

MAINE STATE LEGISLATURE

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(New Draft of: S. P. 487, L. D. 1570)

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2034

S. P. 668

In Senate, June 13, 1973

Reported by Senator Tanous of Penobscot from Committee on Judiciary and printed under Joint Rules No. 18.

HARRY N. STARBRANCH, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Revising the Laws Governing Admission to Mental
Health Facilities.

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

Sec. 1. R. S., T. 15, § 101, amended. The first sentence of the 2nd paragraph of section 101 of Title 15 of the Revised Statutes, as repealed and replaced by chapter 334 of the public laws of 1965 and as amended by section 1 of chapter 402 of the public laws of 1967, is further amended to read as follows:

If it is made to appear to the court by the report of any such examiner that the respondent suffers or suffered from a mental disease or mental defect affecting his criminal responsibility or his competence to stand trial or that further observation is indicated, the court may order the respondent committed to the custody of the Commissioner of Mental Health and Corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded, to be there detained and observed by the superintendent, or his delegate, and professional staff ~~until further order of the court~~ for a period of time not to exceed 60 days, for the purpose of ascertaining the mental condition of the respondent.

Sec. 2. R. S., T. 15, § 101, sub-§§ 1 and 2, repealed and replaced. Subsections 1 and 2 of section 101 of Title 15 of the Revised Statutes, as enacted by section 1 of chapter 402 of the public laws of 1967, are repealed and the following enacted in place thereof:

1. **Custody.** Commit the defendant to the custody of the Commissioner of Mental Health and Corrections to be placed in an appropriate institution

for the mentally ill or the mentally retarded for observation, care and treatment. Said commitment shall not exceed one year in duration. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and one year, the superintendent of the institution in which the defendant is placed shall forward a report to the Commissioner of Mental Health and Corrections relative to the defendant's competence to stand trial and his reasons therefor. The commissioner shall forthwith file the report with the court having jurisdiction of the case. The court shall forthwith set a date for, and shall hold, a hearing on the question of the defendant's competence to stand trial, and shall receive all relevant testimony bearing on the question. If the court determines that the defendant is not competent to stand trial but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, it shall recommit the defendant to the custody of the Commissioner of Mental Health and Corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded for observation. If the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that he will be competent in the foreseeable future, the court shall dismiss all charges against the defendant and notify the appropriate authorities who may institute civil commitment procedures for the individual; or

2. **Bail.** Except in the case of a defendant who is charged with the commission of an offense, the only punishment for which is life imprisonment, order the defendant's release on bail, with or without the further order that the defendant undergo observation at a state mental hospital or mental health facility approved by the Department of Mental Health and Corrections, or by arrangement with a private psychiatrist and treatment when it is deemed appropriate by the head of the hospital or clinic or by the private psychiatrist. When such outpatient observation and treatment is ordered, the head of the hospital or clinic or the psychiatrist shall, within the time specified in subsection 1, forward a report to the court containing the opinion of the head of the hospital or clinic or of the psychiatrist, relative to the defendant's competence to stand trial and his reasons therefor. The court shall forthwith set a date for and shall hold a hearing on the question of the defendant's competence to stand trial, which shall be held pursuant to and consistent with the standards set out in subsection 1.

Sec. 3. R. S., T. 15, § 101, amended. The next to the last paragraph of section 101 of Title 15 of the Revised Statutes, as enacted by section 1 of chapter 402 of the public laws of 1967, is repealed.

Sec. 4. R. S., T. 15, § 2211-A, amended. The 2nd sentence of the first paragraph of section 2211-A of Title 15 of the Revised Statutes, as enacted by section 1 of chapter 58 of the public laws of 1965 and as repealed and replaced by section 1 of chapter 403 of the public laws of 1969, is repealed and the following enacted in place thereof:

The application and certification shall be in accordance with the requirements of Title 34, section 2333.

Sec. 5. R. S., T. 15, § 2211-A, amended. The 2nd sentence of the 2nd paragraph of section 2211-A of Title 15 of the Revised Statutes, as enacted

by section 1 of chapter 58 of the public laws of 1965 and as repealed and replaced by section 1 of chapter 403 of the public laws of 1969, is amended to read as follows:

Except as otherwise specifically provided in this section, Title 34, chapter 191, subchapters I and III, except ~~sections~~ section 2373 and 2375, shall be applicable to any such person as if the admission of such person were applied for under Title 34, section 2333.

Sec. 6. R. S., T. 15, § 2211-A, amended. The 3rd paragraph from the end of section 2211-A of Title 15 of the Revised Statutes, as enacted by section 1 of chapter 58 of the public laws of 1965 and as repealed and replaced by section 1 of chapter 403 of the public laws of 1969, is repealed.

Sec. 7. R. S., T. 34, § 136-A, sub-§ 1, amended. The first paragraph of subsection 1 of section 136-A of Title 34 of the Revised Statutes, as enacted by section 3 of chapter 30 of the public laws of 1971, is repealed and the following enacted in place thereof:

When the Warden of the Maine State Prison, Superintendent of the Men's Correctional Center, Women's Correctional Center, Boys Training Center or Stevens School believes that any person in any such institution is mentally ill, requiring hospitalization and meeting requirements for admission, he shall make application in accordance with sections 2333 or 2334.

Sec. 8. R. S., T. 34, § 136-A, sub-§ 1, amended. The 2nd sentence of the 2nd paragraph of subsection 1 of section 136-A of Title 34 of the Revised Statutes, as enacted by section 3 of chapter 30 of the public laws of 1971, is amended to read as follows:

Except as otherwise specifically provided in this subsection, chapter 191, subchapters I and III, except ~~sections~~ section 2373 and 2375, shall be applicable to any such person as if the admission of such person were applied for under section 2333.

Sec. 9. R. S., T. 34, § 136-A, sub-§ 1, amended. The last paragraph of subsection 1 of section 136-A of Title 34 of the Revised Statutes, as enacted by section 3 of chapter 30 of the public laws of 1969, is repealed.

Sec. 10. R. S., T. 34, § 136-A, sub-§ 2, amended. The first paragraph of subsection 2 of section 136-A of Title 34 of the Revised Statutes, as enacted by section 3 of chapter 30 of the public laws of 1971, is repealed and the following enacted in place thereof:

When the Warden of the Maine State Prison, Superintendent of the Men's Correctional Center, Women's Correctional Center, Boys Training Center or Stevens School believes that any person, confined in any such institution is mentally ill requiring hospitalization and meeting requirements for admission, he shall make application in accordance with the requirements of section 2152.

Sec. 11. R. S., T. 34, § 2251, sub-§ 3, amended. Subsection 3 of section 2251 of Title 34 of the Revised Statutes is amended by adding at the end a new sentence to read as follows:

For the purposes of this chapter, inpatient care and treatment in a mental health center shall be included within the definition of hospital.

Sec. 12. R. S., T. 34, § 2251, sub-§ 7, additional. Section 2251 of Title 34 of the Revised Statutes, as amended by chapter 381 of the public laws of 1971, is further amended by adding a new subsection 7 to read as follows:

7. **Likelihood of serious harm.** "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person himself as manifested by evidence of threats of, or attempts at, suicide or serious bodily harm; or

B. A substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior or evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them; or

C. A reasonable certainty that severe physical impairment or injury will result to the person alleged to be mentally ill as manifested by his inability to avoid or protect himself from such impairment or injury and community resources for his care are unavailable.

Sec. 13. R. S., T. 34, § 2257, amended. Section 2257 of Title 34 of the Revised Statutes is amended to read as follows:

§ 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 the pendency of such proceedings unless ordered by the ~~probate~~ district 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.

Sec. 14. R. S., T. 34, §§ 2291-2293, repealed. Sections 2291 to 2293 of Title 34 of the Revised Statutes are repealed.

Sec. 15. R. S., T. 34, § 2331, amended. The first sentence of section 2331 of Title 34 of the Revised Statutes, as repealed and replaced by chapter 128 of the public laws of 1967, is amended to read as follows:

The head of a private hospital may receive therein for observation, diagnosis, care and treatment any individual whose admission is applied for under any of the procedures provided in this ~~section~~ chapter.

Sec. 16. R. S., T. 34, § 2331, sub-§ 1, repealed and replaced. Subsection 1 of section 2331 of Title 34 of the Revised Statutes is repealed and the following enacted in place thereof:

1. **Informal admission.** Informal admission;

Sec. 17. R. S., T. 34, § 2331, sub-§§ 2 and 3, amended. Subsections 2 and 3 of section 2331 of Title 34 of the Revised Statutes are amended to read as follows:

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

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

Sec. 18. R. S., T. 34, § 2332, repealed. Section 2332 of Title 34 of the Revised Statutes, as amended by section 1 of chapter 151 of the public laws of 1965, is repealed.

Sec. 19. R. S., T. 34, § 2333, repealed and replaced. Section 2333 of Title 34 of the Revised Statutes, as amended by section 2 of chapter 151 of the public laws of 1965, is repealed and the following enacted in place thereof:

§ 2333. —emergency procedure

Any individual may be admitted to a hospital upon:

1. **Application.** Written application which shall be made subject to the prohibitions and penalties of section 2259 to the hospital by any health officer or police officer or any other person stating his belief that the individual is mentally ill and poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A and B only, and the grounds for that belief; and

2. **Certificate.** A certification by at least one physician that he has examined the individual and is of the opinion that the individual is mentally ill, and, because of his illness poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A and B only.

Such application and certificate, upon endorsement for such purpose by a judge of probate, or the District Court Judge within whose jurisdiction the individual is present, or by a Justice of the Superior Court, shall authorize any health or police officer to take the individual into custody and transport him to a hospital as designated in the application. The county in which the individual is found shall be responsible for any expenses of transportation pursuant to this section.

If in the event that the head of the hospital recommends further hospitalization of the individual, the head of the hospital must first allow the individual an opportunity to be admitted pursuant to section 2290. If the individual declines to be admitted pursuant to section 2290, the head of the hospital may make application with the District Court Judge within whose jurisdiction the hospital is located within 72 hours after admission of the individual under this section, together with a statement of the reasons for the recommendation of continued hospitalization.

For purposes of this section, any District Court Judge shall have jurisdiction. The release of the individual may be postponed for a period not to exceed 10 days for the holding of a hearing pursuant to section 2334.

In every case of admission to a hospital of an individual, his parents, spouse, guardian, if known, next of kin or friend shall be advised and notified, after consultation with the patient, of the fact of the admission of the indivi-

dual under this section. The person or persons notified shall be invited and permitted to confer with the principal person responsible for the care of the individual at all reasonable times concerning the status and condition of the individual.

In the event that the hearing is not held within 10 days of the receipt of said request for judicial hospitalization hearing, the individual shall be discharged from the hospital by operation of law.

Sec. 20. R. S., T. 34, § 2334, repealed and replaced. Section 2334 of Title 34 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 2334. Court Order: judicial hospitalization procedure

Proceedings for the involuntary hospitalization of an individual shall be commenced by the filing of a written application with the District Court, within which jurisdiction the individual may be found, by a relative, spouse, guardian or any other person. Any such application shall be accompanied by a statement containing demonstrable evidence and facts showing that there is a likelihood of serious harm, as defined in section 2251, if the individual is not hospitalized. Such application shall be accompanied by certificate of a physician, which certificate shall contain a statement by the certifying individual that he has examined the individual and that it is his opinion that he is mentally ill, and because of his illness poses a likelihood of serious harm as defined in section 2251.

Upon receipt of the application and certificate by the District Court, the court shall cause written notice of such application to be given personally or by mail to the person alleged to be mentally ill within 5 days, and such notice shall set forth such person's rights under this section. At the same time, such notice shall also be given personally or by mail to his legal guardian, if known, and to his spouse, or to a parent, or one of his adult children, or if none of these persons exists, or if their whereabouts are unknown, then to one of his next of kin or to a friend.

The District Court shall hold a hearing on the application pursuant to section 2334 not later than 30 days from the receipt of said application and pursuant to section 2333, not later than 10 days from receipt of said application. Failure to hold a hearing within the time specified shall cause the application to be dismissed by operation of law.

Upon receipt of the application, the court shall forthwith cause the individual alleged to be mentally ill to be examined by 2 physicians, one of whom shall be chosen by the person alleged to be mentally ill or his counsel, who shall examine the individual and report to the court within 3 days of the examination their findings in writing as to the mental condition of the individual and whether he poses a likelihood of serious harm due to mental illness, as defined in section 2251. If the application is made pursuant to section 2333, the examiners must consider whether the individual poses a likelihood of serious harm within the definition as contained in section 2251, subsection 7, paragraphs A and B only.

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. If the report of the physicians is to the effect that the proposed patient is not mentally ill or does not pose a likelihood of serious harm as defined in section 2251, or both, the court shall immediately terminate the proceedings and dismiss the action and if the individual is hospitalized, order his immediate release from hospitalization; otherwise the hearing shall be held on the day court has set for hearing.

The hearing 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 person for whom the hospitalization is sought. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions. The individual involved, 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 to cross-examine witnesses, and the court may in its discretion receive the testimony of any other person. The hearing shall be confidential and no report of the proceedings shall be released to the public or press, except by permission of the individual or his counsel, and with approval of the presiding District Court Judge. The court may order a public hearing on the request of the person for whom the hospitalization is sought, or his counsel.

An opportunity 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 who shall be paid by the District Court.

The court shall have the power to subpoena any witnesses. A stenographic or electronic record of the proceedings in all judicial hospitalization hearings shall be required, and such record, together with all notes, exhibits and other evidence, shall be made a permanent part of the District Court records, and kept available for transcription.

If, upon completion of the hearing and consideration of the record, the court finds by a preponderance of the evidence that the subject individual is mentally ill and because of his illness poses a likelihood of serious harm, it shall so state its findings. It shall be the responsibility of the presiding justice to cause exploration of all alternatives to commitment to a mental hospital, including continued residency in the community and outpatient treatment at a mental health facility. The court may order commitment to a mental hospital for a period of not to exceed 3 months in the first instance, and not to exceed 6 months after the first rehearing, and not to exceed one year after all subsequent rehearings; otherwise it shall dismiss the proceedings and order the individual for whom the hospitalization was sought discharged and if hospitalized, released from hospitalization.

Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place to provide transportation to any hospital to which the court has committed an individual. The District Court shall be responsible

for any expenses incurred. At the end of 2 months, after the initial court commitment, and at the end of 5 months after the first rehearing, and at the end of 11 months after each subsequent rehearing, the head of the hospital shall determine whether continued hospitalization is necessary for the court committed patient. If he so determines that continued hospitalization is necessary, he shall make application in accordance with this section to the District Court which has territorial jurisdiction where the hospital is located for a hearing to be held pursuant to this section.

Sec. 21. R. S., T. 34, § 2335, amended. Section 2335 of Title 34 of the Revised Statutes is amended by adding after the 2nd sentence a new sentence to read as follows:

However, he shall retain all rights to release and periodic court review as contained within this chapter.

Sec. 22. R. S., T. 34, § 2336, amended. The last sentence of section 2336 of Title 34 of the Revised Statutes is amended to read as follows:

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~~ 2334.

Sec. 23. R. S., T. 34, § 2337, amended. The last paragraph of section 2337 of Title 34 of the Revised Statutes is amended to read as follows:

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~~ 2334.

Sec. 24. R. S., T. 34, §§ 2338 and 2371, repealed. Sections 2338 and 2371 of Title 34 of the Revised Statutes are repealed.

Sec. 25. R. S., T. 34, § 2372, amended. Section 2372 of Title 34 of the Revised Statutes is amended to read as follows:

§ 2372. Medical examination of new patients

Every patient admitted pursuant to sections ~~2332, 2333 or 2334~~ to a hospital 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~~ 24 hours after the ~~day~~ time 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~~ due to his mental illness poses a likelihood of serious harm as defined in section 2251, the patient shall be immediately discharged.

Sec. 26. R. S., T. 34, § 2374, sub-§ 4, amended. Subsection 4 of section 2374 of Title 34 of the Revised Statutes, as enacted by chapter 141 of the public laws of 1969, is amended by adding at the end a new sentence to read as follows:

Except that if the patient is directly admitted to another hospital and it is the opinion of the head of the first hospital that the patient will directly re-enter the first hospital within the foreseeable future, the patient need not be discharged.

Sec. 27. R. S., T. 34, § 2374, amended. The first sentence of the last paragraph of section 2374 of Title 34 of the Revised Statutes, as enacted by chapter 141 of the public laws of 1969, is amended to read as follows:

The head of a hospital may discharge, or cause to be discharged, any patient, and forward a report thereof to the department when the patient, and either the legal guardian, spouse or adult next of kin of the patient, request his discharge, although at the time of such request the patient is mentally ill and appropriately hospitalized in a mental hospital, but in the opinion of the head of the hospital he ~~is not likely to injure himself or others~~ does not pose a likelihood of serious harm due to such mental illness.

Sec. 28. R. S., T. 34, §§ 2376, 2377, 2421 and 2422 repealed. Sections 2376, 2377, 2421, as amended by section 25-A of chapter 494 of the public laws of 1967, and 2422 of Title 34 of the Revised Statutes are repealed.

Sec. 29. Procedure to be followed for those hospitalized upon the effective date of this Act. Any person hospitalized in a mental hospital on the effective date of this Act shall be considered to be present in a hospital as an informal patient under the provisions of section 2290 of Title 34 as amended by this Act. Each such person shall be personally informed, verbally and in writing, of his rights under chapter 191 of Title 34 as amended by this Act within 15 days from the effective date of this Act. And within the same period, any such person whom the head of the hospital determines to be mentally ill and to pose a likelihood of serious harm within the terms of paragraphs A, B and C of subsection 7 of section 2251 of Title 34, as amended by this Act, shall be discharged from the hospital and may be readmitted there-to under section 2333 of Title 34, as amended by this Act. In view of the size of this potential class and the potential burden upon the district court system imposed by the necessity for the filing of multiple applications for judicial hearings under section 2334 of Title 34 as amended by this Act in instances of readmission provided for in this section, the 10-day hearing requirement of section 2333 of Title 34 as amended by this Act shall be inoperative as to all such cases, and all such hearings held under section 2334 of Title 34 as amended by this Act shall be held within 90 days from the effective date of this Act.

Sec. 30. Reappropriation to Department of Mental Health and Corrections to assist in defraying District Court costs. There is reappropriated to the Department of Mental Health and Corrections the unexpended balance of the fund heretofore reappropriated to said department by section 2 of chapter 407 of the Public Laws of 1961, including any sums allocated thereto by transfer prior to the effective date of this Act. Said sum shall constitute a fund for the use of said department to assist the Maine District Court, upon request therefrom, in defraying the expenses incurred in connection with hearings conducted under section 30 of this Act.

All accounts receivable on the books of account of the Department of Mental Health and Corrections owing to the State upon the effective date of this Act under Title 34, section 2421, shall be reviewed by the Department of the Attorney General and wherever feasible, as determined by that department, shall be collected and paid into the reappropriated fund established by this Act. Any balance remaining in the reappropriated fund established by this Act, on June 30, 1974, shall lapse to the General Fund.

STATEMENT OF FACT

This bill is proposed to bring the mental health laws into compliance with constitutional requirements as interpreted by the federal courts.