

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1422

H. P. 1130

House of Representatives, March 24, 1975

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Kennedy of Gray.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning the Confidentiality of Records Held by the Department of Mental Health and Corrections, Certain Hospitals and Other Facilities.

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

Sec. 1. 34 MRSA § 1, last 2 sentences, are repealed as follows:

~~All orders of commitment, medical and administrative records in the department are held to be confidential. Such records may be subpoenaed by a court of record~~

Sec. 2. 34 MRSA § 1-A is enacted to read:

§ 1-A. Disclosure of information

All order of commitment, medical and administrative records, applications and reports and facts therein pertaining to any persons receiving services from the department, from any hospital pursuant to chapter 191, or from any facility licensed by the department pursuant to section 2052-A, 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, having been given the opportunity to review the information sought to be disclosed shall consent, or

2. Necessity. As disclosure may be necessary to carry out any of the statutory functions of the department, or the hospitalization provisions of chapter 191, or

3. Court directive. As may be subpoenaed by a court of record subject to any limitations contained within privileged communication provisions of Title 32, or

4. Individual's request. As the individual receiving services shall request to see his or her own records, provided that, at the same time, he or she consents to receive an explanation of the contents of those records by a professional employed by the department.

As to persons receiving services pursuant to chapters 191, 184-A, 184-B and 187, nothing in this section shall preclude disclosure, upon proper inquiry, of information relating to the physical condition or mental status of an individual receiving such services to any members of his or her family, his or her relatives or friends; nor the disclosure of biographical or medical information concerning the individual to commercial or governmental insurers, or any other corporation, association or agency from which the department may receive reimbursement for the care and treatment, education, training or support of the individual; nor the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any individual receiving such services in connection with any educational or training program, established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training program, the patient's identity shall remain undisclosed.

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 or by imprisonment for not more than 11 months, or by both.

Sec. 3. 34 MRSA § 1-B is enacted to read:

§ 1-B. Destruction or return of confidential records

Any individual who has received services from the department, from any hospital pursuant to chapter 191, or from any facility licensed by the department pursuant to section 2052-A, may, no sooner than one year after those services have ended, request that any confidential records concerning that individual which are held by that department, hospital or facility, or by any person or entity which has received any copies or information taken from those confidential records held by that department, hospital or facility, be destroyed or returned to that individual. Failure to comply with a request made under this section shall be punishable by a fine of not more than \$500 or by imprisonment for not more than 10 days.

Sec. 4. 34 MRSA § 2159, as last amended by P & SL 1973, c. 53, is repealed.

Sec. 5. 34 MRSA § 2256, as last amended by PL 1969, c. 135, § 2, is repealed.

STATEMENT OF FACT

This bill would repeal all existing statutory provisions relating to the confidentiality of records and information concerning those persons receiving services from the Department of Mental Health and Corrections and enact

one, comprehensive provision which, while allowing disclosure under specific instances, would ensure that records and information concerning persons who do receive such services, are kept confidential. The new section is partially patterned upon and would replace existing section 2256 as well as part of section 1 which only applies to Pineland Center and the 2 mental health institutes and hospitals providing mental health services. That part of section 1 which is proposed to be repealed has been so restrictive as to prevent disclosure of information when such disclosure has been requested by the individual involved and consented to by the department, as well as when such disclosure has been necessary in order to carry out statutory functions of the department.

This Act also provides that a patient who has not received services from a state mental health facility or from certain other facilities and hospitals for at least one year may have confidential records concerning him or her either destroyed or given to that patient.