

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1389

S. P. 422

In Senate, April 2, 1975

Referred to Committee on Judiciary. 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 to Amend the Alcoholism Intoxication and Treatment Act.

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

Sec. 1. 22 MRSA § 1372, sub-§ 1, as enacted by PL 1973, c. 582, § 1, is amended by adding at the end a new sentence to read:

To determine if a person is intoxicated, the police or emergency service patrol may request the person to submit to any reasonable test, including, but not limited to tests of his coordination, breath and coherency of speech.

Sec. 2. 22 MRSA § 1372, sub-§ 2, as enacted by PL 1973, c. 582, § 1, is repealed and the following enacted in place thereof:

2. Any person who appears to be incapacitated by alcohol or who, as the result of the use of alcohol, is disorderly or is likely to cause or incur physical harm to himself or another, may be taken into protective custody by a law enforcement officer and assisted, with or without his consent, to a public or private treatment facility, an emergency medical service customarily used for incapacitated persons or a police facility. For purposes of this section, the term law enforcement officer shall include state police officers, municipal police officers, sheriffs, deputy sheriffs, state liquor inspectors, game wardens, constables and any person whose duty it is to enforce any criminal law of this State by making arrests. A police facility is any place regularly used for lawful detention of persons.

Whenever a person is assisted to a police facility, the officer in charge of said facility or his designee shall immediately notify the nearest approved public treatment facility that such person is being held in protective custody. If appropriate treatment is available at an approved public treatment facility,

the treatment facility shall, whenever possible, provide transportation to the treatment facility and the police shall transfer custody of the person to the treatment facility. Any person assisted by a law enforcement officer to a police facility shall have the right to make one phone call at his own expense on his own behalf. The officer in charge shall inform the person of this right upon his arrival at the police facility.

No person assisted to a police facility pursuant to this section shall be held in protective custody against his will; provided however, that if appropriate treatment at or transportation to an approved public treatment facility is unavailable such person may be held in protective custody at a police facility until he is no longer incapacitated, disorderly or likely to cause or incur injury to himself or another, or for a period not to exceed 12 hours, whichever is shorter.

The law enforcement officer, in detaining the person and in taking him to an approved public treatment facility, emergency medical service or police facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining law enforcement officer may take reasonable steps to protect himself.

A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime; provided however, a record of custody shall be made indicating the date and time the person was placed in protective custody, the place of custody, the time of release and the disposition of the person. Such record shall not be treated for any purposes as an arrest or criminal record; it shall be confidential and not made available to the public except upon court order or with the written permission of the person placed in custody or pursuant to proceedings instituted under sections 7119 or 7120. Records of custody shall be made available, upon request, to the Office of Alcoholism and Drug Abuse Prevention for official use only and shall be treated as confidential.

Sec. 3. 22 MRSA § 1372, sub-§ 3, as enacted by PL 1973, c. 582, § 1, is repealed and the following enacted in place thereof:

3. A person who comes voluntarily or is brought to an approved public treatment facility shall be evaluated forthwith by a registered nurse experienced and trained in alcoholism diagnosis or by a licensed physician. The person may then be admitted as a patient or referred to another public or private health facility. The referring approved public treatment facility shall arrange for his transportation.

Sec. 4. 22 MRSA § 1372, sub-§ 4, as enacted by PL 1973, c. 582, § 1, is amended to read:

4. A person, who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the ~~facility~~ approved public treatment facility once he is no longer incapacitated by alcohol, or if he re-

mains incapacitated by alcohol for more than 48 hours after admission as a patient, unless he is committed under section 1373. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

Sec. 5. 22 MRSA § 7118, sub-§ 1, as enacted by PL 1973, c. 566, § 1, is amended by adding at the end a new sentence to read:

To determine if a person is intoxicated, the police or emergency service patrol may request the person to submit to any reasonable test, including, but not limited to, tests of his coordination, breath and coherency of speech.

Sec. 6. 22 MRSA § 7118, sub-§ 2, as enacted by PL 1973, c. 566, § 1, is repealed and the following enacted in place thereof:

2. Any person who appears to be incapacitated by alcohol or who, as the result of the use of alcohol, is disorderly or is likely to cause or incur physical harm to himself or another, may be taken into protective custody by a law enforcement officer and assisted, with or without his consent, to a public or private treatment facility, an emergency medical service customarily used for incapacitated persons or a police facility. For purposes of this section, the term law enforcement officer shall include state police officers, municipal police officers, sheriffs, deputy sheriffs, state liquor inspectors, game wardens, constables and any person whose duty it is to enforce any criminal law of this State by making arrests. A police facility is any place regularly used for lawful detention of persons.

Whenever a person is assisted to a police facility, the officer in charge of said facility or his designee shall immediately notify the nearest approved public treatment facility that such person is being held in protective custody. If appropriate treatment is available at an approved public treatment facility, the treatment facility shall, whenever possible, provide transportation to the treatment facility and the police shall transfer custody of the person to the treatment facility. Any person assisted by a law enforcement officer to a police facility shall have the right to make one phone call at his own expense on his own behalf. The officer in charge shall inform the person of this right upon his arrival at the police facility.

No person assisted to a police facility pursuant to this section shall be held in protective custody against his will; provided however, that if appropriate treatment at or transportation to an approved public treatment facility is unavailable such person may be held in protective custody at a police facility until he is no longer incapacitated, disorderly or likely to cause or incur injury to himself or another, or for a period not to exceed 12 hours, whichever is shorter.

The law enforcement officer, in detaining the person and in taking him to an approved public treatment facility, emergency medical service or police facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining law enforcement officer may take reasonable steps to protect himself.

A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime; provided however, a record of custody shall be made indicating the date and time the person was placed in protective custody, the place of custody, the time of release and the disposition of the person. Such record shall not be treated for any purposes as an arrest or criminal record; it shall be confidential and not made available to the public except upon court order or with the written permission of the person placed in custody or pursuant to proceedings instituted under sections 7119 or 7120. Records of custody shall be made available, upon request, to the Office of Alcoholism and Drug Abuse Prevention for official use only and shall be treated as confidential.

Sec. 7. 22 MRSA § 7118, sub-§ 3, as enacted by PL 1973, c. 566, § 1, is repealed and the following enacted in place thereof:

3. A person who comes voluntarily or is brought to an approved public treatment facility shall be evaluated forthwith by a registered nurse experienced and trained in alcoholism diagnosis or by a licensed physician. The person may then be admitted as a patient or referred to another public or private health facility. The referring approved public treatment facility shall arrange for his transportation.

Sec. 8. 22 MRSA § 7118, sub-§ 4, as enacted by PL 1973, c. 566, § 1, is amended to read:

4. A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the ~~facility~~ **approved public treatment facility** once he is no longer incapacitated by alcohol, or if he remains incapacitated by alcohol for more than 48 hours after admission as a patient, unless he is committed under section 7119. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

STATEMENT OF FACT

Because Maine covers a large geographic area and because there are only approximately 17 residential public treatment facilities, police are required to transport incapacitated persons over long distances, thereby expending valuable manhours and financial resources. The present law thus has a built-in tendency to discourage police from contacting and assisting those who are most in need of their assistance. This bill would remedy this problem, by allowing the police to transport an incapacitated person to an approved public treatment facility or a police station. If the police officer assists a person to a police station, he must immediately inform the nearest treatment facility that such person is being held in protective custody. The burden of transporting the person to a treatment facility then lies with the facility. If the facility arranges for transportation of the person, the police must release any person placed under protective custody to the treatment facility. If the fa-

cility, after being notified, does not make arrangements for the transportation of the incapacitated person to the facility, he may be held at the police station until he is no longer incapacitated or for 12 hours, whichever is shorter.

This bill serves the interests of both the police and the alcoholism treatment community because the public is protected from the disorderly or unlawful actions of the "Saturday night drunk" while at the same time this person is guaranteed an opportunity to receive professional treatment in a noncorrectional setting.