

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1880

H. P. 1707

House of Representatives, June 3, 1977

Reported by Mr. Spencer from Committee on Judiciary. Sent up for concurrence and ordered printed under Joint Rules No. 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to the Commitment of Mentally Ill Individuals.

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

Sec. 1. 4 MRSA § 157, 1st ¶, 3rd sentence, as enacted by PL 1975, c. 559, § 1, is repealed as follows:

~~One of the judges at large shall have as his primary responsibility the conduct of proceedings pursuant to Title 34, section 2334~~

Sec. 2. 34 MRSA § 2251, sub-§ 7, as amended by PL 1973, c. 716, § 4, is further amended to read:

7. Likelihood of serious harm. "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person himself as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm to himself, and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable; or

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable; or

C. A reasonable certainty that severe impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his

actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable.

Sec. 3. 34 MRSA § 2333, as last amended by PL 1975, c. 559, §§ 7 and 8, is repealed and the following enacted in its place: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 2251, 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. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, a Judge of the District Court, a judge of probate or a complaint justice. If that judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

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

D. Upon the endorsement by the judge or justice of the application and certificate, any health officer, police officer or other person designated by the judge or justice shall be authorized to take the person into custody and to 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, he 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 file any such application in the District Court within 5 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. 4. 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, subsection 2, paragraph B, shall be accompanied by a copy of:

A. The emergency application, as provided in section 2333, subsection 1, paragraph A;

B. The accompanying certificate, as provided in section 2333, subsection 1, paragraph B; and

C. The certificate, pursuant to section 2372, of the examining physician or a 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 or parent or one of his adult children; 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 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, each 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 2372.

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 the continued date which the court has set for the hearing.

4. Hearing.

A. The District Court shall hold a hearing on the application not later than 15 days from the date of the application. On a motion by any party, 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 consideration 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 individual 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 presiding District Court Judge. The court may order a public hearing on the request of the patient or his counsel.

5. Findings 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. If the District Court makes the findings described in subparagraphs (1) and (2), but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days pending reconsideration and resubmission of an individual treatment plan by the hospital.

6. Commitment. Upon making the findings described in subsection 5, the court may order commitment of the patient, as provided in this subsection.

A. 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.

B. 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.

C. 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.

7. Continued involuntary hospitalization. If the head of the hospital determines that continued involuntary hospitalization is necessary for a patient who has been ordered by the District Court to be committed, he shall, not later than 30 days prior to the expiration of a period of commitment ordered by the court, 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.

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

9. Appeals. A person ordered by the District Court to be committed to a hospital may appeal from that order to the Superior Court. The appeal shall be on questions of law only. Any findings of fact of the District Court shall not be set aside unless clearly erroneous. The order of the District Court shall remain in effect pending the appeal. The District Court Civil Rules of Procedure and the Maine Rules of Civil Procedure shall apply to the conduct of such appeals, except as otherwise specified in this subsection.

STATEMENT OF FACT

Section 1, which is added by the new draft, repeals a provision enacted 2 years ago and never applied, that a judge at large of the District Court have as his primary responsibility the conduct of commitment proceedings.

Section 2 expands the definition of "likelihood of serious harm," one of the requirements for involuntary commitment of a mentally ill person. It requires that there be recent evidence of the conduct and requires consideration of less restrictive treatment settings than a state hospital.

Section 3 deals with emergency commitments. The original bill had required a "probable cause" hearing before a Superior Court justice or a District Court judge. The new draft requires the initial application to be reviewed, in all cases, by a Superior Court justice, a District Court judge, a probate judge or a complaint justice, who must find that the application and the certificate by a physician or a psychologist are in accordance with the law.

Section 4 deals with the procedure for commitment hearings in the District Court. Under present law, those must be held within 20 days of the date of the application. The original bill proposed reducing this to 7 days. Based on the result of an experiment in scheduling these matters in the District Court in Augusta, the new draft changes the time to 15 days.

As in the original bill, this section changes the standard of proof for commitment from "a preponderance of the evidence," the same standard of proof applied in most civil cases, to "clear and convincing evidence," a stricter standard.

This section also adds to the law a provision on appeals.

Much of the wording of the bill is a clarification of the statutes.