

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2146

H. P. 1957 House of Representatives, January 30, 1976
Referred to the Committee on Health and Institutional Services. Sent up
for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT to Provide Service for the Mentally Retarded.

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

34 MRSA c. 184, sub-cc. II and III are enacted to read:

SUBCHAPTER II
INSTITUTIONS

§ 2065. Pineland Center

Pineland Center, heretofore established at New Gloucester in the County of Cumberland, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and may be maintained for care and treatment of persons who are between the ages of 6 and 16 who are mentally ill.

The head of the Pineland Center shall be called the superintendent. The commissioner shall, with the advice and consent of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Superintendent of the Pineland Center. The appointment shall be for a term of 2 years initially and then an indeterminate term during the pleasure of the commissioner and the Maine Committee on Problems of the Mentally Retarded, or until his successor is appointed and qualified. The superintendent shall be a qualified psychiatrist, a qualified hospital administrator, a qualified psychologist or a person with a Master's Degree in Education, Social Work, Public Administration or Public Health. In making the appointment, the commissioner and the Maine Committee on Problems of the Mentally Retarded shall give due consideration to the appointee's qualifications and ex-

perience in health matters. The superintendent shall be responsible for the training, education, treatment and care of all persons received into the Pineland Center. He shall be responsible for the release of all such persons, except those placed in the Pineland Center under Title 15, sections 101 or 103. He shall have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Pineland Center, subject to the approval of the department.

§ 2066. Aroostook Residential Center

Aroostook Residential Center, heretofore established at Presque Isle in the County of Aroostook, shall be maintained for the purpose of providing training and education, as well as living accommodations for mentally retarded individuals, in order that they may attend education and training programs in the City of Presque Isle. The residential center shall be operated pursuant to policies adopted by the Director of the Bureau of Mental Retardation, approved by the commissioner. The residential center shall be operated primarily for living accommodations or training or education, or both, of mentally retarded persons who are able to benefit from available programs provided that pursuant to policies adopted for its operation, the residential center may be used for living accommodations or training and education, or both, by any mentally retarded person, who is able to benefit from available programs. The director of the residential center shall be responsible for the administration of the residential center, subject to the policies established for its operation. The commissioner, with the advice and consent of the Maine Committee on Problems of the Mentally Retarded, shall appoint and set a salary for the director of the center. The director shall be a person qualified by education and experience to administer a residential facility for the mentally retarded.

Cost of education and training for children of school age provided by the residential center shall be payable by the administrative unit wherein any such child is entitled to public school privileges, as provided in Title 20, section 859. Payments for such costs shall be in accordance with Title 20, chapter 404. Payments for the cost of board at the residential center, whenever applicable, shall be in accordance with Title 20, section 3561.

In instances in which the residential center is utilized for purposes other than those for which payment is provided in the 2nd paragraph of this section, including but not limited to, the provision of residential services for mentally retarded persons during the summer months and the provision of residential services in connection with vocational rehabilitation programs for mentally retarded persons, the residential center may receive payment of such costs in accordance with such rates from any public or private agency providing financial assistance to, or on behalf of, the mentally retarded person.

All amounts received by the residential center under this section shall be paid to the General Fund.

§ 2067. Elizabeth Levinson Center

The Elizabeth Levinson Center, heretofore established at Bangor in the County of Penobscot, shall be maintained primarily for the care, treatment and training of the mentally retarded and shall be administered by a director

pursuant to the policies established by the Director of the Bureau of Mental Retardation, approved by the commissioner. The commissioner, with the advice and consent of the Maine Committee on Problems of the Mentally Retarded, shall appoint and set a salary for the director of the center. The director shall be a person qualified by education and experience to administer a residential facility for the mentally retarded.

SUBCHAPTER III ADMISSIONS

§ 2068. Definitions

Each word or term defined in this section has the meaning indicated in this section for the purposes of this subchapter, unless a different meaning is plainly required by the context.

1. Department. "Department" means the Department of Mental Health and Corrections.
2. Bureau. "Bureau" means the Bureau of Mental Retardation.
3. Director. "Director" means the Director of the Bureau of Mental Retardation.
4. Comprehensive evaluation. "Comprehensive evaluation" means a 2-stage process by which:
 - A. An investigation and report is made by a competent social worker of the respondent's home environment; and
 - B. An examination of the respondent is performed by a professional to determine whether the respondent is mentally retarded and if so, is incapable of engaging in planned behavior as a result thereof, providing, such professional shall take into account the respondent's home environment as set out in the aforementioned report.
5. Professional. "Professional" means a person licensed by the State to practice medicine or osteopathic medicine or psychology.
6. Mentally retarded. "Mentally retarded" means subaverage intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior.
7. Court. "Court" means the District Court, District VII, Southern Division.
8. Respondent. "Respondent" means the person whose commitment or continued commitment is being sought in any proceedings under this subchapter.
9. Institution. "Institution" means Pineland Center, Aroostook Residential Center or the Elizabeth Levinson Center.

§ 2069. Admissions

An individual shall be committed to the care of the Bureau of Mental Retardation within an institution solely pursuant to this subchapter.

1. Involuntary commitment; verified petition. Proceedings for the involuntary commitment of a person shall be commenced by the filing of a verified petition with the District Court, District VII, Division of Southern Kennebec, in the manner and form prescribed by the Bureau of Mental Retardation. Any such verified petition shall contain an allegation that the respondent is mentally retarded and as a result thereof is incapable of engaging in self-maintaining behavior, together with a statement of the factual grounds for that belief.

2. Court determination. Upon receipt of the verified petition, the court shall review the sufficiency of the petition and if it determines the petition meets the requirements of subsection 1, and that the statement of factual grounds for the belief of the petitioner bears a reasonable relationship to the allegation that the respondent is mentally retarded and as a result thereof is incapable of engaging in self-maintaining behavior, shall forthwith cause written notice of such verified petition to be given personally or by mail to the respondent. At the same time, notice shall be mailed to the respondent's legal guardian, if known, and to his spouse, or to a parent, or to one of his adult children, or if none of these persons exist, or if their whereabouts are unknown, then to one of his next of kin or to a friend. A docket entry shall be sufficient evidence that such notice has been mailed.

3. Evaluation of respondent. Upon receipt of the verified petition and following the issuance of the notice required in subsection 2, the court shall cause a comprehensive evaluation of the respondent to be performed and shall order the respondent to cooperate with such an evaluation. A copy of the evaluation report shall be submitted to the court which shall forthwith send a copy to the respondent or his counsel and to the director. If it appears to the court that the respondent will not comply with the order for evaluation, the court may issue a warrant authorizing evaluation of the respondent's home environment and may order the sheriff to take the respondent into protective custody and transport him immediately to an institution or other suitable place for up to 48 hours for completion of the evaluation. Following completion of the evaluation or at the end of 48 hours, whichever is sooner, the respondent shall be permitted to return home and shall be provided transportation to his home by the sheriff.

4. Determination by bureau. Upon receipt of the copy of the evaluation report, the director shall determine whether the bureau is willing and has the resources to provide services to the respondent. If the bureau is not willing or lacks the resources to provide services, or both, it shall forthwith notify the court which shall order the pending cause dismissed forthwith. If the bureau is willing and has the resources to provide services to the respondent, the bureau shall forthwith develop a detailed treatment plan outlining the nature of the training, approximate length of time each phase of training should take, together with the institution or other location in which the respective phases of training will be carried out. The plan shall be submitted to the court with a copy to the respondent or his counsel. In developing this plan, the bureau shall rely upon the comprehensive evaluation as provided in subsection 3, unless it determines additional evaluation is needed, in which event it shall make application to the court for an order to perform said eval-

uation which shall be at the bureau's expense. Copies of this evaluation report shall be furnished to the court and to the respondent or his counsel.

5. Notice of hearing. A hearing to be held with accordance with section 2070 shall be held as soon as possible following receipt by the court of all required documents. The court shall cause timely notice of the time and place of the hearing to be given personally or by mail to the respondent, the director and the affiant. A docket entry shall be sufficient evidence that such notice has been mailed. Continuances may be granted by the court for good cause shown upon motion by the respondent, the bureau or upon the court's own motion.

§ 2070. Hearing

The hearing required by section 2069 shall be held before the District Court in as informal a setting as may be consistent with orderly procedure. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence. To the extent not inconsistent with this chapter, the hearing shall be conducted in accordance with the Maine Rules of Civil Procedure. The Office of the Attorney General shall represent the bureau in these hearings and the bureau shall have the burden of presenting to the court a case for a finding that the respondent should be committed to the care of the bureau.

An opportunity to be represented by counsel shall be afforded to every respondent, and if neither he nor others provide counsel, the court shall appoint counsel. The court shall have the power to subpoena any witnesses. A stenographic or electronic record of the proceedings shall be required, and such record, together with all notes, exhibits and other evidence shall be confidential and shall be retained as a part of the District Court records for a period of 2 years from the date of the hearing.

The hearing shall be confidential and no report of the proceeding shall be released to the public or press, except by permission of the respondent or his counsel and with the approval of the presiding district court judge. The hearing shall be closed to the public unless counsel for the respondent requests that the hearing be open to the public.

The respondent shall not be compelled to testify and shall be so advised of this right by the court at the beginning of the proceeding.

The issues before the court in this proceeding shall be whether the respondent is mentally retarded, whether the respondent is incapable of engaging in self-maintaining behavior as a result of his mental retardation and whether the Bureau of Mental Retardation has the available resources to maximize the respondent's potential for engaging in self-maintaining behavior.

The court shall consider whether the treatment plan submitted by the bureau is designed to maximize the respondent's potential for engaging in planned behavior and may order alterations as it deems appropriate. Should the court order commitment to the bureau, the court shall approve that treatment plan which it finds is designed to maximize the respondent's potential to engage in self-maintaining behavior.

If, upon completion of the hearing and consideration of the record, the court finds by a preponderance of the evidence that the respondent is mentally retarded and is incapable of engaging in planned behavior as a result of mental retardation, the court may order the respondent committed to the custody of the bureau for a period not to exceed one year in accordance with the treatment plan approved by the court. In considering the adequacy of the treatment plan to maximize the respondent's potential for engaging in planned behavior, the court shall place primary emphasis on approving a plan which embodies the least restrictive environment for the respondent in each phase of training.

If at any time it is determined by the director that the respondent could be treated in a less restrictive environment than that provided in any aspect of the treatment plan, the director shall so alter the treatment plan to provide such an environment and shall immediately send notification of the alteration to the court and to counsel for the respondent.

The director may discharge the respondent from his commitment to the bureau at any time the director finds that the respondent is capable of engaging in self-maintaining behavior or has maximized his potential for engaging in self-maintaining behavior.

The district court shall be responsible for any expenses incurred under this subchapter, except as otherwise provided by law, including fees of appointed counsel, witness fees, evaluation costs and expenses of transportation of the respondent.

Thirty days before the expiration of the period of commitment ordered by the court, the director shall determine whether the respondent continues to be incapable of engaging in self-maintaining behavior as a result of mental retardation and whether further treatment is necessary to maximize the respondent's ability to engage in self-maintaining behavior. If the determination is made that further treatment is necessary and that the bureau has the resources to provide such additional treatment, the director may initiate commitment proceedings in accordance with section 2069.

§ 2071. Respite care

Notwithstanding any other provisions of this subchapter, the director of an institution may admit for respite care any mentally retarded person in need of such care, who does not object, upon application by the parent or legal guardian of such person or any other person with whom the mentally retarded individual resides.

STATEMENT OF FACT

This bill provides for services for the mentally retarded at Pineland Center, Aroostook Residential Center and the Elizabeth Levinson Center.