

MAINE STATE LEGISLATURE

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1 (Governor's Bill)
2 SECOND REGULAR SESSION
3

4 ONE HUNDRED AND TENTH LEGISLATURE
5

6 **Legislative Document**

No. 1943

7
8 H. P. 1968 House of Representatives, February 9, 1982
Referred to the Committee on Judiciary. Sent up for concurrence
and ordered printed.

EDWIN H. PERT, Clerk

9 Presented by Representative Nelson of Portland.

Cosponsors: Representative MacBride of Presque Isle, Senator
Bustin of Kennebec and Senator Gill of Cumberland.

10
11 STATE OF MAINE
12

13 IN THE YEAR OF OUR LORD
14 NINETEEN HUNDRED AND EIGHTY-TWO
15

16 AN ACT to Amend the Certification Process
17 for Admission into Public Mental Retardation
18 Institutions and to Clarify the Jurisdiction
19 of the District Court.
20

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

22 Sec. 1. 4 MRSA §152, 2nd sentence, as enacted by PL
23 1965, c. 236, is amended to read:

24 This limitation as to damages shall not apply in any action
25 of divorce, annulment or separation of marriage or in any
26 action to enforce judgment of support or alimony; and of
27 mental health commitment hearings under Title 34, chapter
28 191, subchapter III, and of mental retardation certification
29 hearings under Title 34, chapter 229.

30 Sec. 2. 34 MRSA §2658-A, as enacted by PL 1977, c.
31 635, §7, is amended to read:

32 §2658-A. Admission by informed consent or with consent of
33 client's private guardian

1 The client or his private guardian may consent to his
2 own admission if the superintendent of the facility or his
3 designee has determined that:

4 1. Informing client. The client has been informed of
5 and understands both the nature, purpose and proposed dura-
6 tion of the admission and the provisions of section 2660
7 regarding the client's right to leave and the limitations on
8 that right; ~~and~~

9 1-A. Requirements. The requirements of section 2655
10 regarding admission have been met; and

11 2. Consent of client. The client voluntarily consents
12 to the propsoed admission; or the client's private guardian
13 consents on the client's behalf.

14 **Sec. 3.** 34 MRSA §2659-A, first ¶, as enacted by PL
15 1977, c. 635, §7, is amended to read:

16 If the superintendent of a facility or his designee has
17 determined that the client is not capable of giving informed
18 consent to admission and that no private guardian exists to
19 give consent for admission, a client may be admitted for
20 extended care and treatment only after judicial certifica-
21 tion, pursuant to this section; or after involuntary commit-
22 ment pursuant to section 2664, subsection 3.

23 **Sec. 4.** 34 MRSA §2659-A, sub-§1, ¶C, as enacted by PL
24 1977, c. 635, §7, is amended to read:

25 C. If a parent or guardian having legal custody of the
26 person of the client, asks the court not to hear the
27 proceedings for certification, the court shall grant
28 the request unless the petition is made under section
29 2664.

30 **Sec. 5.** 34 MRSA §2659-A, sub-§2, ¶C, first sentence,
31 as enacted by PL 1977, c. 635, §7, is amended to read:

32 Shall, upon request of counsel, cause the client who is
33 the subject of the proceeding to be examined by a pro-
34 fessional.

35 **Sec. 6.** 34 MRSA §2659-A, sub-§3, 2nd sentence, as
36 enacted by PL 1979, c. 344, §3, is amended to read:

37 The certification hearing shall be confidential and shall be
38 electronically recorded.

1 flexibility in serving the rare mentally retarded individual
2 who requires placement in a mental retardation treatment
3 facility in order to avoid imminent danger to himself or
4 others, who has been determined to be competent to refuse
5 voluntary admission or for whom judicial certification to
6 the proposed treatment facility is not appropriate.

7 The purpose of this bill is to rectify 2 problems.
8 First, the bill relates to the fact that although the
9 Revised Statutes, Title 34, section 2334 and section 2659-A
10 apparently grant jurisdiction to the District Court in com-
11 mitment hearings and certification hearings, the lack of
12 inclusion of this jurisdiction in the general jurisdictional
13 statute raises an issue regarding the legal status of
14 involuntarily committed residents at state institutions. In
15 other words, there is an inconsistency between the jurisdic-
16 tional statute and the enabling statutes relating to certi-
17 fication and admission of residents which now leaves some
18 doubt as to the institutional residents' legal status. This
19 bill establishes statutory consistency between these 2 sets
20 of statutes regarding the jurisdiction of the District
21 Court.

22 Second, this bill corrects an oversight in the drafting
23 of Public Law 1979, chapter 344 in which the requirement
24 that all certification hearings be electronically recorded
25 was apparently inadvertently omitted. The prior law had
26 this requirement. In addition, mental health commitment
27 hearings must all be electronically recorded. Since the
28 nature of these certification hearings is similar and the
29 State wishes to preserve a record of what occurs in order to
30 defend appeals of the proceedings, this bill is proposed in
31 order to provide this consistency.

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