

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1773

S.P. 639

In Senate, January 25, 1994

An Act to Reinstate Involuntary Commitment for Chronic and Life-threatening Substance Abuse.

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 26. Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.
Cosponsored by Senators: CONLEY of Cumberland, PARADIS of Aroostook, Representatives:
MARTIN of Eagle Lake, PARADIS of Augusta.

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

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4 Sec. 1. 5 MRSA §20045-A is enacted to read:

6 §20045-A. Involuntary treatment and services for chemically
8 dependent persons who pose a likelihood of serious
10 and imminent self-harm

12 1. Law enforcement officer's power. If a law enforcement
14 officer has reasonable grounds to believe, based upon personal
16 observation, that a person may be a chemically dependent person
18 who poses a likelihood of serious and imminent self-harm, the law
20 enforcement officer:

22 A. May take the person into protective custody; and

24 B. If the officer does take the person into protective
26 custody, shall deliver the person immediately to an approved
28 public treatment facility or an emergency medical service
30 facility customarily used for emergency service for
32 examination by a licensed physician as provided in section
34 20046-A.

36 In taking the person into protective custody, the detaining
38 officer may take reasonable steps for self-protection. The
40 taking of a chemically dependent person who poses a likelihood of
42 serious and imminent self-harm into protective custody under this
44 section is not an arrest. An entry or other record may not be
46 made to indicate that the person has been arrested or charged
48 with a crime.

2. Emergency treatment order not executed. If an emergency
treatment order relating to the person's likelihood of serious
harm is not executed by the examiner under section 20046-A, the
law enforcement officer shall:

A. Release the person from protective custody and, with the
person's permission, immediately return the person to the
person's residence if it is within the territorial
jurisdiction of the officer;

B. Release the person from protective custody and, with the
person's permission, immediately return the person to the
place where the person was taken into protective custody; or

C. If the person is also under arrest for a violation of
the law, retain the person in custody until the person is
released in accordance with the law.

2 3. Emergency treatment order executed. If an emergency
3 treatment order is executed by the examiner under section
4 20046-A, the law enforcement officer shall immediately undertake
5 to secure the endorsement of a justice or judge under section
6 20046-A and may detain the person for a reasonable period of
7 time, not to exceed 18 hours pending that endorsement.

8 4. Transportation costs. The costs of transportation under
9 this section are paid in the manner provided under section
10 20046-A.

11 5. Official duty. The law enforcement officer who acts in
12 compliance with this section is acting in the course of official
13 duties and is not criminally or civilly liable for actions taken
14 under this section.

15 6. Further diagnosis and voluntary treatment. If the
16 administrator in charge of the approved public treatment facility
17 determines that further diagnosis and treatment are for the
18 patient's benefit, the administrator shall encourage the patient
19 to agree to further diagnosis and appropriate voluntary treatment.

20 **Sec. 2. 5 MRSA §§20046-A to 20046-C are enacted to read:**

21 **§20046-A. Emergency treatment order procedure; detoxification**
22 **facility**

23 A person may be admitted to inpatient treatment at an
24 approved public or private detoxification facility according to
25 the following procedures.

26 1. Application. A person may make a written application to
27 admit another person to an approved public or private
28 detoxification facility, subject to the prohibitions and
29 penalties of section 20046-B, stating:

30 A. A belief that the person is a chemically dependent
31 person who poses a likelihood of serious and imminent
32 self-harm; and

33 B. The grounds for this belief.

34 2. Certifying examination. The written application must be
35 accompanied by a dated certificate, signed by a licensed
36 physician, stating the physician:

37 A. Has examined the person on the date of the certificate,
38 the date of which may not be more than 3 days before the
39 date of the post-admission examination under subsection 7;
40 and

2 B. Is of the opinion that the person is a chemically
4 dependent person who poses a likelihood of serious and
 imminent self-harm.

6 3. Judicial review. A Justice of the Superior Court, judge
8 of the District Court, judge of probate or a complaint justice
 shall review the application and accompanying certificate.

10 A. If the justice or judge finds the application and
12 accompanying certificate to be regular and in accordance
 with the law, the justice or judge shall endorse them.

14 B. A person may not be held against the person's will in an
16 approved detoxification facility under this section, whether
18 voluntarily admitted under section 20044 or an application
20 for involuntary admission is made under this section, unless
22 the application and certificate have been endorsed by a
24 justice or judge, except that a person for whom an examiner
 has executed the certificate under subsection 2 may be
 detained in an approved detoxification facility for a
 reasonable period of time, not to exceed 18 hours, pending
 endorsement by a justice or judge, if:

 (1) For a person voluntarily admitted under section
26 20044, the administrator of the approved detoxification
28 facility undertakes to secure the endorsement
 immediately upon execution of the certificate by the
 examiner; and

30 (2) An application for involuntary admission is made for the
32 person and the person or persons transporting that person to
34 the hospital undertake to secure the endorsement immediately
 upon execution of the certificate by the examiner.

36 4. Custody and transportation. Custody and transportation
38 under this section are governed as follows.

40 A. Upon endorsement of the application and certificate by
42 the justice or judge, a health officer, law enforcement
44 officer or other person designated by the justice or judge
 may take the person into custody and transport the person to
 the approved detoxification facility designated in the
 application.

46 B. If the person is unable to pay, the county where the
48 person is a legal resident is responsible for the expenses
 of transportation under this section, including return from
 the approved detoxification facility if admission is

2 declined. If a person is not a resident of the State or if
3 the county of residence can not be determined, the expenses
4 of transportation are the responsibility of the office.

5 5. Continuation of emergency treatment. If the
6 administrator of the approved detoxification facility recommends
7 further treatment, the administrator shall determine the
8 suitability of admission, care and treatment of the patient as a
9 voluntarily admitted patient, as described in section 20044.

10 A. If the administrator or the admitting physician of the
11 approved detoxification facility determines that admission
12 of the person as a voluntarily admitted patient is suitable,
13 the administrator or physician may admit the person on this
14 basis if the person so desires.

15 B. If the administrator or the admitting physician of the
16 approved detoxification facility determines that admission
17 of the person as a voluntarily admitted patient is not
18 suitable, or if the person declines admission as a
19 voluntarily admitted patient, the administrator of the
20 approved detoxification facility may file an application for
21 the issuance of an order of involuntary emergency treatment
22 under section 20046-C.

23 (1) The application must be made to the District Court
24 having territorial jurisdiction over the approved
25 detoxification facility.

26 (2) The application must be filed within 5 days from
27 the admission of the patient under this section,
28 excluding the day of admission and a Saturday, Sunday
29 or legal holiday.

30 C. If neither readmission nor application to the District
31 Court is effected under this subsection, the administrator
32 of the approved detoxification facility shall discharge the
33 person immediately.

34 6. Notice. Upon admission of a person under this section
35 and after obtaining the person's permission, the administrator of
36 the approved detoxification facility shall mail notice of the
37 fact of admission to the person's guardian, if applicable,
38 spouse, parent or adult child, or a next of kin or friend if none
39 of the listed persons exists.

40 7. Post-admission examination. A patient admitted to an
41 approved detoxification facility must be examined immediately
42 after admission.

2 A. The administrator of the approved detoxification
4 facility shall arrange for examination by a staff physician
6 of a patient admitted under this section.

8 B. The staff physician may not be the certifying examiner
10 under this section or under section 20046-C.

12 C. If the post-admission examination is not held within 24
14 hours after the time of admission or if a staff physician
16 fails or refuses after the examination to certify that, in
18 the staff physician's opinion, the person is a chemically
20 dependent person who poses a likelihood of serious and
22 imminent self-harm, the person must be immediately
24 discharged.

26 **§20046-B. Habeas corpus; prohibited acts; penalty**

28 1. Habeas corpus. A person detained pursuant to this
30 chapter is entitled to the writ of habeas corpus upon proper
32 petition by that person or by a friend to a justice generally
34 empowered to issue the writ of habeas corpus in the county in
36 which the person is detained.

38 2. Unwarranted emergency treatment. A person is guilty of
40 causing an unwarranted emergency treatment if that person
42 willfully causes the unwarranted involuntary emergency treatment
44 of a chemically dependent person.

46 3. Denial of rights. A person is guilty of causing a
48 denial of rights if that person willfully causes the denial to a
50 person of any rights accorded by this chapter.

4. Penalty. Causing an unwarranted emergency treatment or
a denial of rights is a Class C crime.

§20046-C. Judicial procedure and involuntary emergency treatment

1. Application. An application to the District Court to
admit a person to an approved treatment facility or approved
detoxification facility under section 20046-A, subsection 5,
paragraph B must be accompanied by:

A. The emergency application under section 20046-A,
subsection 1;

B. The accompanying certificate of the certifying examiner
under section 20046-A, subsection 2; and

C. The certificate of the staff physician under section
20046-A, subsection 7, that the staff physician:

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(1) Has examined the patient; and

(2) Is of the opinion that the patient is a chemically dependent person who poses a likelihood of serious and imminent self-harm.

2. Detention pending judicial determination.

Notwithstanding any other provision of this subchapter, a person with respect to whom proceedings for treatment pursuant to section 20046-A have been commenced may not be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the application of the patient or the patient's guardian, if applicable, spouse, parent or adult child, or a next of kin or friend;

B. The District Court orders release or discharge upon the report of the administrator of the approved detoxification facility that the person may be discharged with safety; or

C. The District Court orders release or discharge upon a writ of habeas corpus under section 20046-B.

3. Notice of receipt of application. Notice of receipt of application under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application:

(1) To be given personally or by mail to the person within a reasonable time before the hearing, but not less than 3 days before the hearing; and

(2) To be mailed to the person's guardian, if known, or to the person's spouse, parent or an adult child, or if none of these persons exist or if none of them can be located, to the next of kin or a friend.

B. A docket entry is sufficient evidence that notice under this subsection has been given.

4. Examination. Examination under this section is governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1, the court shall immediately cause the person to be examined by 2 examiners.

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(1) Each examiner must be a licensed physician.

(2) One of the examiners must be a physician chosen by the person or by the person's counsel, if the chosen physician is reasonably available.

(3) Neither examiner may be the certifying examiner under section 20046-A, subsection 2 or the staff physician under section 20046-A, subsection 7.

B. The examination must be held at the approved treatment facility or approved detoxification facility or at any other suitable place not likely to have a harmful effect on the health of the person.

C. If the report of the examiners is to the effect that the person is not chemically dependent or does not pose a likelihood of serious and imminent self-harm, the application must be ordered discharged immediately.

D. If the report of the examiners is to the effect that the person is a chemically dependent person who poses a likelihood of serious and imminent self-harm, the hearing must be held on the date, or on the continued date, that the District Court has set for the hearing.

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application no later than 15 days from the date of the application.

(1) On a motion by a party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the District Court shall dismiss the application and order the person discharged immediately.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

B. The hearing must 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 health of the person.

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C. The District Court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The District Court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the District Court shall appoint counsel for the person.

E. In addition to proving that the patient is a chemically dependent person who poses a likelihood of serious and imminent self-harm, the applicant must show:

(1) By evidence of the patient's actions and behavior, that the patient poses a likelihood of serious and imminent self-harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient treatment is the best available means for the treatment of the person.

F. In each case, the applicant shall submit to the District Court, at the time of the hearing, testimony indicating the individual treatment plan to be followed by the approved treatment facility or approved detoxification facility staff, if the person is admitted under this section, and the applicant shall bear the expense for witnesses for this purpose.

G. A stenographic or electronic record must be made of the proceedings in all judicial involuntary treatment hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing.

2 H. Unless the District Court orders a public hearing on the
3 request of the person or counsel, the hearing is
4 confidential and a report of the proceedings may not be
5 released to the public or press, except by permission of the
6 person or counsel and with approval of the presiding
7 District Court judge.

8 6. Court findings. Procedures dealing with the District
9 Court's findings under this section are as follows.

10 A. If the District Court makes the following findings upon
11 completion of the hearing and consideration of the record,
12 it shall include in the record a statement including:

13 (1) That by clear and convincing evidence the person
14 is chemically dependent and that recent actions and
15 behavior demonstrate that the person is a chemically
16 dependent person who poses a likelihood of serious and
17 imminent self-harm;

18 (2) That inpatient treatment is the best available
19 means for treatment of the patient; and

20 (3) That it is satisfied with the individual treatment
21 plan offered by the approved treatment facility or
22 approved detoxification facility.

23 B. If the District Court makes the findings described in
24 paragraph A, subparagraphs (1) and (2), but is not satisfied
25 with the individual treatment plan as offered, it may
26 continue the case for no longer than 10 days, pending
27 reconsideration and resubmission of an individual treatment
28 plan.

29 7. Involuntary treatment. Upon making the findings
30 described in subsection 6, the District Court may order
31 involuntary inpatient treatment at an approved public or private
32 treatment facility or an approved public or private
33 detoxification facility for a period not to exceed 60 days in the
34 first instance and not to exceed 120 days after the first and
35 subsequent hearings.

36 A. The District Court may issue an order of involuntary
37 treatment after the completion of the hearing, or it may
38 take the matter under advisement and issue an order within
39 24 hours of the hearing.

40 B. If the District Court does not issue an order of
41 involuntary treatment within 24 hours of completion of the
42 hearing, it shall dismiss the application and order the
43 patient discharged immediately.

2 8. Continued involuntary treatment. If the administrator
4 or the admitting physician of the approved treatment facility or
6 approved detoxification facility determines that continued
8 involuntary treatment is necessary for a person who has been
10 ordered by the District Court to receive such treatment, the
 administrator or the admitting physician shall apply, no later
 than 30 days prior to the expiration of a period of commitment
 ordered by the court, to the District Court that has territorial
 jurisdiction over the treatment facility for a hearing to be held
 under this section.

12 9. Transportation. Unless otherwise directed by the
14 District Court, the sheriff of the county in which the District
16 Court has jurisdiction and in which the hearing takes place shall
 provide transportation to the approved treatment facility or
 approved detoxification facility to which the court has committed
 the person.

18 10. Expenses. With the exception of expenses incurred by
20 the applicant pursuant to subsection 5, paragraph F, the District
22 Court is responsible for expenses incurred under this section,
24 including fees of appointed counsel, witness and notice fees and
 expenses of transportation for the person.

26 11. Appeals. A person ordered by the District Court to be
28 committed to an approved treatment facility or approved
 detoxification facility may appeal from that order to the
 Superior Court.

30 A. The appeal is on questions of law only.

32 B. Findings of fact of the District Court may not be set
34 aside unless clearly erroneous.

36 C. The order of the District Court remains in effect
 pending the appeal.

38 D. The Maine Rules of Civil Procedure apply to the conduct
40 of the appeal, except as otherwise specified in this
42 subsection.

STATEMENT OF FACT

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This bill reinstates the law authorizing involuntary commitment for persons suffering from chronic and life-threatening substance abuse.

This document has not yet been reviewed to determine the need for cross-reference, stylistic and other technical amendments to conform existing law to current drafting standards.