4. 18-C MRSA §5-308, sub-§3, ¶D-1 is enacted to read:

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

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

3-A. Access for public interest purposes; confidentiality extended. An authorized employee or legal counsel of the following may access and review a probate court record related to an adult guardianship proceeding 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;

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

E. A nonprofit organization that provides civil legal services to elderly residents of the State and that receives funding from the Maine Civil Legal Services Fund established in Title 4, section 18-A.

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. 6. 18-C MRSA §5-308, sub-§4, as amended by PL 2023, c. 4, §12, is further amended to read:

4. Effective date. This section takes effect ~~April 1, 2025~~ January 15, 2026 or on the effective date of amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section, whichever is earlier. The State Court Administrator shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes when amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section have taken effect.

Sec. 7. 18-C MRSA §5-409, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

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

Sec. 8. 18-C MRSA §5-409, sub-§3, ¶D, as enacted by PL 2017, c. 402, Pt. A, §2 and affected by PL 2019, c. 417, Pt. B, §14, is amended to read:

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

Sec. 9. 18-C MRSA §5-409, sub-§3, ¶D-1 is enacted to read:

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

Sec. 10. 18-C MRSA §5-409, sub-§3-A is enacted to read:

3-A. Access for public interest purposes; confidentiality extended. An authorized employee or legal counsel of the following may access and review a probate court record related to a conservatorship proceeding 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;

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

E. A nonprofit organization that provides civil legal services to elderly residents of the State and that receives funding from the Maine Civil Legal Services Fund established in Title 4, section 18-A.

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. 11. 18-C MRSA §5-409, sub-§4, as amended by PL 2023, c. 4, §13, is further amended to read:

4. Effective date. This section takes effect ~~April 1, 2025~~ January 15, 2026 or on the effective date of amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section, whichever is earlier. The State Court Administrator shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes when amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section have taken effect.

Sec. 12. 18-C MRSA §5-511, sub-§2, as enacted by PL 2017, c. 402, Pt. A, §2 and 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. 13. 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. 14. 18-C MRSA §5-511, sub-§3, ¶E-1 is enacted to read:

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

Sec. 15. 18-C MRSA §5-511, sub-§3-A is enacted to read:

3-A. Access for public interest purposes; confidentiality extended. An authorized 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;

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

E. A nonprofit organization that provides civil legal services to elderly residents of the State and that receives funding from the Maine Civil Legal Services Fund established in Title 4, section 18-A.

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. 16. 18-C MRSA §5-511, sub-§4, as amended by PL 2023, c. 4, §14, is further amended to read:

4. Effective date. This section takes effect ~~April 1, 2025~~ January 15, 2026 or on the effective date of amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section, whichever is earlier. The State Court Administrator shall notify the Secretary of State, the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes when amendments to the Maine Rules of Probate Procedure incorporating the substantive requirements of this section have taken effect.

Sec. 17. Rules. The Supreme Judicial Court shall adopt amendments to the Maine Rules of Probate Procedure to carry out the provisions of this Act. The amendments to the Maine Rules of Probate Procedure must include provisions specifying, with respect to the Maine Revised Statutes, Title 18-C, section 5-205, subsection 11; section 5-308, subsection 3-A; section 5-409, subsection 3-A; and section 5-511, subsection 3-A, referred to in this section as "the specified sections of the Maine Uniform Probate Code":

1. How an entity or agency described in the specified sections of the Maine Uniform Probate Code shall designate an employee as authorized to access and to review probate court records to carry out an official function, duty or responsibility in the public interest;

2. The process by which an entity or agency must communicate to the register of probate and any electronic filing system its designation of an employee who must have the ability to access and to review probate court records pursuant to the specified sections of the Maine Uniform Probate Code; and

3. The process by which a register of probate shall provide access to individuals authorized to access probate court records pursuant to the specified sections of the Maine Uniform Probate Code.

Sec. 18. Reports required. The Supreme Judicial Court shall submit an initial report to the Joint Standing Committee on Judiciary no later than May 1, 2025 and a 2nd report to the Joint Standing Committee on Judiciary no later than June 1, 2025, each of which must:

1. Summarize the Supreme Judicial Court's progress toward adopting amendments to the Maine Rules of Probate Procedure as required by this Act; and

2. Identify the estimated date by which those amendments to the Maine Rules of Probate Procedure required by this Act will take effect.

The Joint Standing Committee on Judiciary may report out legislation in response to either report to any regular or special session of the 132nd Legislature.

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.