

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 1968, L.D. 1943)  
SECOND REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document** **No. 2086**

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H. P. 2228 House of Representatives, March 24, 1982  
Reported by Representative Hobbins from the Committee on  
Judiciary and printed under Joint Rules No. 2 EDWIN H. PERT, Clerk

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STATE OF MAINE

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

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**AN ACT to Amend the Certification Pro-  
cess for Admission into Public Mental  
Retardation Institutions and to Clarify  
the Jurisdiction of the District Court.**

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

Sec. 1. 4 MRSA §152, first sentence, as repealed and replaced by PL 1981, c. 470, Pt. A, §4, is amended to read:

The District Court shall possess the civil jurisdiction exercised by all trial justices and municipal courts in the State on September 16, 1961, and in addition, original jurisdiction, concurrent with that of the Superior Court of all civil actions in which neither damages in excess of \$20,000, nor, except as herein provided, equitable relief is demanded of proceedings under Title 14, sections 6651 to 6658 and of actions for divorce, annulment of marriage or judicial separation and of proceedings under Title 19 and

1 original jurisdiction, concurrent with that of the Superior  
2 Court, of actions to quiet title to real estate under Title  
3 14, sections 6651 to 6658, and in these actions the District  
4 Court may grant equitable relief; and original jurisdiction,  
5 concurrent with that of the Superior Court, for breach of  
6 implied warranty and covenant of habitability under Title  
7 14, section 6021, and in these actions the District Court  
8 may grant equitable relief; and original jurisdiction, con-  
9 current with that of the Superior Court, of actions to quiet  
10 title to real estate under Title 36, section 946, and in  
11 such actions the District Court may grant equitable relief,  
12 of actions to foreclose mortgages under Title 14, chapter  
13 713, subchapter VI; and of mental health commitment hearings  
14 under Title 34, chapter 191, subchapter III, and of mental  
15 retardation certification hearings under Title 34, chapter  
16 229; and of small claims actions under Title 14, chapter  
17 738, and in these actions the District Court may grant equi-  
18 table relief.

19 Sec. 2. 34 MRSA §2657-A, sub-§7 is enacted to read:

20 7. Involuntary admission. When determined necessary,  
21 section 2665 authorizes involuntary admission.

22 Sec. 3. 34 MRSA §2659-A, first ¶, as enacted by PL  
23 1977, c. 635, §7, is amended to read:

24 If the superintendent of a facility or his designee has  
25 determined that the client is not capable of giving informed  
26 consent to admission, a client may be admitted for extended  
27 care and treatment only after judicial certification, pur-  
28 suant to this section or after involuntary admission, pur-  
29 suant to section 2665.

30 Sec. 4. 34 MRSA §2659-A, sub-§2, ¶C, first sentence,  
31 as enacted by PL 1977, c. 635, §7, is amended to read:

32 Shall, unless waived by a parent or guardian, cause the  
33 client who is the subject of the proceeding to be examined  
34 by a professional.

35 Sec. 5. 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 or stenographically recorded.

39 Sec. 6. 34 MRSA §2659-B is enacted to read:

40 §2659-B. Continuation of treatment in a facility

1           1. Authority to continue treatment. A client who has  
2 been admitted to a facility by judicial certification, or  
3 who has been retained in a facility pursuant to this  
4 section, may continue extended care and treatment in that  
5 facility for an additional period, not to exceed 2 years,  
6 only after judicial certification under section 2659-A or  
7 after waiver of that process by the District Court as pro-  
8 vided in this section. Waiver of the judicial certification  
9 process is not permitted for any mentally retarded person  
10 under public guardianship.

11           2. Waiver of judicial certification. A petition to  
12 waive judicial certification under section 2659-A may be  
13 filed in District Court by the facility where the client is  
14 residing. The court may waive judicial certification upon a  
15 finding that:

16           A. A prescriptive program plan, as provided in section  
17 2655, has been agreed to by the superintendent of the  
18 facility and the guardian;

19           B. The guardian has been informed of and understands  
20 the nature, purpose and proposed duration of the admis-  
21 sion and the provisions of section 2660 regarding the  
22 client's right to leave and the limitations on that  
23 right;

24           C. The guardian has consented to the continued  
25 extended care and treatment of the client in the facil-  
26 ity; and

27           D. Continued care and treatment is necessary and there  
28 is no less restrictive alternative to the care and  
29 treatment provided by the facility, consistent with the  
30 best interest of the client.

31           Sec. 7. 34 MRS §2665 is enacted to read:

32           §2665. Involuntary admission

33           Any client recommended for regular admission to a  
34 facility pursuant to section 2655 may be admitted as an  
35 involuntary patient. The procedure for involuntary admis-  
36 sion to a mental retardation facility for care, training and  
37 treatment shall follow those procedures set forth in section  
38 2334 for the involuntary commitment of mentally ill indi-  
39 viduals, except that, where a finding of mental illness is  
40 required, a finding of mental retardation, as defined by  
41 section 2602, shall be substituted.

1 STATEMENT OF FACT

2 Section 1 of the new draft corrects an omission in the  
3 current law. Title 34, section 2334, and section 2659-A  
4 grant jurisdiction to the District Court in mental health  
5 commitment hearings and mental retardation certification  
6 hearings. The general jurisdiction statute for District  
7 Court (Title 4, section 152) does not grant jurisdiction to  
8 the District Court in those instances. This amendment cor-  
9 rects that inconsistency between the enabling statutes and  
10 the jurisdictional statute by giving the District Court  
11 jurisdiction in those instances.

12 Sections 2, 3 and 7 authorize a procedure, parallel to  
13 the procedure presently used for commitment of mentally ill  
14 persons to state mental health facilities, to be utilized  
15 for involuntary commitment of mentally retarded people to  
16 mental retardation facilities. Although involuntary commit-  
17 ment to mental retardation facilities is likely to occur  
18 only on rare occasions, this addition allows the State  
19 greater flexibility in serving the rare mentally-retarded  
20 individual who requires placement in a mental retardation  
21 treatment facility in order to avoid imminent danger to him-  
22 self or others, who has been determined to be competent to  
23 refuse voluntary admission or for whom judicial certifica-  
24 tion to the proposed treatment facility is not appropriate.

25 Section 4 allows the parent or guardian to waive the  
26 independent examination by a professional for a judicial  
27 certification hearing regarding the initial admission of a  
28 mentally-retarded individual to a treatment facility.

29 Section 5 requires all mental retardation certification  
30 hearings to be electronically or stenographically recorded.  
31 Mental health commitment hearings must all be electronically  
32 recorded. The nature of these certification hearings is  
33 similar to commitment hearings and the State should preserve  
34 a record of what occurs in order to defend appeals of the  
35 proceedings.

36 Section 6 establishes a procedure to retain clients of  
37 a mental retardation facility without requiring a full cer-  
38 tification hearing. Currently, clients who have been judi-  
39 cially certified for admission to a facility must receive a  
40 full certification hearing every 2 years to continue to  
41 receive care and treatment in that facility.

42 After 3 years of experience utilizing the present cer-  
43 tification procedure for admission to mental retardation  
44 facilities, it has become apparent, based on input from the

1 Bureau of Mental Retardation staff, District Court Judges,  
2 parents and guardians of clients admitted through the certi-  
3 fication process to mental retardation facilities and others  
4 involved in the certification process, that the necessity  
5 for an adversary hearing process, in each instance where  
6 continued care and treatment of a client is desired, is  
7 unnecessary. This section allows the full certification  
8 hearing process to be waived if a District Court Judge  
9 determines:

10 1. An adequate treatment plan has been agreed upon by  
11 the facility and the guardian;

12 2. The guardian understands and consents to the con-  
13 tinued treatment;

14 3. Continued treatment and care is necessary; and

15 4. No less restrictive alternative care and treatment  
16 is available.

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