

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1807

H. P. 1219

House of Representatives, March 26, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Talbot of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

**AN ACT to Provide Minimum Standards for the Protection of the Rights of
Residents of Public Institutions.**

Sec. 1. 34 MRSA c. 2 is enacted to read:

CHAPTER 2

RIGHTS OF RESIDENTS OF PUBLIC INSTITUTIONS

§ 25. Definitions

The listed terms as used in this chapter are defined as follows, unless a different meaning is plainly required by the context.

1. Public institution. "Public institution" means any penal, correctional or juvenile institution or facility, mental health institution or facility, institution or facility for the mentally retarded, county jail, municipal lockup or other institution administered under or regulated by this Title.

2. Resident. "Resident" means any person sentenced, committed or otherwise legally admitted to, or temporarily detained at, a public institution, either voluntarily or involuntarily.

§ 26. Declaration of purpose and intent.

This chapter shall be liberally construed to promote the intent of the Legislature as follows.

1. Rights of an ordinary citizen. The central principle underlying all rules, regulations, procedures, and practices relating to residents of public institutions shall be that such persons shall retain all rights of an ordinary

citizen, except those expressly or by necessary implication taken from them by law.

2. Rights enumerated. Such rights include but are not necessarily limited to nutritious food in adequate quantities; adequate professional medical care; an acceptable level of sanitation, ventilation, light, and a generally healthful environment; housing, providing for not less than 50 square feet of floor space per person in any confined sleeping area; reasonable opportunities for both indoor and outdoor physical exercise and recreational activities; and protection against any physical or psychological abuse or unnecessary indignity.

3. Standards to prevent inhumane treatment. Persons in control of public institutions shall be held responsible for maintaining minimum standards and shall make use of every resource available to them to prevent inhumane treatment of residents by employees, other residents, or by any other persons.

4. Protect against suicide or other self-destructive acts. Measures shall be instituted and maintained within public institutions to protect against suicide or other self-destructive acts.

5. Protect against the theft or destruction of such personal property. All reasonable methods shall be used to protect against the theft or destruction of such personal property of residents as may be permitted within the institution.

§ 27. Inhumane treatment prohibited

Inhumane treatment of residents includes, but is not limited to the following acts or activities, and are prohibited:

1. Corporal punishment. Corporal punishment or otherwise imposing physical pain upon a resident as a punitive measure;

2. Use of physical force. Any use of physical force by an employee except that which is reasonably necessary for self-defense, for the prevention or interruption of an assault by a resident upon himself or another person or for the prevention of a riot or escape;

3. Sexual or other assaults. Sexual or other assaults upon residents by personnel or other residents;

4. Punitive or restrictive measure. Any punitive or restrictive measure taken by the administration or personnel of a public institution in retaliation for a resident's assertion of his rights as guaranteed by Maine law and the Maine and United States Constitutions;

5. Degrading actions. Any action intended to degrade the resident, including insults and verbal abuse; and

6. Discriminatory treatment. Any discriminatory treatment based upon a resident's race, religion, nationality, or political beliefs.

§ 28. Isolation, seclusion, or solitary confinement

A resident may be segregated alone from the rest of the population of a public institution in a special room or cell only under the following conditions.

1. Diet of persons being segregated. During such segregation the resident shall receive daily the normal diet of residents in the general institutional population.

2. Segregation areas. The room or cell in which the resident is segregated shall be at least as large as other cells in the institution and shall be adequately lighted during daylight hours. Bedding, clothing, running water and toilet facilities normal to the general institutional population shall be provided. Such items may not be removed as a punitive measure, but may only be removed temporarily when the resident occupant, through the misuse thereof, presents a threat of imminent harm to the health or safety of himself or to that of other persons. Any such item so removed shall be returned to the room or cell as soon as the threat of any such harm ceases. The removal of any such item from the room or cell shall be undertaken only when, after consideration of available means to treat the behavior of the resident occupant, such removal is considered to be the least drastic effective means for treating such behavior. If the removal of any such item from the room or cell is temporarily necessary as defined above, the institutional physician available to the institution at the time shall certify in writing the reasons therefor, as defined above, at 12-hour intervals until all items so removed are returned to the resident occupant, and at all times the resident occupant shall be provided with bedding, clothing, and sanitation facilities adequate to protect his health.

3. Segregation not permitted for punishment. A resident may not be kept in a special segregation facility solely for punishment and may be so segregated only under conditions of emergency, as defined as a situation in which the resident, through demonstrated behavior, presents a threat of imminent harm to himself or to other persons or presents a threat of imminent and substantial destruction of property. Segregation under such circumstances shall not be continued for a period longer than that which is required by the emergency.

While in segregation, a resident's right of access to his attorney, the courts, or to administrative representatives associated with the institution's grievance procedure shall not be abridged or denied, and a resident who is segregated from the institution's population shall retain all normal institutional rights to receive and send mail, receive publications, meet with visitors and members of the news media, and participate daily in adequate indoor and outdoor exercise.

4. Authority to segregate. No resident shall be placed in a segregation room or cell without the approval in writing of the highest ranking administrator on duty at the institution at the time, and the reasons for the original placement of the resident in a segregation room or cell, and the reasons for continued placement in such a room or cell beyond 6 hours, if necessary under conditions of emergency, shall be attested in writing at 6-hour intervals by the highest ranking administrator on duty at the institution at the time, until the resident is returned to the general institutional population.

5. Medical visits to be made upon segregation. When any resident is kept in a special segregation room or cell for a period in excess of 24 hours,

the head of the institution shall cause the institutional or private physician or psychiatrist to visit the resident forthwith, and at least once in each succeeding 24-hour period in segregation thereafter, to examine into the state of health of the resident. In addition, if the resident is exhibiting suicidal behavior, he shall be examined immediately upon being placed in segregation, and the resident's family shall be notified of his suicidal condition. The head of the institution shall give full consideration to any recommendation of the institutional or private physician or psychiatrist, as to the resident's dietary needs and condition of his segregation required to maintain the health of the resident. The segregation of any resident shall be discontinued if the attending physician or psychiatrist indicates that such segregation might be harmful to the mental or physical health of the resident.

6. Report to be made when resident segregated. In the event that any resident is segregated from the general institutional population for a period in excess of 2 days, the head of the institution shall forward a report thereof to the commissioner giving the reasons therefor. As to any resident kept in a special segregation facility with respect to whom the recommendations of the attending physician or psychiatrist are not carried out, a report thereof with the reasons therefor shall be forwarded by the head of the institution to the commissioner. No resident shall be kept in a special segregation facility for a period in excess of 5 days unless the attending physician or psychiatrist certifies then, and at 5-day intervals, that the resident, if released to the general institutional population would present a threat of imminent harm to himself or to other persons, or would present a threat of imminent and substantial destruction of property.

7. Log to be maintained. A log in a bound book shall be maintained at or near any special segregation room or cell, and employees in charge of such rooms or cells shall be responsible for recording all admissions, releases, visits to the room or cell, and other events except those of the most routine nature.

§ 29. Disciplinary procedure

The department, as to the state penal, correctional and juvenile institutions, and the several county sheriffs, as to the county jails, shall develop and describe in writing a fair and orderly procedure for processing disciplinary complaints against residents and shall establish rules, regulations, and procedures to insure the maintenance of a high standard of fairness and equity. The rules shall prescribe offenses and the punishments for them that may be imposed. Any punishment that may affect the term of commitment, sentence, or parole eligibility of a resident of a public institution shall not be imposed without an impartial hearing at which the resident shall have a right to be present, to present evidence on his own behalf, to cross-examine adverse witnesses, and to be represented by counsel or counsel substitute of his choice. A resident shall be informed in writing of the specific nature of his alleged misconduct, and a record shall be maintained of all disciplinary complaints, hearings, proceedings and the dispositions thereof. In all cases, residents shall have the right to appeal final dispositions to higher authority, and if at any stage of the proceedings the resident is cleared of all charges, all references to the disciplinary complaint shall be expunged.

§ 30. Grievance procedure

The commissioner shall establish a formal grievance procedure to which all residents shall have access. Residents shall be entitled to report any grievance, whether or not it charges a violation of this chapter, and to mail such communication to the commissioner. The grievance procedure established shall provide for an investigation, aside from any investigation made by the institution or department, of all alleged grievances by a person or agency outside of the department, and for a written report of findings to be submitted to the department and the resident within a reasonable time.

§ 31. Public access to residents of public institutions

Residents of public institutions and members of the general public have an absolute right to meet and communicate with each other, limited only by the reasonable requirements of institutional security and order and the likelihood that such access would present a threat of imminent harm to persons or present a threat of imminent and substantial destruction of property.

Each resident of a public institution shall have daily visiting privileges, and the commissioner, or sheriffs as to county jails, shall establish rules and regulations permitting attorneys of record, representatives of the news media, relatives, and friends to visit and talk in private with any resident or group of residents of an institution at reasonable times and limited only by the requirements of this section. In addition, the institution and its residents may be visited at any time by members of the State Legislature, judges of the criminal or appellate courts, the Attorney General, and the Governor or his designees.

If any application for a visit to a resident of a public institution is denied, the applicant or resident may apply to the Superior Court for an order directing the head of the institution to permit the visit. Such order shall be granted after notice and hearing if it is found that the person is a representative of a public concern regarding the conditions of the institution; he is not a mere curiosity seeker; and it is not established by the head of the institution that the visit, or any aspect of it, would present the clear threats to persons or property enumerated in this section.

§ 32. Judicial relief

A resident, or group of residents, alleging institutional abuses in violation of this chapter, may petition the Superior Court for relief. The court may afford the following remedies.

1. Finding that allegations without merit. It may make a finding that the allegations are without merit.

2. Issuance of injunction. It may issue an injunction, prohibitive or mandatory, or utilize any remedy in law or equity.

3. Prohibition of further commitments. It may prohibit further commitments to the institution.

4. Order that institution be closed. If the abuses are found to be extensive and persistent, it may order the institution closed subject to a stay of a

reasonable period, not to exceed 6 months, to permit the responsible authorities to correct the abuses. If the abuses are not corrected to the satisfaction of the court, it may order residents of the institution so closed, transferred to the nearest appropriate institution meeting prescribed standards and having available room for additional residents. The cost of transfer, support and return of such residents shall be paid by the institution from which such residents are transferred.

§ 33. Willful denial of rights; penalty

Any person found to have willfully or maliciously violated the provisions of this chapter shall be punished by a fine of \$1,000 for each offense, or imprisonment for any term of years, or both.

Sec. 2. 34 MRSA § 701, as last repealed and replaced by PL 1971, c. 397, § 3, is repealed and the following enacted in place thereof:

§ 701. Forms of imprisonment

Imprisonment in the State Prison shall require that convicts, including inmates transferred to the prison under appropriate sections of this Title, work at tasks normal to the maintenance, service, industrial, and other activities of the prison. All residents of the prison, including inmates transferred to the prison, shall be subject to the rules and statutory guidelines for the prison regarding disciplinary action, administrative segregation, and solitary confinement.

Sec. 3. 34 MRSA § 709, as repealed and replaced by PL 1971, c. 397, § 5, is repealed and the following enacted in place thereof:

§ 709. Disciplinary action; punishment

Punishment for violation of the rules of the State Prison may be imposed in accordance with the procedures set forth in the rules and regulations governing the State Prison. Punishment may consist of warnings, loss of privileges, loss of good conduct time, confinement to an ordinary cell, hard labor, or a combination thereof, excepting corporal punishment.

Sec. 4. 34 MRSA § 2259 is amended to read:

§ 2259. Unwarranted hospitalization or denial of rights; penalty

Any person who willfully causes, or conspires with or assists another to cause, the unwarranted hospitalization of any individual under this chapter, or the denial to any individual of any of the rights accorded to him under this chapter Title, shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not less than one year nor more than 5 years, or by both subject to the provisions of section 33.

STATEMENT OF FACT

This legislation creates a general "bill of rights" for residents of Maine Mental Health and Correctional Institutions in order to prohibit mistreatment of such persons while they are being treated, serving their sentences, or simply being held in custody in such facilities.

The legislation is adapted from model legislation recommended for public institutions by the National Council on Crime and Delinquency.