

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2091

H. P. 2016

House of Representatives, January 18, 1978

Governor's Bill. Referred to the Committee on Health and Institutional Services. Sent up for Concurrence.

EDWIN H. PERT, Clerk

Presented by Mrs. Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-EIGHT

AN ACT to Clarify Admission Procedures at Pineland Center.

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

Sec. 1. 34 § 2652, sub-§ 1, ¶ L, as enacted by PL 1977, c. 502, § 4, is amended to read:

L. "Voluntary admission" means the reception into a facility of a mentally retarded client who ~~understand~~ understands the nature, purpose and proposed duration of the admission and his right to leave the facility and thus to terminate the admission at any time, and who consents to such admission; or a mentally retarded client whose eligibility for admission to the facility has been certified by the District Court under section ~~2657 2659-A subsections 4 and 5.~~

Sec. 2. 34 MRSA § 2652, sub-§ 4, first sentence, as enacted by PL 1977, c. 502, § 4, is amended to read:

Each client who receives services pursuant to sections 2653 to ~~2657 2657-A~~ shall be represented by an advocate.

Sec. 3. 34 MRSA § 2653, sub-§ 2, ¶ D, as enacted by PL 1977, c. 502, § 4, is amended to read:

D. Ensure the client's representation by an advocate throughout the process of mental retardation services specified under sections 2653 to ~~2657~~ 2657-A, provided that the client does not refuse such representation.

Sec. 4. 34 MRSA § 2655, sub-§ 6 is enacted to read:

**6. Recommendation of admission.** If admission to a facility is recommended by an interdisciplinary team, the prescriptive program plan shall include the following:

**A. A written report prepared by the interdisciplinary team supporting the following conclusions:**

- (1) The client is mentally retarded;
- (2) The client requires treatment, education and habilitation of an intensive nature;
- (3) The client can benefit from programs at the facility; and
- (4) Appropriate programs for treatment, education and habilitation are not presently available in the community or the facility is the treatment setting of the client's choice.

**B. Plans for preparing the client for admission, including, unless specifically contraindicated, a preadmission visit to the facility; and**

**C. Plans to facilitate, at the earliest feasible time, the client's return to the community.**

Sec. 5. 34 MRSA § 2656, sub-§ 4, first sentence, as enacted by PL 1977, c. 502, § 4, is amended to read:

No portion of a prescriptive program plan shall be implemented until each person required under subsection 2 has signed the service agreement for the plan, **except that if a client is to be admitted to a facility, the service agreement need not be completed until 5 days from the date of admission.**

Sec. 6. 34 MRSA §§ 2657 to 2659, as enacted by PL 1977, c. 502, § 4, are repealed.

Sec. 7. 34 MRSA §§ 2657-A, 2658-A and 2659-A are enacted to read:

§ 2657-A. Requirements for admission to a facility

A client may be admitted to a facility only under one of the following provisions.

**1. Preadmission visit.** Any client may be detained by a facility up to 48 hours provided that the purpose is a preadmission visit solely to observe and evaluate the client.

2. **Respite care.** Respite care may be provided to any client by a facility without full compliance with the procedures for admission by judicial certification, if it is recommended by an interdisciplinary team and a service agreement has been completed. The purpose of that respite care shall be for evaluation, diagnosis or other clearly stated and defined therapeutic reasons. Respite care may be provided upon application to the regional office of the bureau by the client, legal guardian or parent, for a period not to exceed 21 days at a time and not more than 60 days during any 12-month period. Continuing placement in the facility, if indicated, shall be accomplished only upon full compliance with procedures described by this Part.

3. **Medical admission.** Any person may be admitted to Benda Hospital pursuant to § 2662.

4. **Regular admission.** A client may be admitted for extended treatment and care if the following steps have been complied with:

A. An application for admission has been made by the client, a representative of his choice, the client's legal guardian, the client's next of kin or any other responsible person;

B. The director of a regional office or his designee has certified that he believes that the compelling needs of the client are not being met and has stated the factual basis of that benefit;

C. An initial prescriptive program plan has been developed according to section 2655; and

D. The requirements of informed consent or of judicial certification, as hereinafter set out, have been met.

5. **Emergency procedure.** When immediate detention is necessary, sections 2663 and 2664 authorize temporary restraint.

#### § 2658-A. Admission by informed consent

The client may consent to his own admission if the superintendent of the facility or his designee has determined that:

1. **Informing client.** The client has been informed of and understands both the nature, purpose and proposed duration of the admission and the provisions of section 2660 regarding the client's right to leave and the limitations on that right; and

2. **Consent of client.** The client voluntarily consents to the proposed admission.

#### § 2659-A. Admission by judicial certification

If the superintendent of a facility or his designee has determined that the client

is not capable of giving informed consent to admission, a client may be admitted for extended care and treatment only after judicial certification, pursuant to this section.

**1. Application.**

**A.** An application shall be filed by a regional office or by a facility in the District Court where the client is residing.

**B.** The petition shall not be filed until the regional office has obtained approval for the admission by the facility. The department shall adopt rules establishing procedures and standards to be used by facilities in determining whether to approve admissions.

**C.** If a parent or guardian having legal custody of the person of the client, asks the court not to hear the proceedings for certification, the court shall grant the request.

**D.** Any party may file a motion with the court where the petition is filed alleging that a court in another location would be more convenient, and the court may order a change in venue if justice so requires.

**2. Prehearing responsibilities of the court. Upon receipt by the District Court of the petition, the court:**

**A.** Shall schedule a hearing to be held as soon as is practicable; except that if the client is being detained under section 2664, the hearing shall be held not later than 15 days from the date of the petition, unless the court, for cause shown, grants a continuance of not more than 10 additional days;

**B.** Shall cause written notice of the petition and hearing to be given personally or by mail to the client who is the subject of the proceeding, and to the client's legal guardian, spouse, parent or adult child, if any are known; or if none of these persons are known, or their whereabouts are unknown, to one of his next of kin or to a next friend. A docket entry shall be sufficient evidence that the notice has been given;

**C.** May cause the client who is the subject of the proceeding to be examined by a professional. An opportunity to choose the professional shall be given to the client or his counsel, provided that the professional shall be reasonably available. The professional shall not be the same one who performed any part of the evaluation required under section 2654 or who participated in the development of the prescriptive program plan. Upon completion of the examination, the professional shall report to the court his opinion as to whether the client is mentally retarded and as a result thereof requires the treatment, education or habilitation provided by the facility, together with the reasons for each opinion;

- D. Shall appoint counsel for any indigent client not already represented; and
- E. Shall furnish counsel with copies of the petition as well as the reports of the court appointed examiner.

3. Procedure. The hearing shall be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

4. Certificate of evidence. The court shall certify the admission only if the petitioner proves, by clear and convincing evidence, that:

- A. The client is a person in need of institutionalized services, as defined in section 2652, subsection 1, paragraph H;
- B. The needed services are available at the facility named in the application; and
- C. There is no less restrictive alternative to the care provided by the facility, consistent with the best interest of the client.

5. Construction of certification. Certification of a client's eligibility for admission shall not be construed as a judicial commitment of the client, but shall only empower the facility to admit the client as a resident for treatment, education or habilitation subject to the provisions for discharge contained in section 2660.

6. Period of certification. The court shall order certification to remain in effect for a period of not more than 2 years from the date of the order.

7. Expenses. The District Court shall be responsible for any expenses incurred under this section, including fees of appointed counsel, witness fees and the expenses resulting from any court appointed examiner.

8. Appeals. A client certified under this section 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 the appeals, except as otherwise specified in this subsection.

Sec. 8. 34 MRSA §§ 2660 to 2664 are enacted to read:

§ 2660. Client's right to leave facility

1. Client's request. Any client admitted by informed consent may leave the facility at his own request subject only to section 2664.

2. Discharge. Whenever a judicially certified client is prepared for discharge, as defined in section 2661, subsection 2, he shall be discharged if the

regional office and the interdisciplinary team so recommend.

3. Parent or guardian. A parent or guardian having legal custody over the person of the client, may at any time obtain discharge of his child or ward.

§ 2661. Post-admission responsibilities of the department

1. Provision of care and treatment.

A. An initial service agreement for services to be received in the facility shall be executed within 5 days of admission and shall include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement. The purpose of this meeting shall be to assess and, if necessary, refine the client's prescriptive program plan.

B. While residing in the facility, the client shall receive care, treatment and services only according to the procedures set forth in this section and in sections 2655 and 2656.

2. Preparation for discharge. Whenever an interdisciplinary team finds that the client may be ready for discharge and determines that temporary placement of the client in the community is required to assist in its evaluation of the client in the community is required to assist in its evaluation of the client, the team may recommend that placement and shall develop a prescriptive program plan and service agreement which shall include provisions to ensure:

A. That the client's money shall be adequately managed;

B. That the client has a legal representative, if such a person is required;

C. That the client shall receive needed services in the community; and

D. That the client's parent or legal guardian, if such person is available, shall continue to be involved with the client.

The superintendent may release the client pursuant to such recommendation for temporary community placement through the regional office.

3. Role of regional office. The regional office which will have responsibility for the client shall be included in the preparation of the prescriptive program plan and service agreement specified in subsection 8. The regional office shall also be responsible for implementing the client's release. The regional office shall, along with the other members of the interdisciplinary team, evaluate the success of the client's reintegration into the community and shall assist in obtaining the client's discharge when assured that the provisions of the prescriptive program plan and service agreement have been met.

**§ 2662. Medical admission to the Benda Hospital at Pineland Center**

1. Admission to Benda Hospital governed. Admission to the Benda Hospital shall be governed solely by this section.

2. Medical or dental treatment. Any person requiring medical or dental treatment, including post-operative care, may be informally admitted to the Benda Hospital only if, and for so long as, a signed consent to admission is given and remains unrevoked by one of the following:

- A. The client;
- B. A parent;
- C. A legal guardian; or
- D. A friend.

3. Informed consent. That consent shall be consent to admission only, and shall not be construed as a substitute for "informed consent."

**§ 2663. Emergency restraint and transportation**

Any law enforcement officer in the State having reasonable grounds to believe, based upon his personal observation, that any person may be a mentally retarded individual and that due thereto he presents a threat of imminent and substantial physical harm to himself or to other persons may take that person into protective custody and, in any such case, shall deliver that person forthwith for examination by an available licensed physician or licensed psychologist as provided for in section 2664.

In the event that a certificate relating to the person's likelihood of serious harm shall not be executed by the examiner under section 2664, the officer shall release the person from protective custody, and, with the permission of that person, shall return this person forthwith either to his place of residence, if within the territorial jurisdiction of the officer, or to the place where that person was taken into protective custody; provided that, if that person is also then under arrest for a violation of law, he shall be retained in custody until released in accordance with the law. In the event that the examiner shall execute the certificate provided for under section 2664, the officer having protective custody of the person examined shall have authority to detain him for as long as is necessary to obtain the endorsement by a judicial officer provided for under section 2664, provided that the officer shall undertake to secure that endorsement forthwith upon execution of the certificate by the examiner.

**§ 2664. Emergency procedure**

1. Admission. A person may be admitted to a facility after the facility 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 person in need of institutional services, as defined in section 2652, subsection 1, paragraph H;**
- (2) That an emergency exists requiring immediate placement in a facility; and**
- (3) 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 retarded individual in need of institutional services. The date of that examination shall not be more than 3 days prior to the date of admission to the facility.**

**C. The application and accompanying certificate shall be review 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 facility pursuant to this section unless the application and certificate have been endorsed by a judge or justice, except as follows:**

- (1) A person for whom an examiner has executed the certificate provided for under this section may be detained in a facility for as long as is necessary to obtain the endorsement by a judge or justice; provided that the person or persons transporting that person to the facility shall undertake to secure the endorsement forthwith upon execution of the certificate by the examiner.**

**D. Upon the endorsement by the judge or justice of the application and certificate, any health office, 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 facility as designated in the application. The county in which the 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. Client admitted no longer than 5 days. This section shall authorize the**

**facility to admit the client for no longer than 5 days. If a petition for judicial certification is filed, the facility may additionally admit the client for a period not to exceed 25 days from the date of the application.**

#### STATEMENT OF FACT

This bill is aimed at reducing the substantial amount of ambiguity, confusion and needless procedural complexity in the provisions on admission to residential facilities for the retarded enacted in 1977. Substantive changes and major clarifications are necessary to permit administrators, clients and the courts to understand the rights and responsibilities created by the law. Substantive changes include eliminating the initial court finding prior to the full hearing which was necessary under the old law. In addition to reducing complexity, due process protection is improved in that, unless an emergency exists, a retarded client's regular admission shall be delayed until after the full District Court hearing on the necessity for institutionalization. While the court hearing is necessary prior to any regular admission, the bill also makes clear that parents and guardians retain full discretion to remove their child or ward at any time. Other changes include clarified venue and appeal provisions and delaying the service agreement until after admission to permit the facility's personnel to be involved.