

1 2 3	(Governor's Bill) SECOND REGULAR SESSION
4 5	ONE HUNDRED AND TENTH LEGISLATURE
6 7	Legislative Document No. 1943
8 9	H. P. 1968 House of Representatives, February 9, 1982 Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed. EDWIN H. PERT, Clerk Presented by Representative Nelson of Portland. Cosponsors: Representative MacBride of Presque Isle, Senator
10	Bustin of Kennebec and Senator Gill of Cumberland.
11 12	STATE OF MAINE
13 14 15	IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-TWO
16 17 18 19 20	AN ACT to Amend the Certification Process for Admission into Public Mental Retardation Institutions and to Clarify the Jurisdiction of the District Court.
21	Be it enacted by the People of the State of Maine as follows:
22 23	Sec. 1. 4 MRSA §152, 2nd sentence, as enacted by PL 1965, c. 236, is amended to read:
24 25 26 27 28 29	This limitation as to damages shall not apply in any action of divorce, annulment or separation of marriage or in any action to enforce judgment of support or alimony; and of mental health commitment hearings under Title 34, chapter 191, subchapter III, and of mental retardation certification hearings under Title 34, chapter 229.
30 31	Sec. 2. 34 MRSA §2658-A, as enacted by PL 1977, c. 635, §7, is amended to read:
32 33	<u>§2658-A. Admission by informed consent or with consent of client's private guardian</u>

1 The client <u>or his private guardian</u> may consent to his 2 own admission if the superintendent of the facility or his 3 designee has determined that:

4 <u>1. Informing client.</u> The client has been informed of 5 and understands both the nature, purpose and proposed dura-6 tion of the admission and the provisions of section 2660 7 regarding the client's right to leave and the limitations on 8 that right; and

9 <u>1-A. Requirements. The requirements of section 2655</u> 10 regarding admission have been met; and

11 <u>2. Consent of client.</u> The client voluntarily consents
12 to the propsed admission; or the client's private guardian
13 consents on the client's behalf.

14 Sec. 3. 34 MRSA §2659-A, first ¶, as enacted by PL 15 1977, c. 635, §7, is amended to read:

16 If the superintendent of a facility or his designee has 17 determined that the client is not capable of giving informed 18 consent to admission and that no private guardian exists to 19 give consent for admission, a client may be admitted for 20 extended care and treatment only after judicial certifica-21 tion, pursuant to this section; or after involuntary commit-22 ment pursuant to section 2664, subsection 3.

23 Sec. 4. 34 MRSA §2659-A, sub-§1, ¶C, as enacted by PL 24 1977, c. 635, §7, is amended to read:

25 <u>C.</u> If a parent or guardian having legal custody of the 26 person of the client<sub>7</sub> asks the court not to hear the 27 proceedings for certification, the court shall grant 28 the request <u>unless the petition is made under section</u> 29 2664.

30 Sec. 5. 34 MRSA §2659-A, sub-§2, ¶C, first sentence, 31 as enacted by PL 1977, c. 635, §7, is amended to read:

32 Shall, upon request of counsel, cause the client who is 33 the subject of the proceeding to be examined by a pro-34 fessional.

35 Sec. 6. 34 MRSA §2659-A, sub-§3, 2nd sentence, as 36 enacted by PL 1979, c. 344, §3, is amended to read:

37 The certification hearing shall be confidential <u>and shall be</u> 38 electronically recorded.

## Sec.7. 34 MRSA §2664, sub-§3 is enacted to read:

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2	3. Criteria for involuntary admission. Any client
3	recommended for regular admission to a facility pursuant to
4	section 2657-A may be admitted as an involuntary patient.
5	The procedure for involuntary commitment to a mental retar-
6	dation facility for care, training and treatment shall
7	follow those procedures set forth in section 2334 for the
8	involuntary commitment of mentally ill individuals, except
9	that requirements of a finding of mental illness shall for
10	purposes of this section be interpreted to require a finding
11	of mental retardation as defined in section 2602.

## STATEMENT OF FACT

13 After 3 years of experience utilizing the present cer-14 tification procedure for admission to mental retardation facilities, it has become apparent, based on input from the 15 16 Bureau of Mental Retardation staff, District Court Judges, 17 parents and guardians of clients admitted through the certi-18 fication process to mental retardation facilities and others 19 involved in the certification process, that the necessity 20 for an adversary hearing process, in each instance where 21 certification for admission to a mental retardation facility 22 sought, is unnecessary. This bill, without reducing the is 23 protections and standards afforded to clients in regard to 24 admission to mental retardation facilities, allows for a 25 more informal negotiating procedure in which the client, his 26 parent or his legally appointed guardian is being considered 27 and develops a mutually agreeable admission and prescriptive program plan which could then be submitted to the District 28 29 Court for review and approval. If mutual agreement is 30 unattainable, the existing certification procedures will 31 still be available and utilized.

32 anticipated that the savings in District Court It is 33 time and professional witness time will be considerable. ln. 34 addition, it is anticipated that the negative aspects of an 35 adversarial hearing will often be avoided and the positive 36 benefits of an informally negotiated agreement regarding 37 admission and program planning will be substantial.

bill also authorizes a procedure, parallel to the 38 This 39 procedure presently used for commitment of mentally ill persons to state mental health facilities, to be 40 utilized for 41 involuntary commitment of mentally retarded people to mental 42 facilities. Although involuntary commitment to retardation 43 mental retardation facilities is likely to occur only on 44 rare occasions, this addition allows the State greater

1 flexibility in serving the rare mentally retarded individual 2 who requires placement in a mental retardation treatment 3 facility in order to avoid imminent danger to himself or 4 others, who has been determined to be competent to refuse 5 voluntary admission or for whom judicial certification to 6 the proposed treatment facility is not appropriate.

7 The purpose of this bill rectify is to 2 problems. 8 First, the bill relates to the fact that although the Revised Statutes, Title 34, section 2334 and section 2659-A 9 grant jurisdiction to the District Court in com-10 apparently 11 mitment hearings and certification hearings, of the lack 12 inclusion of this jurisdiction in the general jurisdictional 13 statute raises issue regarding the legal an status of 14 involuntarily committed residents at state institutions. ln. 15 other words, there is an inconsistency between the jurisdic-16 tional statute and the enabling statutes relating to certi-17 admission of residents which now leaves some fication and 18 doubt as to the institutional residents' legal status. This 19 bill establishes statutory consistency between these 2 sets 20 statutes regarding the jurisdiction of of the District 21 Court.

22 Second, this bill corrects an oversight in the drafting 23 of Public Law 1979, chapter 344 in which the requirement certification hearings be electronically recorded 24 that all 25 was apparently inadvertently omitted. The prior law had 26 requirement. In addition, mental health commitment this 27 hearings must all be electronically recorded. Since the nature of these certification hearings is similar and the 28 29 State wishes to preserve a record of what occurs in order to 30 defend appeals of the proceedings, this bill is proposed in order to provide this consistency. 31

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