

# MAINE STATE LEGISLATURE

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August 2, 1977

To: Albert St. Germaine, Director, Forensic Services, B.M.H.I.  
From: Joseph E. Brennan, Attorney General  
Re: Escape Policy

QUESTION:

May personnel from a state mental health institute take into custody a patient committed to the institute pursuant to 34 M.R.S.A. §2334 who has left the institute without permission?

ANSWER:

Personnel from a state mental health institute may take into custody a patient committed pursuant to 34 M.R.S.A. §2334 who has left the institute without permission when (1) authorized by the superintendent of the institute; (2) the patient is found in a public place; and, (3) the taking can be effected without the use of an unreasonable degree of force.

SYLLABUS:

The expeditious return to custody of escaped involuntarily committed mental patients is in the best interest of the State and may be critical to the protection of the patient and the people of the State. It is the opinion of this office that, in the furtherance of these interests, personnel from a state mental health institute may properly take into custody a patient committed pursuant to 34 M.R.S.A. §2334 who has left the institute without permission when authorized by the superintendent of the institute. Authorization by the superintendent is to be granted on a case-by-case basis and is to be limited to instances when the escaped patient is found in a public place. In effecting the return to custody, state institute personnel may only use a reasonable degree of force.

DISCUSSION:

The superintendents of the state mental health institutes have been granted authority to "receive all patients in need of special care and treatment, legally sent to the hospital. . . ." 34 M.R.S.A. § 2102. The superintendents are mandated to receive for "observation,

diagnosis, care and treatment any individual" who is involuntarily committed by court order. 34 M.R.S.A. §2331. The superintendents are also clothed with the power to determine whether a patient committed pursuant to 34 M.R.S.A. §2334 shall be discharged prior to the expiration of the period of confinement ordered by the court. The power of the superintendents to effect the return to custody of escaped patients is a logical and necessary incident to their statutory powers to detain, treat, and discharge.

At common law a private person could take into custody, without legal process, a person who was (1) mentally ill; (2) dangerous to himself or others; and, (3) in need of restraint. Appeal of Sleeper, 147 Me. 302, 87 A.2d 115 (1952). 1/ This common law power alone might support the taking into custody by hospital personnel of escaped patients. But the superintendent and hospital employees are not private persons. They are agents of the State "the duty of which, as *parens patriae* of persons of unsound mind, is to protect them, and the community from them." Warner v. State, *supra*, p. 466. Persons committed to a Maine state mental health institute pursuant to 34 M.R.S.A. § 2334 have already been adjudged by the District Court (1) to be mentally ill; (2) to pose a likelihood of serious harm to themselves or others; and, (3) to be in need of inpatient hospitalization. 34 M.R.S.A. §§2334, 2251.

These findings by the District Court not only relieve hospital personnel of determining independently the need for restraint of escaped patients but also result in commitment to the hospital of the patient. The commitment order grants to the superintendent, as head of the hospital, custody of the patient for care and treatment. 34 M.R.S.A. §§2102, 2331. The superintendent does not lose custody merely because a patient escapes; and is, therefore, justified in seeking the return of the patient. cf. 17-A M.R.S.A. § 102. In effecting the return to custody hospital personnel can legitimately use a reasonable degree of force, as an incident of their obligation to protect and treat the patient and as an incident of their public duty to seek the return of persons lawfully in custody. cf. 17-A M.R.S.A. § 107(4) (A).

Despite the sound basis upon which the superintendent of a mental health institute may properly authorize hospital personnel to take into custody an escaped patient, it is deemed advisable that such authorization be granted only on a case-by-case basis. Due consideration should be given in each case to the medical needs of the patient and the likelihood that serious harm to the patient or to others or to property may result if an immediate return to custody is not effected. In any event, an escaped patient may only be taken into custody by hospital personnel when the patient is found in a public place and when the taking can be accomplished without the use of an unreasonable degree of force.

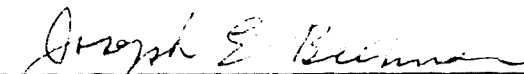
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1/ The enactment of statutes detailing the circumstances under which mentally ill persons can be restrained without a court order have been held not to supercede the common law. Orvis v. Brickman, 196 F.2d 762 (DCCA 1952), Warner v. State, 297 N.Y. 395, 79 N.E.2d 459 (1948).

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These limitations should reduce the possibility of the State, the superintendent, or hospital personnel being subjected to tort or criminal liability. Nevertheless, there is reserved to the superintendent the power to act to protect himself and the State from liability for the actions of the escaped patient.

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