

MAINE STATE LEGISLATURE

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(EMERGENCY)
FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2312

S. P. 815

In Senate, January 7, 1974

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Speers of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to Hospitalization of the Mentally Ill.

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

Whereas, certain provisions of chapter 547 of the public laws of 1973 as they pertain to the provision of hearings in the Maine District Court to determine need for hospitalization for mental illness have proved to be extremely burdensome upon the Maine District Court system and upon state personnel responsible for the administration of the laws relating to hospitalization of persons suffering from mental illness; and

Whereas, certain provisions of chapter 547 of the public laws of 1973 require clarification in order to assure the effective operation of the laws of this State relative to hospitalization of persons for mental illness; and

Whereas, an appropriation of funds is essential in order to pay expenses incurred in the conduct of proceedings before the Maine District Court relative to the judicial determination of need for hospitalization in a hospital for the mentally ill, no provision being made presently for the payment of such expenses; and

Whereas, it is vitally necessary that certain provisions of chapter 191 of Title 34, as amended by chapter 547 of the public laws of 1973 be further amended in order to assure the effective administration of the laws relating to hospitalization of persons for mental illness in a manner consistent with

the protection of the rights of such persons and consistent with the orderly administration of the court system as it pertains to such matters; 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. R. S., T. 15, § 2211-A, amended. The last sentence of the first paragraph, as repealed and replaced by section 4 of chapter 547 of the public laws of 1973 and the last sentence of the 2nd paragraph, as amended by section 5 of chapter 547 of the public laws of 1973, are amended to read as follows:

The application and certification shall be in accordance with the requirements of Title 34, section 2333 or **2333-A if applicable.**

Except as otherwise specifically provided in this section, Title 34, chapter 191, subchapters I and III, except section 2373, shall be applicable to any such person as if the admission of such person were applied for under Title 34, section 2333 or **2333-A if applicable.**

Sec. 2. R. S., T. 15, § 2211-A, amended. Section 2211-A of Title 15 of the Revised Statutes, as enacted by section 1 of chapter 58 of the public laws of 1965 and as amended, is further amended by adding at the end a new paragraph to read as follows:

In addition to the authority given by this section to apply for the involuntary admission to a state hospital for the mentally ill of a person confined in the county jail, the sheriff is authorized to permit a person confined in a county jail to apply for informal admission to a state hospital for the mentally ill under Title 34, section 2290. In the event of any such application, all other provisions of this section as to notice of status as an inmate of a county jail, notice to the court and counsel, transportation and expenses thereof, and the continuation and termination of sentence, commitment or detention, shall apply. Except as otherwise provided in this section, the provisions of law applicable to persons admitted to a state hospital for the mentally ill under Title 34, section 2290, shall apply to any person confined in a county jail admitted to a state hospital for the mentally ill under said section.

Sec. 3. R. S., T. 34, § 136-A, sub-§ 1, amended. The first paragraph, as repealed and replaced by section 7 of chapter 547 and the 2nd paragraph, as amended by section 8 of chapter 547, both of the public laws of 1973, of subsection 1 of section 136-A of Title 34 of the Revised Statutes, are amended to read as follows:

When the Warden of the Maine State Prison, Superintendent of the Men's Correctional Center, Women's Correctional Center, Boys Training Center or Stevens School believes that any person in any such institution is mentally ill, requiring hospitalization and meeting requirements for admission, he shall make application in accordance with sections 2333 or ~~2334~~ **2333-A if applicable.**

Any such person with respect to whom such application and certification are made may be admitted to either state hospital for the mentally ill. Except as otherwise specifically provided in this subsection, chapter 191, subchapters I and III, except section 2373, shall be applicable to any such person as if the admission of such person were applied for under section 2333 or section 2333-A if applicable. In addition to the authority given by this section to apply for the involuntary admission to a state hospital for the mentally ill of a person confined in the Maine State Prison, a correctional center or a juvenile institution, the head of any such institution is authorized to permit a person confined in such institution to apply for informal admission to a state hospital for the mentally ill under section 2290. Except as otherwise provided in this subsection, the provisions of law applicable to persons admitted to a state hospital for the mentally ill under section 2290 shall apply to any person confined in the Maine State Prison, a correctional center or a juvenile institution admitted to a state hospital for the mentally ill under said section.

Sec. 4. R. S., T. 34, § 2290, amended. Section 2290 of Title 34 of the Revised Statutes, as enacted by chapter 10 of the public laws of 1965 and as amended by section 1 of chapter 492 of the public laws of 1973, is further amended to read as follows:

§ 2290. Informal admission

Any person ~~having no criminal action pending against him~~ desiring admission to a hospital for the mentally ill ~~other than a private hospital~~ for care and treatment of a mental illness, may be admitted, subject, except in case of medical emergency, to the availability of suitable accommodations, as a patient without making formal application therefor, although standard hospital information may be elicited, if, after examination, the head of the hospital deems such person suitable for such admission, care and treatment. **Any person under the age of 18 years must have the consent of his parent or guardian, and, in the case of an admission to a hospital for the mentally ill other than a private hospital, the consent of the Commissioner of Mental Health and Corrections or his designee.** Any such patient shall be free to leave such hospital at any time after admission; **this, however, shall not preclude the admission of any such person to a hospital under section 2333 or 2333-A when at any time such admission is considered necessary in the interest of the patient and of the community.** The head of the hospital admitting the individual shall forthwith make a report thereof to the department. The head of the hospital shall cause every patient admitted pursuant to this section to be informed at the time of admission of his status as an informally admitted patient and of his freedom to leave the hospital at any time ~~subject to this section. Any person 16 years of age or under must have the consent of his parent or guardian and the Commissioner of Mental Health and Corrections~~

Sec. 5. R. S., T. 34, § 2333, repealed and replaced. Section 2333 of Title 34 of the Revised Statutes, as amended by section 2 of chapter 151 of the public laws of 1965 and as last repealed and replaced by section 19 of chapter 547 of the public laws of 1973, is repealed and the following enacted in place thereof:

§ 2333. Emergency procedure; substantial risk of physical harm to self or others

1. Admission. Any person may be admitted to a hospital upon:

A. Application. Written application which shall be made subject to the prohibitions and penalties of section 2259 to the hospital by any health officer or police officer or any other person stating his belief that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A and B only, and the grounds for that belief; and

B. Certificate. A certification by a licensed physician or a licensed psychologist who practices clinical psychology that he has examined the person and is of the opinion that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A and B only.

Such application and certificate, upon endorsement for such purpose by a judge of probate, a District Court Judge, a Superior Court Justice or a Complaint Justice, shall authorize any health or police officer to take the person whose admission is applied for into custody and transport him to a hospital as designated in the application. The county in which such person is found shall be responsible for any expenses of transportation pursuant to this section, including return if admission is declined.

2. Continuation of hospitalization. In the event that the head of the hospital recommends further hospitalization of the patient:

A. The head of the hospital shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient as described in section 2290. If such admission is determined to be suitable, the patient, if he so desires, shall be admitted as an informally admitted patient as described in section 2290.

B. If the head of the hospital determines that admission of the patient as an informally admitted patient is not suitable, or if the patient declines admission as an informally admitted patient, the head of the hospital may apply to the District Court having territorial jurisdiction where the hospital is located, for the issuance of an order for hospitalization under section 2334 within 5 days from admission of the patient under this section. In the computation of this time, the day of admission shall not be counted but intermediate Saturdays, Sundays and legal holidays shall be counted. If the 5th day falls on a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.

Upon admission of a person under this section, notice of the fact of admission shall be sent to his parents, spouse, guardian, if known, next of kin or friend after consultation with the patient. The person or persons notified shall be invited and permitted to confer with the principal person responsible for the care of the patient at all reasonable times concerning the status and condition of the patient.

If neither readmission nor application to the District Court is effected under subsection 1, paragraph A or B, the patient shall be discharged forthwith.

Sec. 6. R. S., T. 34, § 2333-A, additional. Title 34 of the Revised Statutes is amended by adding a new section 2333-A, to read as follows:

§ 2333-A. Emergency procedure; reasonable certainty of severe physical impairment or injury

1. Admission. An application under this section may be made only to the hospital having suitable accommodations nearest to the place at which the person alleged to be a mentally ill individual resides at the time of application.

Any person may be admitted to a hospital upon:

A. Application. Written application which shall be made subject to the prohibitions and penalties of section 2259 to a hospital by any health officer or police officer or any other person stating his belief that the person is a mentally ill individual and poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraph C, and the grounds for that belief; and

B. Certificate. A certification by a licensed physician or by a licensed psychologist who practices clinical psychology that he has examined the person and is of the opinion that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraph C.

Such application and certificate, upon endorsement for such purpose by a judge of probate, a District Court Judge, a Superior Court Justice or a Complaint Justice, shall authorize any health or police officer to take the person whose admission is applied for into custody and transport him to a hospital as designated in the application. The county in which such person is found shall be responsible for any expenses of transportation pursuant to this section, including return if admission is declined.

2. Continuation of hospitalization. In the event that the head of the hospital recommends further hospitalization of the patient:

A. The head of the hospital shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient as described in section 2290. If such admission is determined to be suitable, the patient, if he so desires, shall be admitted as an informally admitted patient as described in section 2290.

B. If the head of the hospital determines that admission of the patient as an informally admitted patient is not suitable, or if the patient declines admission as an informally admitted patient, the head of the hospital may apply to the District Court having territorial jurisdiction where the hospital is located, for the issuance of an order for hospitalization under section 2334 within 5 days from admission of the patient under this section. In the computation of this time, the day of admission shall not be counted but intermediate Saturdays, Sundays and legal holidays shall be counted. If the 5th day falls on a Saturday, Sunday or legal holiday, the period runs

until the end of the next day which is not a Saturday, Sunday or legal holiday.

Upon admission of a person under this section, notice of the fact of admission shall be sent to his parents, spouse, guardian, if known, next of kin or friend after consultation with the patient. The person or persons notified shall be invited and permitted to confer with the principal person responsible for the care of the patient at all reasonable times concerning the status and condition of the patient.

If neither readmission nor application to the District Court is effected under subsection 2, paragraph A or B, the patient shall be discharged forthwith.

Sec. 7. R. S., T. 34, § 2334, repealed and replaced. Section 2334 of Title 34 of the Revised Statutes, as last repealed and replaced by section 20 of chapter 547 of the public laws of 1973, is repealed and the following enacted in place thereof:

§ 2334. Judicial procedure and commitment

An application to the District Court filed pursuant to section 2333 or 2333-A shall be accompanied by a statement containing demonstrable evidence and facts showing that there is a likelihood of serious harm, as defined in section 2251, subsection 7, paragraph A or B if the patient is hospitalized under section 2333; or paragraph C of subsection 7 of section 2251, if the patient is hospitalized under section 2333-A. Each application shall be accompanied by a certificate of a licensed physician or a licensed psychologist who practices clinical psychology, which certificate shall contain a statement by the examiner that he has examined the patient and that it is his opinion that he is a mentally ill individual and, because of his illness, poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A or B if the patient is hospitalized under section 2333; or paragraph C of subsection 7 of section 2251, if the patient is hospitalized under section 2333-A.

Upon receipt of the application and certificate by the District Court, the court shall cause written notice of such application to be given personally or by mail to the patient within 5 days, and such notice shall set forth such person's rights under this section. At the same time notice shall be mailed to his legal guardian, if known, and to his spouse, or to a parent, or one of his adult children, or if none of these persons exists, or if their whereabouts are unknown, then to one of his next of kin or to a friend. A docket entry shall be sufficient evidence that such notice has been mailed.

The District Court shall hold a hearing on the application not later than 20 days from receipt of said application. With consent of the patient or his counsel, the hearing may be continued for a period not to exceed 10 additional days. If the hearing is not held within the time specified or a continuance thereof, the application shall be dismissed and the patient shall be ordered discharged forthwith. In computing the time periods set forth in this paragraph, the District Court Civil Rules shall apply.

Upon receipt of the application, the court shall forthwith cause the patient to be examined by two examiners, either of whom shall be either a licensed

physician or a licensed psychologist who practices clinical psychology and one of whom, if reasonably available, shall be chosen by the patient or by his counsel.

The examination shall be held at the hospital or any other suitable place not likely to have a harmful effect on the mental health of the patient. If the report of the examiners is to the effect that the patient is not mentally ill or does not pose a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A or B, if the patient is hospitalized under section 2333 or paragraph C of subsection 7 of section 2251, if the patient is hospitalized under section 2333-A, the application shall be dismissed and the patient shall be ordered discharged forthwith. Otherwise the hearing shall be held on the date or continued date the court has set for hearing.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the patient. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions. The patient, the applicant and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing, to testify and to present and to cross-examine witnesses, and the court may in its discretion receive the testimony of any other person. The hearing shall be confidential and no report of the proceedings shall be released to the public or press, except by permission of the patient or his counsel and with approval of the presiding District Court Judge. The court may order a public hearing on the request of the patient or his counsel.

An opportunity to be represented by counsel shall be afforded to every patient, and if neither he nor others provide counsel, the court shall appoint counsel.

The court shall have the power to subpoena any witnesses. A stenographic or electronic record of the proceedings in all judicial hospitalization hearings shall be required, and such record, together with all notes, exhibits and other evidence shall be made a permanent part of the District Court records and kept available for transcription.

If, upon completion of the hearing and consideration of the record, the court finds by a preponderance of the evidence that the patient is mentally ill and because of his illness poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraphs A, B or C, it shall so state in the record and it may order commitment on the basis thereof. If application is made under section 2333, the court may find that the patient poses a likelihood of serious harm under paragraph C of subsection 7 of section 2251 and may order commitment on the basis thereof only if it also finds that at the time of admission to a hospital under section 2333, the patient then posed a likelihood of serious harm as defined in paragraph A or B of said subsection 7. It shall be the responsibility of the court to cause exploration of all alternatives to commitment to a mental hospital, including continued residency in the community and outpatient treatment at a mental health facility. The

court may order commitment to a mental hospital for a period of not to exceed 4 months in the first instance, and not to exceed one year after the first and all subsequent rehearings, which order shall issue within 24 hours from the completion of any such hearing or rehearing; otherwise it shall dismiss the application and the patient shall be ordered discharged forthwith.

Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place to provide transportation to any hospital to which the court has committed the patient.

The District Court shall be responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees, and expenses of transportation of the patient.

At the end of 3 months after the initial court commitment, and at the end of 11 months after the first and each subsequent rehearing, the head of the hospital shall determine whether continued involuntary hospitalization is necessary for the court committed patient. If he so determines that continued involuntary hospitalization is necessary, he shall make application in accordance with this section to the District Court which has territorial jurisdiction where the hospital is located for a hearing to be held pursuant to this section.

In the event that the admission of a person alleged to be a mentally ill individual is declined at the time of application made under section 2333 or section 2333-A, the applicant or any other person may make application to the District Court having territorial jurisdiction where the person alleged to be a mentally ill individual resides for the issuance of an order for hospitalization under this section, and with respect to such application, all provisions of this section shall apply, except that the application and certification may allege the existence of a likelihood of serious harm as defined in either paragraph A, B or C of subsection 7 of section 2251, and the commitment may be based upon a finding of the existence of a likelihood of serious harm as defined in any such paragraph.

Sec. 8. R. S., T. 34, § 2372, amended. Section 2372 of Title 34 of the Revised Statutes, as amended by section 25 of chapter 547 of the public laws of 1973, is further amended to read as follows:

§ 2372. Medical examination of new patients

Every patient admitted to a hospital shall be examined as soon as practicable after his admission.

The head of the hospital shall arrange for examination by a staff physician or clinical psychologist of every patient hospitalized pursuant to section 2333 or 2333-A. If such examination is not held within 24 hours after the time of admission, or if a staff physician or clinical psychologist fails or refuses after such examination to certify that in his opinion the patient is a mentally ill individual and due to his mental illness poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A or B if the patient was admitted under section 2333 and under paragraph C if the patient was admitted under section 2333-A, the patient shall be immediately discharged.

Sec. 9. Periodic review. Periodic review in accordance with the time periods set forth in section 7 of this Act shall be applicable to any person committed under Title 34, section 2334, between October 3, 1973 and the effective date of this Act.

Sec. 10. Appropriation. There is appropriated to the District Courts from the General Fund the sum of \$135,000 for the purpose of defraying the expenses of proceedings conducted pursuant to this Act and pursuant to chapter 547 of the public laws of 1973, except proceedings under section 29 thereof. Payable expenses shall include but not be limited to fees of appointed attorneys, witness and notice fees and costs of transportation. Witness fees may be paid to expert examiners appointed by the court to perform services in connection with proceedings commenced or conducted under section 20 of chapter 547 of the public laws of 1973 and under section 7 of this Act, notwithstanding the fact that such examiners are otherwise employed by the State. The breakdown of expenditures shall be as follows:

	1973-74	1974-75
DISTRICT COURTS		
Administration		
Unallocated	\$57,000	\$78,000

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

By chapter 547 of the public laws of 1973, the 106th Legislature enacted substantial procedural and substantive amendments to the laws relating to the hospitalization of the mentally ill. The new provisions placed jurisdiction over all judicial proceedings relative to hospitalization of the mentally ill in the Maine District Court. Because of the mandatory review provisions of the new law, many more judicial proceedings than ever before are required to be conducted in the interest of protection of the rights of the alleged mentally ill persons.

The experience gained from the first 3 months of practice under the new law has demonstrated unequivocally the need for further amendment in order to permit the District Courts sufficient time within which to effectively handle the new burden upon their already crowded calendars. This experience has also taught that further amendment is necessary in order to permit optimum time for evaluation following emergency admission. It has become abundantly clear that the necessary resources for the conduct of examinations as required under the new law are unavailable in the communities of the State, indicating the need for further amendment as set forth in this Act. Moneys were not appropriated to the District Courts by the 106th Legislature and the operating budget of the District Court system cannot sustain the

costs imposed by its newly acquired jurisdiction over mental health matters. It is therefore absolutely necessary that moneys be appropriated by this Act to the District Courts to defray the expenses of judicial proceedings for the determination of the need for hospitalization for mental illness. Experience since 1961 under the predecessor statutes to the newly enacted mental health laws and under the laws as effective since October 3, 1973, has demonstrated clearly that there is no viable alternative to legislative appropriations to the court system responsible for the conduct of judicial proceedings for the hospitalization of the mentally ill to assure that the expenses incurred in such proceedings are paid and that professional services required in the conduct of judicial proceedings are continuously and readily available to the courts.