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CHAPTER 191

HOSPITALIZATION OF MENTALLY ILL

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SUBCHAPTER I

GENERAL PROVISIONS

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§ 2251. Definitions

Each word or term defined in this section has the meaning indicated in this section for the purposes of this chapter, unless a different meaning is plainly required by the context.

1. Department. "Department" means the Department of Mental Health and Corrections.

2. Head of hospital. "Head of hospital" means the individual in charge of a hospital, or his designee.

3. Hospital. "Hospital" means a public or private hospital or institution, or part thereof, equipped to provide in-patient care and treatment for the mentally ill.

4. Licensed physician. "Licensed physician" means an individual licensed under the laws of the State of Maine to practice medicine or osteopathy and a medical officer of the Government of the United States while in this State in the performance of his official duties.

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5. Mentally ill individual. "Mentally ill individual" means an individual having a psychiatric or other disease which substantially impairs his mental health. For the purposes of this chapter, the term "mentally ill individual" does not include mentally retarded or sociopathic individuals.

6. Patient. "Patient" means an individual under observation, care or treatment in a hospital pursuant to this chapter.
1961, c. 303, § 1.

§ 2252. Right to humane care and treatment

Every patient shall be entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

1961, c. 303, § 1.

§ 2253. Mechanical restraints and seclusion

Restraint, including any mechanical means of restricting movement, and seclusion, including isolation by means of doors which cannot be opened by the patient, shall not be applied to a patient unless it is determined by the head of the hospital or his designee to be required by the medical needs of the patient. Every use of mechanical restraint or seclusion and the reasons therefor shall be recorded and available for inspection. The limitation of the use of seclusion by this section shall not apply to maximum security installations.

1961, c. 303, § 1.

§ 2254. Right to communication and visitation

Every patient shall be entitled:

1. Mail. To communicate by sealed envelopes with the department, clergyman or his attorney and with the court, if any, which ordered his hospitalization, and to communicate by mail in accordance with the regulations of the hospital;

2. Visitors. To receive visitors unless definitely contraindicated by his medical condition; except he may be visited by his clergyman or his attorney at any reasonable time.

1961, c. 303, § 1.

§ 2255. Habeas corpus

Any individual detained pursuant to this chapter shall be entitled to the writ of habeas corpus upon proper petition by himself or a friend to any justice generally empowered to issue the writ of habeas corpus in the county in which such individual is detained.

1961, c. 303, § 1.

§ 2256. Disclosure of information

All certificates, applications, records and reports made for the purpose of this chapter and directly or indirectly identifying a patient or former patient or an individual whose hospitalization has been sought under this chapter shall be kept confidential and shall not be disclosed by any person except insofar:

1. Consent of individual. As the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent, or

2. Necessity. As disclosure may be necessary to carry out any of the provisions of this chapter, or

3. Court directive. As a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it or that failure to make such disclosure would be contrary to the public interest.

Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to his current medical condition to any members of the family of a patient or to his relatives or friends, nor the disclosure of any information concerning the patient to other hospitals, accredited social agencies or for purposes of research; nor shall this section affect the public-record status of the court docket, so called.

Any person willfully violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$500 and by imprisonment for not more than one year.

1961, c. 303, § 1.

§ 2257. Detention pending judicial determination

Notwithstanding any other provisions of this chapter, no patient with respect to whom proceedings for judicial hospitalization have been commenced shall be released or discharged during

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the pendency of such proceedings unless ordered by the probate court upon the application of the patient, or his legal guardian, parent, spouse or next of kin, or upon the report of the head of the hospital that the patient may be discharged with safety, or upon writ of habeas corpus under section 2255.

1961, c. 303, § 1.

§ 2258. Additional powers of the department

In addition to the specific authority granted by other provisions of this chapter, the department shall have authority to prescribe the form of applications, records, reports and medical certificates provided for under this chapter and the information required to be contained therein; to require reports from the head of any hospital relating to the admission, examination, diagnosis, release or discharge of any patient; to visit each hospital regularly to review the commitment procedures of all new patients admitted between visits; to investigate by personal visit complaints made by any patient or by any person on behalf of a patient; and to adopt such rules and regulations not inconsistent with this chapter as it may find to be reasonably necessary for proper and efficient hospitalization of the mentally ill.

1961, c. 303, § 1.

§ 2259. Unwarranted hospitalization or denial of rights; penalty

Any person who willfully causes, or conspires with or assists another to cause, the unwarranted hospitalization of any individual under this chapter, or the denial to any individual of any of the rights accorded to him under this chapter, shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than one year nor more than 5 years, or by both.

1961, c. 303, § 1.

SUBCHAPTER II

VOLUNTARY HOSPITALIZATION

Sec.

2291. Authority to receive voluntary patients.

2292. Discharge of voluntary patients.

2293. Right of release on application.

§ 2291. Authority to receive voluntary patients

The head of a private hospital may, and the head of a public hospital, subject, except in case of medical emergency, to the availability of suitable accommodations, may admit for observation, diagnosis, care and treatment any individual who is mentally ill or has symptoms of mental illness and who, being 16 years of age or over, applies therefor, exclusive of those persons with pending criminal action.

1961, c. 303, § 1.

§ 2292. Discharge of voluntary patients

The head of the hospital shall discharge any voluntary patient who has recovered or whose hospitalization he determines to be no longer advisable. He may discharge any voluntary patient if to do so would, in the judgment of the head of the hospital, contribute to the most effective use of the hospital in the care and treatment of the mentally ill.

1961, c. 303, § 1.

§ 2293. Right of release on application

A voluntary patient who requests his release or whose release is requested, in writing, by his legal guardian, parent, spouse or adult next of kin shall be released forthwith except that:

1. Patient admitted on own application. If the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the agreement of the patient thereto; or

2. Head of hospital certifies release unsafe. If the head of the hospital, within 10 days from the receipt of the request, files with the probate court of the county where said hospital is situated or a judge thereof, whether in session or in vacation, a certification that in his opinion the release of the patient would be un-

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safe for the patient or others, release may be postponed on application for as long as the court or a judge thereof determines to be necessary for the commencement of proceedings for judicial hospitalization, but in no event for more than 10 days.

Notwithstanding any other provision of this chapter, judicial proceedings for hospitalization shall not be commenced with respect to a voluntary patient unless release of the patient has been requested by himself or the individual who applied for his admission.

1961, c. 303, § 1.

SUBCHAPTER III

INVOLUNTARY HOSPITALIZATION

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ARTICLE 1. ADMISSION PROCEDURES

§ 2331. Authority to receive involuntary patients

The head of a private hospital may and the head of a public hospital, subject, except in case of medical emergency, to the availability of suitable accommodations, shall receive therein for observation, diagnosis, care and treatment any individual whose admission is applied for under any of the following procedures:

1. Medical certification, nonjudicial procedure. Hospitalization on medical certification; standard nonjudicial procedure.

2. Medical certification, emergency. Hospitalization on medical certification; emergency procedure.

3. Court order. Hospitalization on court order; judicial procedure.

1961, c. 303, § 1.

§ 2332. Medical certification; standard nonjudicial procedure

Any individual may be admitted to a hospital upon:

1. Application. Written application to the hospital by a friend, relative, spouse or guardian of the individual, a health or public welfare officer, or the head of any institution in which such individual may be; and

2. Certification. Certification by 2 licensed physicians that they have examined the individual and that they are of the opinion that:

A. He is mentally ill, and

B. Because of his illness is likely to injure himself or others if allowed to remain at liberty, or

C. Is in need of care or treatment in a mental hospital, and because of his illness, lacks sufficient insight or capacity to make responsible application therefor.

The certification by the licensed physicians may be made jointly or separately, and may be based on examination conducted jointly or separately. An individual with respect to whom such certification has been issued may not be admitted on the basis thereof at any time after the expiration of 15 days after the date of examination. The head of the hospital admitting the individual shall forthwith make a report thereof to the department.

Such a certificate, if it states a belief that the individual is likely to injure himself or others if allowed to remain at liberty, upon endorsement for such purpose by the District Court Judge or complaint justice within whose jurisdiction the individual is present, shall authorize any health or police officer to take the individual into custody and transport him to a hospital as designated in the application.

1961, c. 303, § 1; 1963, c. 402, § 52.

§ 2333. —Emergency procedure

Any individual may be admitted to a hospital upon:

1. **Application.** Written application to the hospital by any health or police officer or any other person stating his belief that the individual is likely to cause injury to himself or others if not immediately restrained, and the grounds for such belief; and

2. **Certification.** A certification by at least one licensed physician that he has examined the individual and is of the opinion that the individual is mentally ill and, because of his illness, is likely to injure himself or others if not immediately restrained.

An individual with respect to whom such a certificate has been issued may not be admitted on the basis thereof at any time after the expiration of 3 days after the date of examination. The head of the hospital admitting the individual shall forthwith make a report thereof to the department.

Such a certificate, upon endorsement for such purpose by the District Court Judge or complaint justice within whose jurisdiction the individual is present, shall authorize any health or police officer to take the individual into custody and transport him to a hospital as designated in the application.

1961, c. 303, § 1; 1963, c. 402, § 53.

§ 2334. Court order; judicial procedure

Proceedings for the involuntary hospitalization of an individual may be commenced by the filing of a written application with the probate court by a friend, relative, spouse or guardian of the individual, or by a licensed physician, a health or public welfare officer, or the head of any public or private institution in which such individual may be. Any such application shall be accompanied by a certificate of a licensed physician stating that he has examined the individual and is of the opinion that he is mentally ill and should be hospitalized, or a written statement by the applicant that the individual has refused to submit to examination by a licensed physician.

Upon receipt of an application the court shall give notice thereof in hand to the proposed patient, in hand or by certified mail, to his legal guardian, if known, and to his spouse, or a parent or one of his adult children, or if none of these persons exist or if their whereabouts are unknown then to one of his next of kin or to a friend. If one of the named persons is the applicant, notice to that person may be omitted but must be given to

one other of the named persons. If the court has reason to believe that notice would be likely to be injurious to the proposed patient, notice to him may be omitted.

As soon as practicable after notice of the commencement of proceedings is given or it is determined that notice should be omitted, the court shall appoint 2 licensed physicians to examine the proposed patient and report to the court their findings as to the mental condition of the proposed patient and his need for custody, care or treatment in a mental hospital.

The examination shall be held at a hospital or other medical facility, at the home of the proposed patient or at any other suitable place not likely to have a harmful effect on his health. A proposed patient to whom notice of the commencement of proceedings has been omitted shall not be required to submit to an examination against his will, and on the report of the licensed physicians of refusal to submit to an examination, the court shall give notice to the proposed patient as provided under this section and order him to submit to such examination.

If the report of the licensed physicians is to the effect that the proposed patient is not mentally ill, the court may without taking any further action terminate the proceedings and dismiss the application; otherwise, it shall forthwith fix a date for and give notice of a hearing to be held not less than 5 nor more than 15 days from receipt of the report.

Notice of the hearing shall be given at least 72 hours prior to the time of said hearing, in the same manner as is required for notice of receipt of application, to the person or persons receiving notice of receipt of application, to the applicant in hand or by certified mail, and to such other persons as the court may direct.

The proposed patient, the applicant and all other persons to whom notice is required to be given shall be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses, and the court may in its discretion receive the testimony of any other person. The proposed patient shall not be required to be present, and all persons not necessary for the conduct of the proceedings shall be excluded, except as the court may direct in its discretion. The court may order a public hearing upon the request of the patient or any member of his family. The hearings shall 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 mental health of the proposed patient. The court shall receive all relevant and material evidence which may be offered. An oppor-

tunity to be represented by counsel shall be afforded to every proposed patient, and if neither he nor others provide counsel, the court shall appoint counsel.

If, upon completion of the hearing and consideration of the record, the court finds that the proposed patient is mentally ill, and because of his illness is likely to injure himself or others if allowed to remain at liberty, or is in need of custody, care or treatment in a mental hospital and, because of his illness, lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization, it shall order his hospitalization. Otherwise, it shall dismiss the proceedings.

Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the probate court has jurisdiction to assure the carrying out of the order within such period as the court shall specify.

The court is authorized to appoint a special commissioner who shall be a member of the bar of the State to assist in the conduct of hospitalization proceedings. In any case in which the court refers an applicant to the commissioner, the commissioner shall promptly cause the proposed patient to be examined and on the basis thereof shall either recommend dismissal of the application or hold a hearing as provided in this section and make recommendations to the court regarding the hospitalization of the proposed patient.

The head of the hospital admitting a patient pursuant to proceedings under this section shall forthwith make a report of such admission to the department.

1961, c. 303, § 1; c. 407, §§ 3, 4.

§ 2335. Hospitalization by United States agency

If an individual ordered to be hospitalized pursuant to section 2334 is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of a certificate from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of such court to any hospital or institution operated by any agency of the United States within or without the State, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency and in which the individual is so hospitalized shall with re-

spect to such individual be vested with the same powers as the heads of hospitals or the department within this State with respect to detention, custody, transfer, conditional release or discharge of patients. Jurisdiction is retained in the appropriate courts of this State at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.

1961, c. 303, § 1.

§ 2336. Transfers from out-of-state institutions

The commissioner may, upon request of a competent authority of a state, or of the District of Columbia, which is not a member of the Interstate Compact on Mental Health, grant authorization for the transfer of a mentally ill patient directly to a Maine state hospital, provided said patient has resided in the State of Maine for a consecutive period of one year during the 3-year period immediately preceding commitment in such other state or the District of Columbia; that said patient is currently confined in a recognized state institution for the care of the mentally ill as the result of proceedings considered legal by that state; that a duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied; that if, after investigation, the commissioner shall deem such a transfer justifiable; and that all expenses incident to such a transfer be borne by the agency requesting same. When the commissioner has authorized such a transfer, the superintendent of the state hospital designated by him shall receive the patient as having been regularly committed to said hospital under section 2332.

1961, c. 303, § 1.

§ 2337. Members of Armed Forces; status

Any member of the Armed Forces of the United States, who was a resident of the State at the time of his induction into the service, who shall be determined by a federal board of medical officers to have a mental disease not incurred in line of duty, shall be received at either of the state hospitals for the mentally ill in the discretion of the commissioner, without formal commitment, upon delivery of such person, together with the findings of such board of medical officers that such person is mentally ill, at the hospital designated by said commissioner.

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After delivery of such person at the hospital designated by said commissioner, his status shall be the same as if he had been committed to the hospital under section 2332.

1961, c. 303, § 1.

§ 2338. **Transportation; temporary**

Whenever an individual is about to be hospitalized under section 2332, 2333 or 2334, the sheriff of the county or a state or local police officer shall, on request, arrange for the individual's transportation to the hospital with suitable attendants and by such means as may be suitable for his medical condition. Whenever practicable, the individual to be hospitalized shall be transported to the hospital by one or more of his friends or relatives, or shall be permitted to be accompanied by one or more of his friends or relatives.

Pending his removal to a hospital, a patient taken into custody or ordered to be hospitalized pursuant to this chapter may be detained in his home, a licensed foster home or any other suitable facility under such reasonable conditions as the sheriff of the county may fix, but he shall not, except because of and during an extreme emergency, be detained in a nonmedical facility used for the detention of individuals charged with or convicted of penal offenses. The sheriff of the county or his properly accredited assistant shall take such reasonable measures, including provision of medical care, as may be necessary to assure proper care of an individual temporarily detained pursuant to this section.

1961, c. 303, § 1.

ARTICLE 2. POST-ADMISSION PROVISIONS

§ 2371. **Notice of hospitalization**

Whenever a patient has been admitted to a hospital pursuant to section 2332 or 2333 on the application of any person other than the patient's legal guardian, spouse or next of kin, the head of the hospital shall notify the patient's legal guardian, spouse or next of kin, if known.

1961, c. 303, § 1.

§ 2372. Medical examination of new patients

Every patient admitted pursuant to section 2332, 2333 or 2334 shall be examined as soon as practicable after his admission.

The head of the hospital shall arrange for examination by a staff physician of every patient hospitalized pursuant to section 2333. If such an examination is not held within 3 days after the day of admission, or if a staff physician fails or refuses after such examination to certify that in his opinion the patient is mentally ill and is likely to injure himself or others if allowed to remain at liberty, the patient shall be immediately discharged.

1961, c. 303, § 1.

§ 2373. Transfer of patients

The department may transfer, or authorize the transfer of, a patient from one hospital to another either within or out of State if the department determines that it would be consistent with the medical needs of the patient to do so. Whenever a patient is transferred, written notice thereof shall be given to his legal guardian, parents or spouse, or, if none be known, his nearest known relative or friend. In all such transfers, due consideration shall be given to the relationship of the patient to his family, legal guardian or friends, so as to maintain relationships and encourage visits beneficial to the patient.

Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any individual heretofore ordered hospitalized pursuant to law or hereafter pursuant to section 2334 in any hospital for care or treatment of the mentally ill and that such individual is eligible for care or treatment in a hospital or institution of such agency, the hospital may cause his transfer to such agency of the United States for hospitalization. Upon effecting any such transfer, the court ordering hospitalization, the legal guardian, spouse or parents, or if none be known, his nearest known relative or friend and the department shall be notified thereof by the hospital. No person shall be transferred to an agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness, unless prior to transfer the court originally ordering confinement of such person shall enter an order for such transfer after appropriate motion and hearing. Any person transferred as provided in this section to an agency of

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the United States shall be deemed to be hospitalized by such agency pursuant to the original order of hospitalization.

1961, c. 303, § 1.

§ 2374. Discharge

The head of a hospital shall as frequently as practicable, but not less often than every 12 months, examine or cause to be examined every patient and whenever he determines that the conditions justifying hospitalization no longer obtain, discharge the patient and make a report thereof to the department.

1961, c. 303, § 1.

§ 2375. Convalescent status; rehospitalization

The head of a hospital may release an improved patient on convalescent status when he believes that such release is in the best interests of the patient. Release on convalescent status may include provisions for continuing responsibility to and by the hospital, including a plan of treatment on an out-patient or non-hospital patient basis. Prior to the end of a year on convalescent status, and not less frequently than annually thereafter, the head of the hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status and, if he determines that in view of the condition of the patient convalescent status is no longer necessary, he shall discharge the patient and make a report thereof to the department. Convalescent status of voluntary patients must be terminated within 10 days after receiving from the patient a request for discharge from convalescent status.

Prior to such discharge, the head of the hospital from which the patient is given convalescent status may at any time readmit the patient. If there is reason to believe that it is to the best interests of the patient who had been involuntarily admitted to be rehospitalized, the department or the head of the hospital may issue an order for the immediate rehospitalization of the patient. Such an order, if not voluntarily complied with, shall, upon the endorsement by a District Court Judge or complaint justice in the county in which the patient is resident or present, authorize any health or police officer to take the patient into custody and transport him to the hospital, or if the order is issued by the department to a hospital designated by it.

1961, c. 303, § 1; 1963, c. 402, § 54.

§ 2376. Right to release; application for judicial determination

Any patient hospitalized under section 2332 or 2333 who requests to be released or whose release is requested in writing by his legal guardian, spouse or adult next of kin shall be released within 10 days after receipt of the request except that, upon application to the probate court or a judge thereof, whether in session or in vacation, supported by a certification by the head of the hospital that in his opinion such release would be unsafe for the patient or for others, release may be postponed for such period not to exceed 10 days as the court or a judge thereof may determine to be necessary for the commencement of proceedings for a judicial determination pursuant to section 2334.

The head of the hospital shall inform involuntary patients in writing, on admission, of their right to release as provided in this section and shall provide reasonable arrangements for making and presenting requests for release.

1961, c. 303, § 1.

§ 2377. Rehearing to determine need for continuing hospitalization

Any patient hospitalized pursuant to section 2334, or if hospitalized prior to September 16, 1961 pursuant to the Revised Statutes, 1954, chapter 27, sections 104, 105, 107 and 110 shall be entitled to a re-hearing to determine his need for continuing hospitalization on his own petition, or that of his legal guardian, parent, spouse, relative or friend, to the probate court of the county in which he is detained at the time of the request for re-hearing. Upon receipt of the petition, the court shall conduct or cause to be conducted by a special commissioner, proceedings in accordance with section 2334, except that notice of receipt of application may be omitted. Such proceedings shall not be required to be conducted if the petition is filed less than 6 months after the issuance of the original order of hospitalization or less than one year after the filing of a previous petition under this section.

1961, c. 303, § 1; c. 407, § 5.

SUBCHAPTER IV

EXPENSES

Sec.

2421. Expenses of examination and commitment.

2422. Revolving fund.

§ 2421. Expenses of examination and commitment

1. Department chargeable in first instance. The probate court conducting proceedings for the involuntary judicial hospitalization of an individual under sections 2334, 2376 and 2377 shall order that the Department of Mental Health and Corrections be charged in the first instance for any expenses of examination, fees incident to giving notice, fees of attorneys when court appointed, and other proper fees and charges when hospitalization is not ordered and, when hospitalization is ordered, for any expenses of examination and commitment, including fees of attorneys, when court appointed, and fees or charges for notice when served in hand or by certified mail. The department, after being made chargeable in the first instance for such expenses, shall recover amounts paid under this section from the proposed patient if able to pay, or from persons legally liable for his support under section 2512 if able to pay or from the town of legal settlement of the proposed patient as if incurred for the expenses of a pauper. No proposed patient under sections 2334, 2376 and 2377 shall suffer any of the disabilities of pauperism or be deemed a pauper by reason of his inability to pay any of such expenses of examination or commitment.

2. Determination of settlement. If the department shall determine that neither the proposed patient nor any person liable for support under section 2512 is able to pay expenses of examination and commitment it shall certify that fact to the Department of Health and Welfare, which department shall determine whether the proposed patient has a legal settlement within the State. If it is determined that the proposed patient has a legal settlement within the State, the Department of Mental Health and Corrections shall seek reimbursement from the municipality of legal settlement. If it is determined that there is no legal settlement within the State, the Department of Health and Welfare shall reimburse the Department of Mental Health and Corrections for expenditures made under subsection 1.

3. Fees for transportation. In instances of indorsement on the certificate of the licensed physicians by the District Court or by a complaint justice, under section 2332 or 2333, for the purpose of authorizing a health or police officer to transport a patient to a hospital, fees for such transportation shall be charged in the first instance to the department. Any fee so charged shall be first approved in writing by the District Court or by a complaint justice. Reimbursement shall be sought for such expenditures as in cases of expenses incurred in probate court commitment proceedings.

1961, c. 407, § 2; 1963, c. 103.

§ 2422. Revolving fund

There is reappropriated to the department the unexpended balance of "Working Capital Reserve for Institutional Farms," Account #6397. Said sum so reappropriated shall be a revolving fund for the use of said department in carrying out the terms and purposes of section 2421. This section shall remain effective until repealed by the Legislature at which time the sum reappropriated by this section shall be repaid into the General Fund.

1961, c. 407, § 2.