

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

Sec. 10. 17-A MRSA §1107, sub-§2, as repealed and replaced by PL 1995, c. 635, §6, is amended to read:

2. Violation of this section is:

A. A Class C crime if the drug is:

(1) Heroin (diacetylmorphine); ~~or~~

(2) Cocaine in the form of cocaine base and at the time of the offense the person has been convicted of any offense under this chapter or under any law of the United States, another state or a foreign country relating to scheduled drugs, as defined in this chapter. For the purposes of this paragraph, a person has been convicted of an offense on the date the judgment of conviction was entered by the court; or

(3) Methamphetamine;

B. A Class D crime if the drug is:

(1) A schedule W drug other than:

(a) Heroin (diacetylmorphine); ~~or~~

(b) Cocaine in the form of cocaine base and the person has a prior scheduled drug conviction within the meaning of paragraph A, subparagraph (2) of this section; or

(c) Methamphetamine; or

(2) A schedule X drug;

C. A Class E crime if the drug is a schedule Y or Z drug; ~~or~~

D. A Class B crime if the drug is cocaine and the quantity possessed is more than 14 grams or cocaine in the form of cocaine base and the quantity possessed is more than 4 grams; or

E. A Class B crime if the drug is methamphetamine and the quantity possessed is more than 14 grams.

See title page for effective date.

CHAPTER 423

H.P. 499 - L.D. 706

An Act to Expedite Treatment of Certain Persons with Mental Illness

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

Sec. 1. 18-A MRSA §5-802, sub-§(d), as enacted by PL 1995, c. 378, Pt. A, §1, is amended to read:

(d) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an ~~advanced~~ advance health-care directive must be made by the primary physician ~~or~~, by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863.

Sec. 2. 18-A MRSA §5-802, sub-§(i) is enacted to read:

(i) An advance health care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862.

Sec. 3. 34-B MRSA §3831, sub-§6 is enacted to read:

6. Adults with advance health care directives.
An adult with an advance health care directive authorizing mental health hospital treatment may be admitted on an informal voluntary basis if the conditions specified in the advance health care directive for the directive to be effective are met in accordance with the method stated in the advance health care directive or, if no such method is stated, as determined by a physician or a psychologist. If no conditions are specified in the advance health care directive as to how the directive becomes effective, the person may be admitted on an informal voluntary basis if the person has been determined to be incapacitated pursuant to Title 18-A, Article 5, Part 8. A person may be admitted only if the person does not at the time object to the admission or, if the person does object, if the person has directed in the advance health care directive that admission to the hospital may occur despite that person's objections. The duration of the stay in the hospital of a person under this subsection may not exceed 5 working days. If at the end of that time the chief administrative officer of the hospital recommends further hospitalization of the person, the chief administrative officer shall proceed in accordance with section 3863, subsection 5.

This subsection does not create an affirmative obligation of a hospital to admit a person consistent with the person's advance health care directive. This subsection does not create an affirmative obligation on the part of the hospital or treatment provider to provide the treatment consented to in the person's advance health care directive if the physician or

psychologist evaluating or treating the person or the chief administrative officer of the hospital determines that the treatment is not in the best interest of the person.

Sec. 4. 34-B MRSA §3862, as amended by PL 1997, c. 683, Pt. A, §20, is further amended to read:

§3862. Protective custody

1. Law enforcement officer's power. If a law enforcement officer has reasonable grounds to believe, based upon probable cause, that a person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has reasonable grounds to believe, based upon probable cause, that the person lacks capacity, the law enforcement officer:

A. May take the person into protective custody; and

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-A, section 5-802, subsection (d) to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective. If the examination occurs in a hospital emergency room, the examination may be performed by a licensed physician, a licensed clinical psychologist, a physician's assistant, a nurse practitioner or a certified psychiatric clinical nurse specialist. If the examination does not occur in a hospital emergency room, the examination may be performed only by a licensed physician or licensed clinical psychologist.

When, in formulating probable cause, the law enforcement officer relies upon information provided by a 3rd-party informant, the officer shall confirm that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, and, for a person who has an advance health care directive

authorizing mental health treatment, if the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have not been met or, in the absence of stated conditions, that the person does not lack capacity, the officer shall:

A. Release the person from protective custody and, with ~~his~~ the person's permission, return ~~him~~ the person forthwith to ~~his~~ the person's place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with ~~his~~ the person's permission, return ~~him~~ the person forthwith to the place where ~~he~~ the person was taken into protective custody; or

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

3. Certificate executed. If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a reasonable period of time, not to exceed 18 hours, pending that endorsement.

3-A. Advance health care directive effect. If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

4. Transportation costs. The costs of transportation under this section must be paid in the manner provided under section 3863. Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

See title page for effective date.

CHAPTER 424

H.P. 1419 - L.D. 2026

**An Act to Make Certain Provisions
for Exceptional Students Consistent
with Federal Laws and Regulations**

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