

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1204

S. P. 368

In Senate, March 21, 1975

Referred to Committee on Health and Institutional Services. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Amending Laws Relating to Hospitalization of the Mentally Ill.

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

Sec. 1. 4 MRSA § 157, as last amended by PL 1973, c. 788, § 6, is further amended by inserting after the 2nd sentence the following:

One of the judges at large shall have as his primary responsibility the conduct of proceedings pursuant to Title 34, section 2334.

Sec. 2. 15 MRSA § 2211-A, last sentence of the first ¶, as last amended by PL 1973, c. 716, § 1, is amended to read:

The application and certification shall be in accordance with the requirements of Title 34, section 2333 ~~or 2333-A~~ if applicable.

Sec. 3. 15 MRSA § 2211-A, last sentence of 2nd ¶, as last amended by PL 1973, c. 716, § 1, is further amended to read:

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

Sec. 4. 15 MRSA § 2211-A, first sentence of the last ¶, as enacted by PL 1973, c. 716, § 2, is amended to read:

In addition to the authority given by this section to apply for the involuntary admission to a state hospital for the mentally ill of a person confined in the county jail, a person confined in a county jail, **when such hospitalization is**

recommended by a licensed physician or licensed psychologist, shall be allowed to apply for informal admission to a state hospital for the mentally ill under Title 34, section 2290.

Sec. 4-A. 34 MRSA § 136-A, sub-§ 1, first 3 sentences, as last amended by PL 1973, c. 716, § 3, are further amended to read:

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 2333-A if applicable~~. Any such person with respect to whom such application and certification are made may be admitted to either state hospital for the mentally ill. Except as otherwise specifically provided in this subsection, chapter 191, subchapters I and III, except section 2373, shall be applicable to any such person as if the admission of such person were applied for under section 2333 ~~or section 2333-A if applicable~~.

Sec. 5. 34 MRSA § 2251, sub-§ 8 is enacted to read:

8. Licensed psychologist. "Licensed psychologist" means an individual licensed under the laws of the State of Maine as a psychologist and who practices clinical psychology.

Sec. 6. 34 MRSA § 2332-A is enacted to read:

§ 2332-A. Emergency restraint and transportation

Any law enforcement officer in the State having reasonable grounds to believe, based upon his personal observation, that any person is a mentally ill individual and that due thereto he presents a threat of imminent and substantial physical harm to himself or to other persons, may take such person into protective custody and deliver such person without unnecessary delay for examination by the nearest known and available licensed physician or licensed psychologist as provided for in section 2333.

In the event that a certificate of mental illness and likelihood of serious harm shall not be executed by the examiner under section 2333, the officer shall have authority to return the person forthwith to the place at which he was taken into protective custody or to his place of residence.

Costs of transportation furnished under this section shall be paid as are costs of transportation provided under section 2333.

Sec. 7. 34 MRSA § 2333, sub-§ 1, as last repealed and replaced by PL 1973, c. 716, § 6, is amended to read:

1. Admission. Any person may be admitted to a hospital upon:

A. 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 person is a mentally ill individual 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~~, B, or C, and the grounds for that belief; and

B. Certificate. A dated certificate by a licensed physician or a licensed psychologist who practices clinical psychology that he has examined the person on the date of the certificate and is of the opinion that the person is a mentally ill individual 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~~, B or C; provided, however, that the date of such ~~certificate examination~~ shall not be more than 3 days prior to the date of the application for admission to which it relates admission to the hospital. Such application and certificate, upon endorsement for such purpose by a judge of probate, a District Court Judge, a Superior Court Justice or a Complaint Justice, shall authorize any health or police officer to take the person whose admission is applied for into custody and transport him to a hospital as designated in the application. The county in which such person is found shall be responsible for any expenses of transportation pursuant to this section, including return if admission is declined.

Sec. 8. 34 MRSA § 2333, sub-§ 2, ¶ B, as last repealed and replaced by PL 1973, c. 716, § 6, is amended to read:

B. If the head of the hospital determines that admission of the patient as an informally admitted patient is not suitable, or if the patient declines admission as an informally admitted patient, the head of the hospital may apply to the District Court having territorial jurisdiction where the hospital is located, for the issuance of an order for hospitalization under section 2334 within 5 days from admission of the patient under this section, ~~excluding in the computation of such time the date of admission and any Saturday, Sunday or legal holiday. In the computation of this time, the day of admission shall not be counted and intermediate Saturdays, Sundays and legal holidays shall not be counted. If the 5th day falls on a Saturday, Sunday or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday.~~

Sec. 9. 34 MRSA § 2333-A, as enacted by PL 1973, c. 716, § 7, is repealed.

Sec. 10. 34 MRSA § 2334, first ¶, as last repealed and replaced by PL 1973, c. 716, § 8, is amended to read:

An application to the District Court filed pursuant to section 2333 ~~or 2333-A~~ shall be accompanied by a copy of the original emergency application, a copy of the physician's or psychologist's certificate and a statement showing that there is a likelihood of serious harm, as defined in section 2251, subsection 7, paragraph A, ~~or B or C if the patient is hospitalized under section 2333, or section 2251, subsection 7, paragraph C, if the patient is hospitalized under section 2333-A.~~ Each application shall be accompanied by a certificate of a licensed physician or a licensed psychologist who practices clinical psychology, which certificate shall contain a statement by the examiner that he has examined the patient and that it is his opinion that he is a mentally ill individual and, because of his illness, poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, ~~or B or C if the patient is hospitalized under section 2333, or section 2251, subsection 7, paragraph C, if the patient is hospitalized under section 2333-A.~~

Sec. 11. 34 MRSA § 2334, 4th ¶, as last repealed and replaced by PL 1973, c. 716, § 8, is amended to read:

Upon receipt of the application, the court shall forthwith cause the patient to be examined by 2 examiners, either of whom shall be either a licensed physician or a licensed psychologist who practices clinical psychology and one of whom, if reasonably available, shall be chosen by the patient or by his counsel; neither examiner appointed by the court shall be the certifying examiner under section 2333.

Sec. 12. 34 MRSA § 2334, 2nd sentence of the 5th ¶, as last repealed and replaced by PL 1973, c. 716, § 8, is amended to read:

If the report of the examiners is to the effect that the patient is not mentally ill or does not pose a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, or B or C ~~if the patient is hospitalized under section 2333 or paragraph C of subsection 7 of section 2251, if the patient is hospitalized under section 2333~~ A, the application shall be dismissed and the patient shall be ordered discharged forthwith.

Sec. 13. 34 MRSA § 2334, 6th ¶, as last repealed and replaced by PL 1973, c. 716, § 8, is amended by inserting after the 3rd sentence the following new sentence:

In addition to proving that the patient is a mentally ill individual and poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraphs A, B or C, the applicant is required to prove that inpatient hospitalization is the least drastic means appropriate for the treatment of such person. The applicant in each case shall submit to the court prior to the time of hearing an individualized treatment plan to be followed by the hospital staff in the event of commitment under this section.

Sec. 14. 34 MRSA § 2334, 9th and 10th ¶¶, as last repealed and replaced by PL 1973, c. 716, § 8, are amended to read:

If, upon completion of the hearing and consideration of the record, the court finds by a preponderance of the evidence that the patient is mentally ill and because of his illness poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraphs A, B or C, and that inpatient hospitalization is the least drastic means appropriate for treatment of the patient and that an individualized treatment plan has been submitted to the court, it shall so state in the record and it may order commitment on the basis thereof. ~~If application is made under section 2333, the court may find that the patient poses a likelihood of serious harm under paragraph C of subsection 7 of section 2251 and may order commitment on the basis thereof only if it also finds that at the time of admission to a hospital under section 2333, the patient then posed a likelihood of serious harm as defined in paragraph A or B of said subsection 7~~

~~The court shall consider 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 4 months in the first instance, and not to exceed one year after the first and all subsequent rehearings, which order may issue immediately or the court may take the matter under advisement and issue the order within 2 business days of the court from the com-

pletion of the hearing; otherwise, it shall dismiss the application and the patient shall be ordered discharged forthwith.

Sec. 15. ~~34~~ **MRSA § 2372, 2nd ¶**, as amended by PL 1973, c. 716, § 9, is further amended to read:

The head of the hospital shall arrange for examination by a staff physician or clinical psychologist of every patient hospitalized pursuant to section 2333 ~~or 2333-A~~. ~~The examiner shall not be the certifying examiner under section 2333.~~ If such an examination is not held within 24 hours after the time of admission, or if a staff physician or clinical psychologist fails or refuses after such examination to certify that in his opinion the patient is a mentally ill individual and due to his mental illness poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, ~~or B or C if the patient was admitted under section 2333 and under paragraph C if the patient was admitted under section 2333-A~~, the patient shall be immediately discharged.

STATEMENT OF FACT

Community hospitals in the state having inpatient psychiatric units are without suitable accommodations in most instances to provide long-term care for involuntarily admitted patients falling within the definition set forth in 34 M.R.S.A. § 2251, sub-§ 7, ¶ C. The result is that in nearly every instance such persons are referred to state mental health institutes. Because of this inability to receive and care for such patients on the part of community hospitals, needless and burdensome paper work accompanies each referral, and in many instances District Court proceedings are complicated by the necessity for a determination as to whether application in such instances has been initially made to community hospitals nearest geographically to the place of residence of the patient. This Act alleviates this situation by permitting direct commitments to the state mental health institute of persons falling within such category.

The Act clarifies certain provisions of the law relating to time periods for application and examination.

The Act places upon the applicant for involuntary hospitalization the burden of demonstrating to the court that involuntary inpatient hospitalization is the least drastic means appropriate for treatment of the patient and further places upon the applicant the requirement that an individualized treatment plan be submitted to the court as a condition precedent to commitment for involuntary hospitalization.

District Court hearings, since the major revision of the hospitalization of the mentally ill laws in 1973, have occupied an inordinate amount of District Court time in District 3 and District 7 of the District Court system, requiring the courts to continuously adjust their calendars. This serious burden upon these 2 courts and the resultant delays caused in the conduct of court business can be alleviated by the assignment of one District Court judge at

large with primary responsibility for the conduct of mental health commitment proceedings.

This Act codifies the common law rule with respect to the authority of a law enforcement officer to impose temporary restraints upon a person whose observable acts establish a reasonable ground to believe that the person is a mentally ill individual and presents a threat of imminent and substantial harm to himself or other persons. The Act sets forth in the definition section of Title 34, section 191, the definition of "licensed psychologist". The Act eliminates the possibility of one professional being the certifying examiner in connection with an emergency admission, the hospital's certifying examiner following admission and an examiner appointed by the court for the purposes of involuntary commitment proceedings.