

MAINE STATE LEGISLATURE

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Handwritten initials "R.M.S." with a squiggle above it.

L.D. 151

DATE: 6-14-05

(Filing No. S- 367)

HEALTH AND HUMAN SERVICES

Reported by:

MAJORITY

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT 'A' to S.P. 57, L.D. 151, Bill, "An Act To Improve the Delivery of Maine's Mental Health Services"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 34-B MRSA §3801, sub-§10 is enacted to read:

10. Assertive community treatment. "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical social worker or licensed clinical professional counselor. An ACT team member who is a

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2 state employee is, while in good faith performing a function as a
3 member of an ACT team, performing a discretionary function within
4 the meaning of Title 14, section 8104-B, subsection 3.

5 **Sec. A-2. 34-B MRSA §3832, sub-§1**, as amended by PL 1983, c.
6 580, §10, is further amended to read:

7 **1. Patient's right.** A patient admitted under section 3831
8 is free to leave the hospital at any time after admission
9 ~~without undue delay following examination by a licensed physician~~
10 ~~or a licensed clinical psychologist, except that~~ within 16 hours
11 of the patient's request unless application for admission of the
12 person under section 3863 is not precluded, if at any time such
13 an admission is considered necessary in the interest of the
14 person and of the community initiated within that time.

15 **Sec. A-3. 34-B MRSA §3863, sub-§2, ¶B**, as amended by PL 1997,
16 c. 438, §2, is further amended to read:

17 **B.** The physician, physician's assistant, certified
18 psychiatric clinical nurse specialist, nurse practitioner or
19 psychologist is of the opinion that the person is mentally
20 ill and, because of that illness, poses a likelihood of
21 serious harm. The written application must include a
22 description of the grounds for that opinion.

23 **Sec. A-4. 34-B MRSA §3863, sub-§5, ¶¶B and C**, as amended by PL
24 1995, c. 496, §2, are further amended to read:

25 **B.** If the chief administrative officer of the hospital
26 determines that admission of the person as an informally
27 admitted patient is not suitable, or if the person declines
28 admission as an informally admitted patient, the chief
29 administrative officer of the hospital may seek involuntary
30 commitment of the patient by filing an application for the
31 issuance of an order for hospitalization under section 3864,
32 except that if the hospital is a designated nonstate mental
33 health institution and if the patient was admitted under the
34 contract between the hospital and the department for receipt
35 by the hospital of involuntary patients, then the chief
36 administrative officer may seek involuntary commitment only
37 by requesting the commissioner to file an application for
38 the issuance of an order for hospitalization under section
39 3864.

40 (1) The application must be made to the District Court
41 having territorial jurisdiction over the hospital to
42 which the person was admitted on an emergency basis.
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(2) The application must be filed within 5 3 days from the date of admission of the patient under this section, excluding the day of admission and any Saturday, Sunday or legal holiday except that, if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday.

C. If neither readmission on an informal voluntary basis nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital to which the person was admitted on an emergency basis shall discharge the person immediately.

Sec. A-5. 34-A MRSA §3863, sub-§5, ¶D is enacted to read:

D. If the chief administrative officer of the hospital has filed an application in the District Court for an order of hospitalization under section 3864 but the hearing on the application has not yet been conducted, the chief administrative officer may also submit in the interim a request for an administrative hearing before a hearing officer employed by or under contract with the department to administer medication on an involuntary basis to the patient if the court orders such commitment. In such cases, the administrative hearing to consider the request for involuntary treatment must be held within 4 business days of the date of the court's order permitting involuntary hospitalization under section 3864.

Sec. A-6. 34-B MRSA §3864, sub-§5, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. The District Court shall hold a hearing on the application not later than 15 14 days from the date of the application.

(1) On a motion by any 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 court shall dismiss the application and order the person discharged forthwith.

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

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2 **Sec. A-7. 34-B MRSA §3864, sub-§5, ¶E**, as enacted by PL 1983,
c. 459, §7, is amended to read:

4 E. In addition to proving that the patient is a mentally
ill individual, the applicant shall must show:

6 (1) By evidence of the patient's recent actions and
8 behavior, that due to the patient's mental illness the
patient poses a likelihood of serious harm; and

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

16 **Sec. A-8. 34-A MRSA §3864, sub-§7**, as amended by PL 1995, c.
496, §6, is further amended to read:

18 **7. Commitment.** Upon making the findings described in
20 subsection 6, the court may order commitment to a hospital for a
period not to exceed 4 months ~~in the first instance and not to~~
22 ~~exceed one year after the first and all subsequent hearings.~~

24 A. The court may issue an order of commitment immediately
after the completion of the hearing, or it may take the
26 matter under advisement and issue an order within 24 hours
of the hearing.

28 B. If the court does not issue an order of commitment
30 within 24 hours of the completion of the hearing, it shall
dismiss the application and order the patient discharged
32 immediately.

34 **Sec. A-9. 34-B MRSA §3870, sub-§3, ¶C** is enacted to read:

36 C. Discharge from convalescent status occurs upon
expiration of the period of involuntary commitment.

38 **Sec. A-10. 34-B MRSA §3870, sub-§4, ¶C**, as enacted by PL 1997,
40 c. 422, §22, is amended to read:

42 C. If the order is not voluntarily complied with, an
involuntarily committed patient on convalescent leave may be
44 returned to the hospital if the following conditions are met:

46 (1) An order is issued pursuant to paragraph A;

48 (2) The order is brought before a District Court Judge
or justice of the peace; and

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(3) Based upon clear and convincing evidence that return to the hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

PART B

Sec. B-1. 34-B MRSA §3801, sub-§4, ¶¶B and C, as enacted by PL 1983, c. 459, §7, are amended to read:

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for ~~his~~ the person's care and treatment are unavailable; ~~or~~

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of ~~his~~ the person's actions or behavior ~~which--demonstrate--his~~ that demonstrates the person's inability to avoid or protect ~~himself~~ the person from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for ~~his~~ the person's care are unavailable; ~~or~~

Sec. B-2. 34-B MRSA §3801, sub-§4, ¶D is enacted to read:

D. For the purposes of section 3873, subsection 5, in view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that deterioration of the person's mental health will occur and that the person will in the foreseeable future pose a danger of:

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- 2 (1) A substantial risk of physical harm to the person
3 as manifested by evidence of recent threats of, or
4 attempts at, suicide or serious bodily harm;
- 6 (2) A substantial risk of physical harm to other
7 persons as manifested by recent evidence of homicidal
8 or other violent behavior or recent evidence that
9 others are placed in reasonable fear of violent
10 behavior and serious physical harm to themselves; or
- 12 (3) A reasonable certainty that severe physical or
13 mental impairment or injury will result to the person
14 as manifested by recent evidence of actions or behavior
15 that demonstrates the person's inability to avoid or
16 protect the person from such impairment or injury.

18 **Sec. B-3. 34-B MRSA §3801, sub-§§7-A, 8-A and 10** are enacted to
19 read:

20 **7-A. Progressive treatment program.** "Progressive treatment
21 program" or "program" means a program of court-ordered services
22 provided to participants under section 3873.

24 **8-A. Severe and persistent mental illness.** "Severe and
25 persistent mental illness" means a diagnosis of one or more
26 qualifying mental illnesses or disorders plus a listed disability
27 or functional impairment that has persisted continuously or
28 intermittently or is expected to persist for at least one year as
29 a result of that disease or disorder. The qualifying mental
30 illnesses or disorders are schizophrenia, schizoaffective
31 disorder or other psychotic disorder, major depressive disorder,
32 bipolar disorder or a combination of mental disorders
33 sufficiently disabling to meet the criteria of functional
34 disability. The listed disabilities or functional impairments,
35 which must result from a diagnosed qualifying mental illness or
36 disorder, include inability to adequately manage one's own
37 finances, inability to perform activities of daily living and
38 inability to behave in ways that do not bring the attention of
39 law enforcement for dangerous acts or for acts that manifest the
40 person's inability to protect the person from harm.

42 **10. Inability to make an informed decision.** "Inability to
43 make an informed decision" means being unable to make a
44 responsible decision whether to accept or refuse a recommended
45 treatment as a result of lack of mental capacity to understand
46 sufficiently the benefits and risks of the treatment after a
47 thorough and informative explanation has been given by a
48 qualified mental health professional.

50 **Sec. B-4. 34-B MRSA §3863, sub-§8** is enacted to read:

2 8. Rehospitalization from progressive treatment program.
3 The assertive community treatment team physician or psychologist
4 may make a written application under this section to admit to a
5 state mental health institute a person who fails to fully
6 participate in the progressive treatment program in accordance
7 with section 3873, subsection 5. The provisions of this section
8 apply to that application, except that the standard for admission
9 is governed by section 3873, subsection 5, paragraph B.

10 Sec. B-5. 34-B MRSA §3871, sub-§6 is enacted to read:

12 6. Discharge to progressive treatment program. If a person
13 participates in the progressive treatment program under section
14 3873, the time period of a commitment under this section
15 terminates on entry into the progressive treatment program.

16 Sec. B-6. 34-B MRSA §3873 is enacted to read:

17 §3873. Progressive treatment program

18 1. Program established. The department shall establish the
19 progressive treatment program to provide care for persons who
20 meet the criteria of subsection 2.

21 2. Criteria for participation. The following criteria
22 apply to participation in the progressive treatment program.

23 A. Participation in the program must be ordered by the
24 District Court in accordance with this paragraph.

25 (1) The superintendent of a state mental health
26 institute may file an application for an order of
27 admission to the progressive treatment program with the
28 District Court.

29 (2) The procedures for commitment under section 3864
30 apply, except that an order of admission to the
31 progressive treatment program requires the following:

32 (a) A finding that the person meets the criteria
33 of paragraph B;

34 (b) A finding that an assertive community
35 treatment team is available to provide treatment
36 and care for the person; and

37 (c) A provision in the order that requires the
38 person to return to the state mental health
39 institute pursuant to subsection 5 in the event of
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2 failure to fully participate and deterioration of
3 the person's mental health so that hospitalization
4 is in the person's best interest and the person
5 poses a likelihood of serious harm as defined in
6 section 3801, subsection 4, paragraph D.

7 B. The person must:

8 (1) Be 21 years of age or older;

9 (2) Have been clinically determined to be suffering
10 from a severe and persistent mental illness;

11 (3) Have been under an order of involuntary commitment
12 to a state mental health institute at the time of
13 filing of the application for progressive treatment; and

14 (4) Have been clinically determined to be in need of
15 the progressive treatment program in order to prevent
16 interruptions in treatment, relapse and deterioration
17 of mental health and to enable the person to survive
18 safely in a community setting in the reasonably
19 foreseeable future without posing a likelihood of
20 serious harm as defined in section 3801, subsection 4,
21 paragraph D. A determination under this subparagraph
22 must be based on current behavior, treatment history,
23 documented history of positive responses to treatment
24 while hospitalized, relapse and deterioration of mental
25 health after discharge and inability to make informed
26 decisions regarding treatment.

27 3. Duration of participation. Except as provided in
28 subsections 4 and 5, participation in the progressive treatment
29 program must be for a term of 6 months. Participation ends if a
30 person successfully completes the program in accordance with
31 subsection 4 or is hospitalized pursuant to a court order entered
32 under subsection 5. Participation in the program is temporarily
33 suspended if the person is voluntarily rehospitized and
34 recommences upon discharge from the hospital.

35 4. Successful completion. A person who fully participates
36 in the program and who follows the individualized treatment plan
37 successfully completes the program upon expiration of 6 months or
38 certification by the assertive community treatment team physician
39 or psychologist that the person is no longer in need of the
40 services of the program.

41 5. Termination of participation. Failure of a person to
42 fully participate in the program and follow the individualized

2 treatment plan may result in termination of participation in the
program and rehospitalization under this subsection.

4 A. If the person does not fully participate in the program
and follow the individualized treatment plan and if the
6 assertive community treatment team physician or psychologist
determines, based on clinical findings, that as a result of
8 failure to fully participate or follow the individualized
treatment plan the person's mental health has deteriorated
10 so that hospitalization is in the person's best interest and
the person poses a likelihood of serious harm as defined in
12 section 3801, subsection 4, paragraph D, the assertive
community treatment team physician or psychologist shall
14 complete a certificate stating that the person requires
hospitalization and the grounds for that belief. The person
16 may agree to hospitalization or may be subject to an
application for readmission under paragraph B.

18 B. A person who participates in the progressive treatment
20 program may be rehospitalized on an emergency basis under
the provisions of section 3863 if the judicial officer
22 reviewing the certificate under section 3863, subsection 3
finds that rehospitalization is in the person's best
24 interest and that the person poses a likelihood of serious
harm as defined in section 3801, subsection 4, paragraph D.
26 This paragraph does not preclude the use of protective
custody by law enforcement officers pursuant to section 3862.

28 C. A person who participates in the progressive treatment
30 program may be committed under section 3864 if the court
reviewing the application finds that hospitalization is in
32 the person's best interest and that the person poses a
likelihood of serious harm as defined in section 3801,
34 subsection 4, paragraph D.

36 D. If the person has an advance directive or durable power
of attorney or a guardian, the advance directive may be
38 admitted into evidence and the attorney in fact or guardian
may provide testimony and evidence to the court in any
40 proceeding under this subsection. The court shall consider
but is not required to follow any directions within the
42 advance directive or durable power of attorney document or
testimony from the attorney or guardian.

44 6. Repeal. This section is repealed January 1, 2010.
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48 **PART C**

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2 **Sec. C-1. Educational and training materials.** The Department of
Health and Human Services shall develop and distribute
4 educational and training materials with input from interested
consumer, advocacy and professional organizations describing
6 assertive community treatment, guardianship, advance directives,
convalescent status, the process for medications for
8 hospitalized patients and the progressive treatment program for
distribution to the courts, judges, providers of mental health
10 services, law enforcement officials, consumers, family members
and the general public.

12 **Sec. C-2. Department rules on progressive treatment program.** The
Department of Health and Human Services shall amend its MaineCare
14 rules in Section 17, "Community Support Services," to prohibit
any provider of assertive community treatment from rejecting any
16 person participating in the progressive treatment program.

18 **Sec. C-3. Reports.** The Department of Health and Human
Services shall submit reports describing the progress in the
20 implementation and the measurable outcomes of the progressive
treatment program to the joint standing committee of the
22 Legislature having jurisdiction over health and human services
matters on or before January 1, 2007, 2008, 2009 and 2010.

24 **PART D**

26 **Sec. D-1. Appropriations and allocations.** The following
28 appropriations and allocations are made.

30 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (formerly BDS)**

32 **Mental Health Services - Community 0121**

34 Initiative: Provides funds for the additional housing costs
associated with assertive community treatment.

36	GENERAL FUND	2005-06	2006-07
38	All Other	\$113,400	\$226,800
40	GENERAL FUND TOTAL	<u>\$113,400</u>	<u>\$226,800</u>

42 **Mental Health Services - Community Medicaid 0732**

44 Initiative: Provides funds for the state share of the additional
costs associated with assertive community treatment.

46	GENERAL FUND	2005-06	2006-07
48	All Other	\$362,910	\$727,432
		<u>\$362,910</u>	<u>\$727,432</u>

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GENERAL FUND TOTAL \$362,910 \$727,432

HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly BDS)
DEPARTMENT TOTALS

	2005-06	2006-07
GENERAL FUND	\$476,310	\$954,232
DEPARTMENT TOTAL - ALL FUNDS	<u>\$476,310</u>	<u>\$954,232</u>

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (formerly DHS)

Medical Care - Payments to Providers 0147

Initiative: Provides funds for the federal share of the additional costs associated with assertive community treatment teams.

	2005-06	2006-07
FEDERAL EXPENDITURES FUND		
All Other	\$628,580	\$1,233,301
FEDERAL EXPENDITURES FUND TOTAL	<u>\$628,580</u>	<u>\$1,233,301</u>

HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (formerly DHS)
DEPARTMENT TOTALS

	2005-06	2006-07
FEDERAL EXPENDITURES FUND	\$628,580	\$1,233,301
DEPARTMENT TOTAL - ALL FUNDS	<u>\$628,580</u>	<u>\$1,233,301</u>

JUDICIAL DEPARTMENT

Courts - Supreme, Superior, District and Administrative 0063

Initiative: Provides funds for 1.5 Judges, 1.5 Security Officer positions, 1.5 Assistant Clerk positions, indigent legal services and other costs associated with the requirements of this legislation.

	2005-06	2006-07
GENERAL FUND		
POSITIONS - LEGISLATIVE COUNT	4.500	4.500
Personal Services	\$352,203	\$375,983
All Other	\$529,464	\$490,917
GENERAL FUND TOTAL	<u>\$881,667</u>	<u>\$866,900</u>

JUDICIAL DEPARTMENT
DEPARTMENT TOTALS

	2005-06	2006-07
DEPARTMENT TOTALS		

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COMMITTEE AMENDMENT "A" to S.P. 57, L.D. 151

2	GENERAL FUND	\$881,667	\$866,900
4	DEPARTMENT TOTAL - ALL FUNDS	<u>\$881,667</u>	<u>\$866,900</u>
6	SECTION TOTALS	2005-06	2006-07
8	GENERAL FUND	\$1,357,977	\$1,821,132
10	FEDERAL EXPENDITURES FUND	\$628,580	\$1,233,301
12	SECTION TOTAL - ALL FUNDS	<u>\$1,986,557</u>	<u>\$3,054,433</u>

PART E

Sec. E-1. Effective date. This Act takes effect January 1, 2006.

SUMMARY

This amendment is the majority report of the committee. The amendment replaces the bill. The amendment establishes the progressive treatment program in order to increase outpatient treatment and decrease reliance on hospitalization. The amendment does the following.

1. It amends current involuntary commitment laws and defines assertive community treatment, providing Maine Tort Claims Act protections to state employee members of the assertive community treatment, or ACT, team.

2. It amends current involuntary commitment laws to establish a type of release from involuntary mental health commitment for persons who are committed to Riverview Psychiatric Center or Bangor Mental Health Institute. Under this status, patients would be ordered by a judge to participate in the progressive treatment program, which would provide treatment and care through an assertive community treatment team for a period of 6 months. Successful completion of the progressive treatment program results in termination of progressive treatment services. Failure to fully participate and follow the individualized treatment plan that results in deterioration of the person's mental health so that hospitalization is in the person's best interest and the person poses a likelihood of serious harm results in the treatment team's applying for the person to be rehospitalized under the current emergency admission procedure. If the person is admitted on an emergency basis, and if the superintendent of a state mental health institute determines that continued hospitalization is required, within 3 days of admission an application for commitment must be filed

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2 with the court under the current involuntary commitment law. The
law is repealed in 2010.

4 3. It requires educational and training materials regarding
6 mental health treatment options, rulemaking regarding the
progressive treatment program, reports by January 1, 2007, 2008,
2009 and 2010 and an effective date of January 1, 2006.

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4. It adds an appropriations and allocations section.

FISCAL NOTE REQUIRED
(See Attached)



122nd MAINE LEGISLATURE

LD 151

LR 0913(02)

An Act To Improve the Delivery of Maine's Mental Health Services

Fiscal Note for Bill as Amended by Committee Amendment 'A'

Committee: Health and Human Services

Fiscal Note Required: Yes

Majority Report

Fiscal Note

	2005-06	2006-07	Projections 2007-08	Projections 2008-09
Net Cost (Savings)				
General Fund	\$1,357,977	\$1,821,132	\$1,893,977	\$1,969,736
Appropriations/Allocations				
General Fund	\$1,357,977	\$1,821,132	\$1,893,977	\$1,969,736
Federal Expenditures Fund	\$628,580	\$1,233,301	\$1,294,966	\$1,359,714

Fiscal Detail and Notes

This bill includes General Fund appropriations of \$476,310 in fiscal year 2005-06 and \$954,232 in fiscal year 2006-07 for the Department of Health and Human Services to support the additional costs associated with assertive community treatment teams.

This bill includes General Fund appropriations of \$881,667 in fiscal year 2005-06 and \$866,900 in fiscal year 2006-07 for the Judicial Department to support additional court hearing costs associated with the requirements of this legislation.