

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 2222

S. P. 698

In Senate, February 18, 1976

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

HARRY N. STARBRANCH, Secretary

Presented by Senator Hichens of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SIX

AN ACT Relating to Mental Health and Retardation Programs in the
Department of Mental Health and Corrections.

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

Sec. 1. 15 MRSA § 101, 3rd ¶, first sentence, as last amended by PL 1973, c. 547, § 1, is further amended to read:

If it is made to appear to the court by the report of any such examiner that the respondent suffers or suffered from a mental disease or mental defect affecting his criminal responsibility or his competence to stand trial or that further observation is indicated, the court may order the respondent to be further examined by designees of the Commissioner of Mental Health and Corrections who shall determine if admission to an appropriate institution for the mentally ill or mentally retarded is necessary for determination of the mental condition of the respondent. If the examination by such designees can be completed without admission, a report of the results of such completed examination shall be forwarded to the court forthwith. If the designated examiners of the Commissioner of Mental Health and Corrections determine that admission to an appropriate institution for the mentally ill or mentally retarded is necessary for complete examination, they shall so notify the court which may order the respondent committed to the custody of the Commissioner of Mental Health and Corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded, to be there detained and observed by the superintendent, or his delegate, and professional staff for a period of time not to exceed 60 days, for the purpose of ascertaining the mental condition of the respondent.

Sec. 2. 15 MRSA § 103 is repealed and the following enacted in place thereof:

§ 103. Commitment of persons acquitted on basis of mental disease or defect

When a respondent is acquitted by reason of mental disease or mental defect excluding responsibility, the verdict and judgment shall so state. In such case, the court shall order such person committed to the Augusta Mental Health Institute or the Bangor Mental Health Institute to be there held and treated. A copy of such order shall be delivered to the District Court having territorial jurisdiction where the hospital is located and such order shall be considered and have the same effect as an application made to the District Court under Title 34, section 2333. The District Court shall then hold a hearing in accordance with Title 34, section 2334 to determine whether the acquitted person should be involuntarily committed to either the Augusta Mental Health Institute or the Bangor Mental Health Institute for care and treatment.

Sec. 3. 34 MRSA § 1-A, as enacted by PL 1975, c. 495, § 2, is repealed.

Sec. 4. 34 MRSA §§ 1-B and 1-C, are enacted to read:

§ 1-B. Disclosure of information

All orders 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 give his informed written consent;

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 ordered by a court of record subject to any limitations contained within the privileged communication provisions of Title 32.

As to persons receiving services pursuant to chapters 184-A, 184-B, 187 and from any facility licensed by the department pursuant to section 2052-A, 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 his spouse or next of kin; 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 or licensee of 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.

§ 1-C. Access to and transfer of information

1. Access to communications by persons engaged in research or statistical compilation. Persons engaged in statistical compilation or research may have access to treatment records of persons receiving services pursuant to chapters 184-A, 184-B, 187 and from any facility licensed by the department pursuant to section 2052-A, when needed for research, provided such access is approved by the director of the mental health facility or his designee and provided such communications and records shall not be removed from the mental health facility which prepared them. Data which does not identify patients or coded data may be removed from a mental health facility provided the key to such code shall remain on the premises of the facility. Where the person engaged in research or statistical compilation is to have access to communications and records, the research plan first shall be submitted to and approved by the head of the mental health facility or his designee. The head of the mental health facility, together with the person doing the research, shall be responsible for the preservation of the anonymity of the patient or recipient of service and shall not disseminate data which identifies the recipient by name, number or combination of characteristics which together could lead to his identification.

2. Transfer of information to Commissioner of Mental Health and Corrections; storage of records and communications. Any facility licensed by the department pursuant to section 2052-A or a facility which receives funds from the department or has or is receiving funds under the Mental Retardation and Community Mental Health Centers Construction Act of 1963, P.L. 88-164, as amended, shall transmit information and records, if requested, to the Commissioner of Mental Health and Corrections pursuant to his obligation to maintain the overall responsibility for the care and treatment of the mentally ill. The Commissioner of Mental Health and Corrections may collect and use such information and records for administration, planning or research, subject to section 1-B, subsection 3. Personally identifying data, other than case number or other code, shall be removed from all records and reports of information before issuance from the mental health facility which prepared them, and a code, the key to which shall remain in possession of the issuing facility, shall not be available to any other person. This code shall be the exclusive means of effecting an identification of service recipients. The key to such a code shall not be available to any data banks in which the information is stored or to any other persons, corporations or agencies, private or governmental. The department shall not release or disseminate to any other person, agency or department of government any information which identifies an individual recipient of services by name, numbers, address, birthdate or other characteristics or combination of characteristics which could lead to the individual's identification, except as otherwise required by law.

Sec. 5. 34 MRSA § 2151, first ¶, as amended by P&SL 1973, c. 53, is repealed and the following enacted in place thereof:

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, except as provided in section 2155, who are mentally ill.

Sec. 6. 34 MRSA § 2152, first ¶, as last amended by P&SL 1973, c. 53, is further amended to read:

The Superintendent of the Pineland Center ~~subject, except in the case of emergency admittance, to the availability of suitable accommodations, shall~~ may receive for observation, diagnosis, training, education, treatment or care any person whose admittance is applied for under any of the following procedures.

STATEMENT OF FACT

This Act provides that pretrial observations for mental illness or defect ordered by the court may be conducted in county jails when appropriate. The Act provides that persons found innocent by reason of mental disease or defect shall be accorded a District Court hearing to determine whether the acquitted person should be involuntarily committed to a mental health institute.

The Act modifies and extends procedures relating to the confidentiality of client records while providing for appropriate use of information for research purposes. The Act makes permissive the obligation of Pineland Center to serve mentally ill children.