

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 911

H. P. 705

House of Representatives, March 9, 1977

On motion of Mr. Spencer of Standish, referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Goodwin of South Berwick.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to the Commitment of Mentally Ill Individuals to State
Mental Hospitals.

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

Sec. 1. 34 MRSA § 225I, sub-§ 7, ¶ C, as amended by PL 1973, c. 716, § 4, is further amended to read:

C. A reasonable certainty that severe impairment or injury will result to the person alleged to be mentally ill as manifested by evidence of his actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after exploration and exhaustion of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable.

Sec. 2. 34 MRSA § 2333, as last amended by PL 1975, c. 559, §§ 7 and 8, is repealed and the following enacted in its place:

§ 2333. Emergency procedure

1. Admission. A person may be admitted to a hospital after the hospital has received an application and certificate pursuant to the following provisions.

A. A written application, which shall be made subject to the prohibitions and penalties of section 2259, may be made by any health officer, police officer or any other person who states:

(1) His belief that the person is a mentally ill individual and, because of his illness, poses a likelihood of serious harm, as defined under section 225I, subsection 7, paragraph A, B or C; and

(2) The grounds for this belief.

B. The written application shall be accompanied by a dated certificate signed by a licensed physician or a licensed psychologist who practices clinical psychology. In the certificate the physician or psychologist shall state that:

(1) He has examined the person on the date of the certificate; and

(2) He is of the opinion that the person is a mentally ill individual, and because of his illness, poses a likelihood of serious harm as defined under section 2251, subsection 7, paragraph A, B or C.

The date of such examination shall not be more than 3 days prior to the date of admission to the hospital.

C. Such application and accompanying certificates shall be endorsed by a District Court judge or a Superior Court justice. Prior to endorsing the application and certificate, the judge or justice shall be satisfied that sufficient evidence has been presented to him so that he is convinced that:

(1) There is probable cause to believe that the person poses a likelihood of serious harm as defined under section 2251, subsection 7, paragraph A, B or C; and

(2) There is reason to believe that the person must be kept in custody pending a full hearing pursuant to section 2334.

No person shall be held against his will in the hospital unless the application and certificate have been endorsed by the judge or justice.

D. Upon the court's endorsement of the application and certificate, any health officer or police officer shall be authorized to take the person into custody and transport him to a hospital as designated in the application. The county in which such person is found shall be responsible for any expenses of transportation for the person pursuant to this section, including return if admission is declined.

2. Continuation of hospitalization. In the event that the head of the hospital recommends further hospitalization of the patient, the head shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient, as described in section 2290.

A. If the head of the hospital determines that admission of the patient as an informally admitted patient is suitable, the patient if he so desires, shall be admitted on this basis.

B. If the head of the hospital determines that admission of the patient as an informally admitted patient is not suitable, or if the patient declines admission as an informally admitted patient, the head of the hospital may apply to the District Court having territorial jurisdiction where the hospital is located, for the issuance of an order for hospitalization under section 2334. The head of the hospital shall make any such application to the District Court within 2 days from admission of the patient under this section,

excluding in the computation of such time the date of admission and any Saturday, Sunday or legal holiday.

C. Upon admission of a person under this section and after consultation with the person, notice of fact of admission shall be mailed to his legal guardian, if known, his spouse, his parent, or adult child, or, if none of these persons exists or if their whereabouts are unknown, then to one of his next of kin or a friend.

3. Discharge. If neither readmission nor application to the District Court is effected under subsection 2, paragraph A or B, the patient shall be discharged forthwith.

Sec. 3. 34 MRSA § 2334, as last amended by PL 1975, c. 559, §§ 10-14, is repealed and the following enacted in its place:

§ 2334. Judicial procedure and commitment

1. Application to District Court. An application to the District Court filed pursuant to section 2333 shall be accompanied by a copy of:

- A. The original emergency application;
- B. The certificate completed by either the licensed physician or licensed psychologist who practices clinical psychology; and
- C. The statement by the examining physician or psychologist that:
 - (1) He has examined the patient; and
 - (2) It is his opinion that the patient is a mentally ill individual and, because of his illness, poses a likelihood of serious harm, as defined in section 2251, subsection 7, paragraph A, B or C.

2. Notice of receipt of application. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1, the court shall cause written notice of such application:

- A. To be given personally or by mail to the patient within a reasonable time prior to hearing, but not less than 3 days prior to hearing; and
- B. To be mailed to the patient's legal guardian, if known, and to his spouse, parent or adult child; or, if none of these persons exist or if their whereabouts are unknown, to one of his next of kin or a friend.

A docket entry shall be sufficient evidence that such notice has been given.

3. Examination.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1, the court shall forthwith cause the patient to be examined by 2 examiners, either of whom shall be either a licensed physician or a licensed psychologist who practices clinical psychology, and one of whom, if reasonably available, shall be chosen by the patient or by his counsel. Neither examiner appointed by the court shall be the certifying examiner under section 2333 or under section 3272.

B. The examination shall be held at the hospital or any other suitable place not likely to have a harmful effect on the mental health of the patient.

C. If the report of the examiners is to the effect that the patient is not mentally ill or does not pose a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, B or C, the application shall be ordered discharged forthwith. Otherwise the hearing shall be held on the date or continued date the court has set for the hearing.

4. Hearing.

A. The District Court shall hold a hearing on the application not later than 7 days from the date of the application. On a motion by the patient, the hearing may be continued for cause for a period not to exceed 10 additional days. If the hearing is not held within the time specified or a continuance thereof, the application shall be dismissed and the patient shall be ordered discharged forthwith. In computing the time periods set forth in this paragraph, the District Court Civil Rules of Procedure shall apply.

B. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the mental health of the patient.

C. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions. The patient, the applicant, and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. The court may in its discretion receive the testimony of any other person and shall have the power to subpoena any witness.

D. An opportunity to be represented by counsel shall be afforded to every patient. If neither the patient nor others provide counsel, the court shall appoint counsel for the patient.

E. In addition to proving that the patient is a mentally ill individual, the applicant shall show:

(1) By evidence of the patient's actions and behavior, that the patient poses a likelihood of serious harm, as defined in section 2251, subsection 7, paragraph A, B or C; and

(2) That, after a full exploration and exhaustion of less restrictive treatment settings and modalities, inpatient hospitalization is the means best available for the treatment of the patient.

F. The applicant in each case shall submit to the court at the time of hearing, testimony indicating the individualized treatment plan to be followed by the hospital staff in the event of commitment under this section. Any expense for witnesses for this purpose shall be borne by the applicant.

G. A stenographic or electronic record of the proceedings in all judicial hospitalization hearings shall be required. Such record, together with all notes, exhibits and other evidence shall be confidential and shall be retained

as part of the District Court records for a period of 2 years from the date of the hearing.

H. The hearing shall be confidential. No report of the proceedings shall be released to the public or press, except by permission of the patient or his counsel and with approval of the District Court judge. The court may order a public hearing on the request of the patient or his counsel.

5. Findings of and action by the court.

A. If, upon completion of the hearing and consideration of the record, the District Court:

(1) Finds clear and convincing evidence that the patient is mentally ill and that his recent actions and behavior demonstrate that his illness poses a likelihood of serious harm as defined in section 2251, subsection 7, paragraph A, B or C;

(2) Finds that inpatient hospitalization is the means best available for treatment of the patient; and

(3) Is satisfied with the individual treatment plan offered by the hospital;

it shall so state in the record and it may order commitment on the basis thereof.

B. The court may order a commitment to a mental hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent rehearings.

C. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing.

D. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and the patient shall be ordered discharged forthwith.

6. Continued involuntary hospitalization. At the end of 3 months after the initial court commitment, and at the end of 11 months after the first and each subsequent rehearing, the head of the hospital shall determine whether continued involuntary hospitalization is necessary for the court committed patient. If he so determines that continued involuntary hospitalization is necessary, he shall make application in accordance with this section to the District Court which has territorial jurisdiction where the hospital is located for a hearing to be held pursuant to this section.

7. Transportation to hospital. Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place to provide transportation to any hospital to which the court has committed the patient.

With the exception of expenses incurred by the applicant pursuant to subsection 4, paragraph F, the District Court shall be responsible for any ex-

penses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the patient.

STATEMENT OF FACT

Section 1 of the bill amends the definition of "likelihood of serious harm," a term which is used to determine whether an individual's mental illness is of sufficient severity to warrant an emergency or involuntary admission to a state mental hospital. Under the present definition "likelihood of serious harm" means any of the following 3 things:

(1) A substantial risk of physical harm to the person himself (e.g., through suicide);

(2) A substantial risk of physical harm to other persons (e.g., through homicidal or other violent behavior); or

(3) A reasonable certainty that severe physical injury will result to the person and a determination that community resources are unavailable to the person.

Under present law evidence must be shown to demonstrate substantial risk of physical harm to the person himself (1) or to others (2). Section 1 of the bill requires that evidence must also be shown to demonstrate the reasonable certainty of physical injury to the person (3). In addition, section 1 strengthens the language about the availability of community resources by requiring "exploration and exhaustion" of settings which are "less restrictive" than a state hospital.

Sections 2 and 3 of the bill attempt to clarify the procedures relating to emergency admissions and commitments to the state hospitals. These sections also contain a few substantive procedural changes.

Section 2, which relates to emergency admissions to state hospitals, includes the following substantive changes.

(1) Under present law, probate judges, District Court judges, Superior Court justices and complaint justices are authorized to endorse applications for emergency admission to state hospitals. This bill authorizes only District Court judges and Superior Court justices to endorse such applications.

(2) Because of the changes in the definition of "likelihood of serious harm" described in section one, this bill requires that higher standards of evidence be presented to and considered by the endorsing judge or justice.

(3) Under present law the head of a state hospital must apply to the District Court within 5 days from emergency admission of a person, if the head wants to admit the person on an involuntary basis. This bill requires the head of a hospital to make such application within 2 days from the emergency admission.

Section 3, which relates to commitments, includes the following substantive changes.

(1) This bill reduces the time the District Court has to hold a commitment hearing from 20 days to 7 days.

(2) Higher standards of proof and independent evidence of an individual's dangerousness to himself and to others are required under this bill, before a court can determine whether or not to commit an individual to a state hospital.