

# MAINE STATE LEGISLATURE

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1 during the continuance of the term of imprisonment  
2 there is pending in any other party state any untried  
3 indictment, information or complaint on the basis of  
4 which a detainer has been lodged against the pris-  
5 oner, he shall be brought to trial within 180 days  
6 after he shall have caused to be delivered to the  
7 prosecuting officer and the appropriate court of the  
8 prosecuting officer's jurisdiction written notice of  
9 the place of his imprisonment and his request for  
10 final disposition to be made of the indictment,  
11 information or complaint, provided that, for good  
12 cause shown in open court, the prisoner or his coun-  
13 sel being present, the court having jurisdiction of  
14 the matter may grant any necessary or reasonable con-  
15 tinuance. The request of the prisoner shall be ac-  
16 companied by a certificate of the appropriate offi-  
17 cial having custody of the prisoner, stating the term  
18 of commitment under which the prisoner is being held,  
19 the time already served, the time remaining to be  
20 served on the sentence, the amount of good time  
21 earned, the time of parole eligibility of the pris-  
22 oner and any decisions of the state parole agency  
23 relating to the prisoner.

24 2. Request for final disposition. The written  
25 notice and request for final disposition referred to  
26 in subsection 1 shall be given or sent by the pris-  
27 oner to the warden, Commissioner of Corrections or  
28 other official having custody of him, who shall  
29 promptly forward it together with the certificate to  
30 the appropriate prosecuting official and court by  
31 registered or certified mail, return receipt  
32 requested.

33 3. -Notification. The warden, Commissioner of  
34 Corrections or other official having custody of the  
35 prisoner shall promptly inform him of the source and  
36 contents of any detainer lodged against him and shall  
37 also inform him of his right to make a request for  
38 final disposition of the indictment, information or  
39 complaint on which the detainer is based.

40 4. -Application. Any request for final disposi-  
41 tion made by a prisoner pursuant to subsection 1  
42 shall operate as a request for final disposition of  
43 all untried indictments, informations or complaints  
44 on the basis of which detainees have been lodged

1 against the prisoner from the state to whose prose-  
2 cuting official the request for final disposition is  
3 specifically directed. The warden, Commissioner of  
4 Corrections or other official having custody of the  
5 prisoner shall forthwith notify all appropriate  
6 prosecuting officers and courts in the several juris-  
7 dictions within the state to which the prisoner's  
8 request for final disposition is being sent of the  
9 proceeding being initiated by the prisoner. Any  
10 notification sent pursuant to this subsection shall  
11 be accompanied by copies of the prisoner's written  
12 notice, request and the certificate. If trial is not  
13 had on any indictment, information or complaint con-  
14 templated hereby prior to the return of the prisoner  
15 to the original place of imprisonment, such indict-  
16 ment, information or complaint shall not be of any  
17 further force or effect, and the court shall enter an  
18 order dismissing the same with prejudice.

19 5. -Waiver of extradition. Any request for  
20 final disposition made by a prisoner pursuant to sub-  
21 section 1 shall also be deemed to be a waiver of  
22 extradition with respect to any charge or proceeding  
23 contemplated thereby or included therein by reason of  
24 subsection 1 and a waiver of extradition to the  
25 receiving state to serve any sentence there imposed  
26 upon him, after completion of his term of imprison-  
27 ment in the sending state. The request for final  
28 disposition shall also constitute a consent by the  
29 prisoner to the production of his body in any court  
30 where his presence may be required in order to effec-  
31 tuate the purposes of this agreement and a further  
32 consent voluntarily to be returned to the original  
33 place of imprisonment in accordance with this agree-  
34 ment. Nothing in this subsection shall prevent the  
35 imposition of a concurrent sentence if otherwise per-  
36 mitted by law.

37 6. -Escape. Escape from custody by the prisoner  
38 subsequent to his execution of the request for final  
39 disposition referred to in subsection 1 shall void  
40 the request.

41 §9604. Temporary custody--Article IV

42 1. Request. The appropriate officer of the  
43 jurisdiction in which an untried indictment, informa-

1 tion or complaint is pending shall be entitled to  
2 have a prisoner against whom he has lodged a detainer  
3 and who is serving a term of imprisonment in any  
4 party state made available in accordance with Article  
5 V, subsection 1, upon presentation of a written  
6 request for temporary custody or availability to the  
7 appropriate authorities of the state in which the  
8 prisoner is incarcerated, provided that the court  
9 having jurisdiction of such indictment, information  
10 or complaint shall have duly approved, recorded and  
11 transmitted the request, and provided further that  
12 there shall be a period of 30 days after receipt by  
13 the appropriate authorities before the request be  
14 honored, within which period the governor of the  
15 sending state may disapprove the request for tempo-  
16 rary custody or availability, either upon his own  
17 motion or upon motion of the prisoner.

18 2. Certificate. Upon receipt of the officer's  
19 written request as provided in subsection 1, the  
20 appropriate authorities having the prisoner in cus-  
21 tody shall furnish the officer with a certificate  
22 stating the term of commitment under which the pris-  
23 oner is being held, the time already served, the time  
24 remaining to be served on the sentence, the amount of  
25 good time earned, the time of parole eligibility of  
26 the prisoner and any decisions of the state parole  
27 agency relating to the prisoner. Said authorities  
28 simultaneously shall furnish all other officers and  
29 appropriate courts in the receiving state who have  
30 lodged detainers against the prisoner with similar  
31 certificates and with notices informing them of the  
32 request for custody or availability and of the  
33 reasons therefor.

34 3. Time of trial. In respect of any proceeding  
35 made possible by this Article, trial shall be com-  
36 menced within 120 days of the arrival of the prisoner  
37 in the receiving state, but, for good cause shown in  
38 open court, the prisoner or his counsel being  
39 present, the court having jurisdiction of the matter  
40 may grant any necessary or reasonable continuance.

41 4. Legality of delivery. Nothing contained in  
42 this Article shall be construed to deprive any pris-  
43 oner of any right which he may have to contest the  
44 legality of his delivery as provided in subsection 1,

1 but such delivery may not be opposed or denied on the  
2 ground that the executive authority of the sending  
3 state has not affirmatively consented to or ordered  
4 such delivery.

5 5. Order dismissing. If trial is not had on any  
6 indictment, information or complaint contemplated  
7 hereby prior to the prisoner's being returned to the  
8 original place of imprisonment pursuant to Article V,  
9 subsection 5, such indictment, information or com-  
10 plaint shall not be of any further force or effect,  
11 and the court shall enter an order dismissing the  
12 same with prejudice.

13 §9605. Delivery--Article V

14 1. Request. In response to a request made under  
15 Article III or Article IV, the appropriate authority  
16 in a sending state shall offer to deliver temporary  
17 custody of such prisoner to the appropriate authority  
18 in the state where such indictment, information or  
19 complaint is pending against such person in order  
20 that speedy and efficient prosecution may be had. If  
21 the request for final disposition is made by the  
22 prisoner, the offer of temporary custody shall accom-  
23 pany the written notice provided for in Article III.  
24 In the case of a federal prisoner, the appropriate  
25 authority in the receiving state shall be entitled to  
26 temporary custody as provided by this agreement or to  
27 the prisoner's presence in federal custody at the  
28 place for trial, whichever custodial arrangement may  
29 be approved by the custodian.

30 2. Identification; copy of indictment. The  
31 officer or other representative of a state accepting  
32 an offer of temporary custody shall present the fol-  
33 lowing upon demand:

34 A. Proper identification and evidence of his  
35 authority to act for the state into whose tempo-  
36 rary custody the prisoner is to be given; and

37 B. A duly certified copy of the indictment,  
38 information or complaint on the basis of which  
39 the detainer has been lodged and on the basis of  
40 which the request for temporary custody of the  
41 prisoner has been made.

1           3. Dismissed. If the appropriate authority  
2 shall refuse or fail to accept temporary custody of  
3 said person, or in the event that an action on the  
4 indictment, information or complaint on the basis of  
5 which the detainer has been lodged is not brought to  
6 trial within the period provided in Article III or  
7 Article IV, the appropriate court of the jurisdiction  
8 where the indictment, information or complaint has  
9 been pending shall enter an order dismissing the same  
10 with prejudice, and any detainer based thereon shall  
11 cease to be of any force or effect.

12           4. Purpose. The temporary custody referred to  
13 in this agreement shall be only for the purpose of  
14 permitting prosecution on the charge or charges con-  
15 tained in one or more untried indictments, informa-  
16 tions or complaints which form the basis of the  
17 detainer or detainers or for prosecution on any other  
18 charge or charges arising out of the same trans-  
19 action. Except for his attendance at court and while  
20 being transported to or from any place at which his  
21 presence may be required, the prisoner shall be held  
22 in a suitable jail or other facility regularly used  
23 for persons awaiting prosecution.

24           5. Return. At the earliest practicable time  
25 consonant with the purposes of this agreement, the  
26 prisoner shall be returned to the sending state.

27           6. Time on sentence. During the continuance of  
28 temporary custody or while the prisoner is otherwise  
29 being made available for trial as required by this  
30 agreement, time being served on the sentence shall  
31 continue to run, but good time shall be earned by the  
32 prisoner only if, and to the extent that, the law and  
33 practice of the jurisdiction which imposed the sen-  
34 tence may allow.

35           7. Escape. For all purposes other than that for  
36 which temporary custody as provided in this agreement  
37 is exercised, the prisoner shall be deemed to remain  
38 in the custody of and subject to the jurisdiction of  
39 the sending state and any escape from temporary cus-  
40 tody may be dealt with in the same manner as an  
41 escape from the original place of imprisonment or in  
42 any other manner permitted by law.

1           8. Responsibility; costs. From the time that a  
2 party state receives custody of a prisoner pursuant  
3 to this agreement until such prisoner is returned to  
4 the territory and custody of the sending state, the  
5 state in which the one or more untried indictments,  
6 informations or complaints are pending or in which  
7 trial is being had shall be responsible for the pris-  
8 oner and shall also pay all costs of transporting,  
9 caring for, keeping and returning the prisoner. This  
10 subsection shall govern unless the states concerned  
11 shall have entered into a supplementary agreement  
12 providing for a different allocation of costs and  
13 responsibilities as between or among themselves.  
14 Nothing in this subsection shall be construed to  
15 alter or affect any internal relationship among the  
16 departments, agencies and officers of and in the gov-  
17 ernment of a party state, or between a party state  
18 and its subdivisions, as to the payment of costs, or  
19 responsibilities therefor.

20   §9606. Time periods tolled--Article VI

21           In determining the duration and expiration dates  
22 of the time periods provided in Articles III and IV,  
23 the running of said time periods shall be tolled  
24 whenever and for as long as the prisoner is unable to  
25 stand trial, as determined by the court having juris-  
26 isdiction of the matter.

27           No provision of this agreement, and no remedy  
28 made available by this agreement, shall apply to any  
29 person who is adjudged to be mentally ill.

30   §9607. Rules and regulations--Article VII

31           Each state party to this agreement shall desig-  
32 ate an officer who, acting jointly with like offi-  
33 cers of other party states, shall promulgate rules  
34 and regulations to carry out more effectively the  
35 terms and provisions of this agreement, and who shall  
36 provide, within and without the state, information  
37 necessary to the effective operation of this agree-  
38 ment.

39   §9608. Effective date--Article VIII

1        This agreement shall enter into full force and  
2 effect as to a party state when such state has  
3 enacted the same into law. A state party to this  
4 agreement may withdraw herefrom by enacting a statute  
5 repealing the same. However, the withdrawal of any  
6 state shall not affect the status of any proceedings  
7 already initiated by inmates or by state officers at  
8 the time such withdrawal takes effect, nor shall it  
9 affect their rights in respect thereof.

10        §9609. Construction--Article IX

11        This agreement shall be liberally construed so as  
12 to effectuate its purposes. The provisions of this  
13 agreement shall be severable and if any phrase,  
14 clause, sentence or provision of this agreement is  
15 declared to be contrary to the constitution of any  
16 party state or of the United States or the applica-  
17 bility thereof to any government, agency, person or  
18 circumstance is held invalid, the validity of the  
19 remainder of this agreement and the applicability  
20 thereof to any government, agency, person or circum-  
21 stance shall not be affected thereby. If this agree-  
22 ment shall be held contrary to the constitution of  
23 any state party hereto, the agreement shall remain in  
24 full force and effect as to the remaining states and  
25 in full force and effect as to the state affected as  
26 to all severable matters.

27                                ARTICLE II

28                                PROVISIONS RELATING TO AGREEMENT

29        §9631. Designation of courts

30        The phrase "appropriate court" as used in Article  
31 I, with reference to the courts of this State, shall  
32 mean the District Court or the Superior Court, as  
33 applicable.

34        §9632. Enforcement and cooperation by courts and  
35 agencies

36        All courts, departments, agencies, officers and  
37 employees of this State and its political subdivi-  
38 sions shall enforce the agreement on detainees con-  
39 tained within Article I and cooperate with one



1 another and with other party states in enforcing the  
2 agreement and effectuating its purpose.

3 §9633. Escape

4 Any person, who escapes or attempts to escape  
5 from custody while in another state pursuant to Arti-  
6 cle I, shall be subject to the penalties provided in  
7 Title 17-A, section 755, for escape or attempt to  
8 escape from the Maine State Prison.

9 §9634. Chief administrative officer to give over the  
10 person of inmate

11 The chief administrative officer of a correc-  
12 tional facility in Maine shall give over the person  
13 of any inmate thereof whenever so required by the  
14 operation of the agreement on detainees.

15 §9635. Commissioner of Corrections to make rules and  
16 regulations

17 The Commissioner of Corrections is designated as  
18 the officer provided for in section 9607.

19 SUBCHAPTER V

20 UNIFORM ACT FOR OUT-OF-STATE PAROLEE

21 SUPERVISION

22 ARTICLE I

23 COMPACT

24 §9801. Conditions for residence in another  
25 state--Article I

26 It shall be competent for the duly constituted  
27 judicial and administrative authorities of a state  
28 party to this compact, herein called "sending state,"  
29 to permit any person convicted of an offense within  
30 such state and placed on probation or released on  
31 parole to reside in any other state party to this  
32 compact, herein called "receiving state," while on  
33 probation or paroled, if:

1       1. Resident. Such person is in fact a resident  
2 of or has his family residing within the receiving  
3 state and can obtain employment there; and

4       2. Consent. Though not a resident of the  
5 receiving state and not having his family residing  
6 there, the receiving state consents to such person  
7 being sent there.

8       Before granting such permission, opportunity  
9 shall be granted to the receiving state to investi-  
10 gate the home and prospective employment of such  
11 person.

12       A resident of the receiving state, within the  
13 meaning of this chapter, is one who has been an actu-  
14 al inhabitant of such state continuously for more  
15 than one year prior to his coming to the sending  
16 state and has not resided within the sending state  
17 more than 6 continuous months immediately preceding  
18 the commission of the offense for which he has been  
19 convicted.

20       §9802. Duties of receiving state--Article II

21       Each receiving state will assume the duties of  
22 visitation of and supervision over probationers or  
23 parolees of any sending state and in the exercise of  
24 those duties will be governed by the same standards  
25 that prevail for its own probationers and parolees.

26       §9803. Retaking--Article III

27       Duly accredited officers of a sending state may  
28 at all times enter a receiving state and there appreh-  
29 end and retake any person on probation or parole.  
30 For that purpose, no formalities will be required  
31 other than establishing the authority of the officer  
32 and the identity of the person to be retaken. All  
33 legal requirements to obtain extradition of fugitives  
34 from justice are expressly waived on the part of the  
35 states party hereto as to such persons. The decision  
36 of the sending state to retake a person on probation  
37 or parole shall be conclusive upon and not reviewable  
38 within the receiving state; provided that if at the  
39 time when a state seeks to retake a probationer or  
40 parolee there should be pending against him within

1 the receiving state any criminal charge, or he should  
2 be suspected of having committed within such state a  
3 criminal offense, he shall not be retaken without the  
4 consent of the receiving state until discharged from  
5 prosecution or from imprisonment for such offense.

6 §9804. Transportation of retaken persons--Article IV

7 The duly accredited officers of the sending state  
8 will be permitted to transport prisoners being  
9 retaken through any and all states party to this com-  
10 compact without interference.

11 §9805. Rules and regulations--Article V

12 The governor of each state may designate an offi-  
13 cer who, acting jointly with like officers of other  
14 contracting states, if and when appointed, shall  
15 promulgate such rules and regulations as may be  
16 deemed necessary to more effectively carry out the  
17 terms of this compact. The officer so designated by  
18 the Governor shall have the authorization to appoint  
19 such deputy compact administrators as he deems neces-  
20 sary to carry out the mandates of this section.

21 §9806. Entry into force--Article VI

22 This compact shall become operative immediately  
23 upon its execution by any state as between it and any  
24 other state or states so executing. When executed,  
25 it shall have the full force and effect of law within  
26 such state, the form of execution to be in accordance  
27 with the laws of the executing state.

28 §9807. Renunciation--Article VII

29 This compact shall continue in force and remain  
30 binding upon each executing state until renounced by  
31 it. The duties and obligations of a renouncing state  
32 shall continue as to parolees or probationers  
33 residing therein at the time of withdrawal until  
34 retaken or finally discharged by the sending state.  
35 Renunciation of this compact shall be by the same  
36 authority which executed it, by sending 6 months'  
37 notice in writing of its intention to withdraw from  
38 the compact to the other states party hereto.



1 record and make recommendations regarding the dispo-  
2 sition to be made of the parolee or probationer by  
3 the sending state. Pending any proceeding pursuant  
4 to this chapter, the appropriate officers of this  
5 State may take custody of and detain the parolee or  
6 probationer involved for a period not to exceed 15  
7 days prior to the hearing and, if it appears to the  
8 hearing officer or officers that retaking or  
9 reincarceration is likely to follow, for such reason-  
10 able period after the hearing or waiver as may be  
11 necessary to arrange for the retaking or  
12 reincarceration.

13 §9862. Persons authorized to conduct preliminary  
14 hearing

15 Any hearing pursuant to this chapter may be  
16 before the compact administrator under Article I or  
17 his authorized designee, except that no hearing offi-  
18 cer shall be the person making the allegation of  
19 violation.

20 §9863. Procedure at preliminary hearing

21 With respect to any hearing pursuant to this  
22 chapter, the parolee or probationer:

23 1. Notice. Shall have reasonable notice in  
24 writing of the nature and content of the allegations  
25 to be made, including notice that its purpose is to  
26 determine whether there is probable cause to believe  
27 that he has committed a violation that may lead to a  
28 revocation of parole or probation;

29 2. Advise. Shall be permitted to advise with  
30 any persons whose assistance he reasonably desires,  
31 prior to the hearing;

32 3. Confrontation. Shall have the right to con-  
33 front and examine any persons who have made allega-  
34 tions against him, unless the hearing officer deter-  
35 mines that such confrontation would present a sub-  
36 stantial present or subsequent danger of harm to such  
37 person or persons; and

38 4. Contentions. May admit, deny or explain the  
39 violation alleged and may present proof, including

1 affidavits and other evidence, in support of his con-  
2 tentions. A record of the proceedings shall be made  
3 and preserved.

4 §9864. Reciprocal provisions

5 In any case of alleged parole or probation viola-  
6 tion by a person being supervised in another state  
7 pursuant to the Uniform Act for Out-of-State Parolee  
8 Supervision, any appropriate judicial or administra-  
9 tive officer or agency in another state is authorized  
10 to hold a hearing on the alleged violation. Upon  
11 receipt of the record of a parole or probation viola-  
12 tion hearing held in another state pursuant to a  
13 statute substantially similar to this chapter, such  
14 record shall have the same standing and effect as  
15 though the proceeding of which it is a record was had  
16 before the appropriate officer or officers in this  
17 State, and any recommendations contained in or accom-  
18 panying the record shall be fully considered by the  
19 appropriate officer or officers of this State in  
20 making disposition of the matter.

21 Sec. 7. 34-B MRSA is enacted to read:

22 TITLE 34-B

23 MENTAL HEALTH AND MENTAL RETARDATION

24 CHAPTER 1

25 GENERAL PROVISIONS

26 SUBCHAPTER I

27 DEFINITIONS

28 §1001. Definitions

29 As used in this Title, unless the context other-  
30 wise indicates, the following terms have the follow-  
31 ing meanings.

32 1. Chief administrative officer. "Chief admin-  
33 istrative officer" means the head of a state institu-  
34 tion or the head of any other institution which pro-  
35 vides services which fall under the jurisdiction of  
36 the department.

1           2. Client. "Client" means a person receiving  
2 services from the department, from the Bureau of  
3 Mental Health, from the Bureau of Mental Retardation,  
4 from any state institution or from any agency li-  
5 icensed or funded to provide services falling under  
6 the jurisdiction of the department.

7           3. Commissioner. "Commissioner" means the Com-  
8 missioner of Mental Health and Mental Retardation or  
9 his designee, except that when the term "commissioner  
10 and only the commissioner" is used, the term applies  
11 only to the person appointed Commissioner of Mental  
12 Health and Mental Retardation and not to any desig-  
13 nee.

14           4. Department. "Department" means the Depart-  
15 ment of Mental Health and Mental Retardation.

16           5. Parking area. "Parking area" means land  
17 maintained by the State at the state institutions  
18 under the jurisdiction of the department, which may  
19 be designated as parking areas by the heads of the  
20 state institutions.

21           6. Public way. "Public way" means a road or  
22 driveway on land maintained by the State at the state  
23 institutions under the jurisdiction of the depart-  
24 ment.

25           7. Resident. "Resident" means a person residing  
26 in a state institution or in any other institution  
27 which provides services which fall under the juris-  
28 isdiction of the department.

29           8. State institution. "State institution"  
30 means:

31           A. The Augusta Mental Health Institute;

32           B. The Bangor Mental Health Institute;

33           C. The Pineland Center;

34           D. The Elizabeth Levinson Center;

35           E. The Aroostook Residential Center; or

1           F. The Military and Naval Children's Home.

2           9. Written political material. "Written political  
3 material" means flyers, handbills or other  
4 nonperiodical publications which are subject to the  
5 restrictions of Title 21, chapter 35.

6                           SUBCHAPTER II

7                           DEPARTMENT

8           §1201. Establishment

9           There is established a Department of Mental  
10 Health and Mental Retardation.

11           1. Cabinet level. The department is a  
12 cabinet-level department.

13           2. Commissioner. The department is under the  
14 control and supervision of the Commissioner of Mental  
15 Health and Mental Retardation.

16           §1202. Office of the commissioner

17           1. Appointment. The Governor shall appoint the  
18 Commissioner of Mental Health and Mental Retardation  
19 subject to review by the joint standing committee of  
20 the Legislature having jurisdiction over health and  
21 institutional services and to confirmation by the  
22 Senate, to serve at the pleasure of the Governor.

23           2. Vacancy. Vacancies in the office of the com-  
24 missioner shall be filled as follows.

25           A. Any vacancy in the office of commissioner  
26 shall be filled by appointment under subsection  
27 1.

28           B. If the office of the commissioner is vacant  
29 or if the commissioner is absent or disabled, the  
30 associate commissioner for programs shall perform  
31 the duties and have the powers provided by law  
32 for the commissioner.

33           C. If the offices of the commissioner and the  
34 associate commissioner for programs are vacant or



1           if both officials are absent or disabled, the  
2           associate commissioner for administration shall  
3           perform the duties and have the powers provided  
4           by law for the commissioner.

5           3. Qualifications. To qualify for appointment  
6           as commissioner, a person must have training and  
7           experience in human services administration or satis-  
8           factory experience in the direction of work of a com-  
9           parable nature.

10           §1203. Duties of the commissioner

11           In addition to other duties set out in this  
12           Title, the commissioner has the following duties.

13           1. General. The commissioner shall have general  
14           supervision, management and control of the research  
15           and planning, grounds, buildings, property, officers,  
16           employees and clients of all state institutions.

17           2. Enforcement of laws. The commissioner shall  
18           enforce all laws concerning the institutions within  
19           the department, unless specific law enforcement  
20           duties are given by law to other persons.

21           3. Rules. Rules shall be established as fol-  
22           lows.

23           A. The commissioner shall establish such rules  
24           as he may determine appropriate or necessary for  
25           the care and management of the property of all  
26           state institutions, for the production and dis-  
27           tribution of the products of the institutions,  
28           for guiding the institutions in determining  
29           whether to approve admissions and for the execu-  
30           tion of the statutory purposes and functions of  
31           the institutions.

32           B. The central principle underlying all rules  
33           relating to residents of the institutions within  
34           the department is that the residents shall retain  
35           all rights of an ordinary citizen, except those  
36           expressly or by necessary implication taken from  
37           them by law.

1           4. Grievance procedures. The commissioner shall  
2 establish procedures for hearing grievances of  
3 clients.

4           5. Residential child care facilities. The com-  
5 missioner shall approve all programs for the provi-  
6 sion of mental health services to residential child  
7 care facilities, as defined in Title 22, section  
8 8101, subsection 4, and shall participate in licen-  
9 sure of these programs in accordance with Title 22,  
10 section 8104.

11           6. Sliding fee scale. The commissioner shall  
12 provide and establish a sliding fee scale for the  
13 provision of center-based developmental day care ser-  
14 vices for preschool children with developmental dis-  
15 abilities according to the following requirements.

16           A. Services provided under this subsection shall  
17 be made available to all eligible preschool chil-  
18 dren, regardless of their family income.

19           B. Services to eligible children of individuals  
20 and families whose adjusted gross income is at or  
21 below 80% of the median personal income for resi-  
22 dents of this State shall be made available at no  
23 cost to the individual or family.

24           C. A sliding fee scale no higher than the appli-  
25 cable scale under Title 22, section 9, subsection  
26 3, shall be applied to eligible children of indi-  
27 viduals and families whose adjusted gross income  
28 is between 80% and 115% of the median personal  
29 income for residents of this State.

30           D. A sliding fee scale that is proportionately  
31 related to the applicable scale under Title 22,  
32 section 9, subsection 3, shall be developed and  
33 applied to eligible children of individuals and  
34 families whose adjusted gross income is over 115%  
35 of the median personal income for residents of  
36 this State.

37           E. The commissioner shall coordinate these ser-  
38 vices with other state agencies in order to  
39 insure that no unnecessary duplication of ser-  
40 vices will occur.

1     §1204. Powers of the commissioner

2             In addition to other powers granted in this  
3 Title, the commissioner has the following powers.

4             1. General powers. The commissioner may perform  
5 any legal act relating to the care, custody, treat-  
6 ment, relief and improvement of the residents of  
7 state institutions or may purchase residential ser-  
8 vices when the department does not provide the appro-  
9 priate institutional services for the client.

10            2. Appointments of associate commissioners and  
11 other employees. The commissioner's powers to  
12 appoint associate commissioners and other employees  
13 are as follows.

14            A. The commissioner may appoint, subject to the  
15 Personnel Law and except as otherwise provided,  
16 any employees who may be necessary.

17            B. The commissioner may appoint and set the sal-  
18 aries for an associate commissioner for programs  
19 and an associate commissioner for administration  
20 to assist in carrying out the responsibilities of  
21 the department.

22                    (1) Each appointment shall be for an inde-  
23 terminate term and until a successor is  
24 appointed and qualified or during the pleas-  
25 ure of the commissioner.

26                    (2) To be eligible for appointment as  
27 associate commissioner for programs, a  
28 person shall have training and experience in  
29 the planning and administration of human  
30 services.

31                    (3) To be eligible for appointment as  
32 associate commissioner for administration,  
33 a person shall have training and experience  
34 in general management.

35            3. Delegation. The commissioner's delegation  
36 powers are as follows.

1 A. The commissioner may delegate powers and  
2 duties given under this Title to the associate  
3 commissioners, bureau directors and chief admin-  
4 istrative officers of state institutions.

5 B. The commissioner may empower the associate  
6 commissioners, bureau directors and chief admin-  
7 istrative officers of state institutions to fur-  
8 ther delegate powers and duties delegated to them  
9 by the commissioner.

10 4. Funding sources. The commissioner may apply  
11 for and accept from any other agency of government,  
12 person, group or corporation any funds which may be  
13 available in carrying out this Title.

14 5. Lease of unused buildings. The commissioner  
15 may, with the approval of the Director of Public  
16 Improvements, lease unused buildings at the state  
17 institutions for the purposes of providing services  
18 to departmental clients.

19 A. The leases shall be for a period not to  
20 exceed one year.

21 B. The commissioner shall submit a plan of the  
22 proposed leases and their impact on the insti-  
23 tutions and departmental clients to the joint  
24 standing committee having jurisdiction over  
25 health and institutional services no later than  
26 January 31st of each year.

27 6. Nurse training. The commissioner may provide  
28 for the training of nurses.

29 §1205. Office of Advocacy

30 1. Establishment. The Office of Advocacy is  
31 established within the department to investigate the  
32 claims and grievances of clients of the department  
33 and to advocate for compliance by any institution,  
34 other facility or agency administered by the depart-  
35 ment with all laws, administrative rules and institu-  
36 tional and other policies relating to the rights and  
37 dignity of clients.

38 2. Chief advocate. A chief advocate shall  
39 direct and coordinate the program of the office.

1           A. The chief advocate shall report only to the  
2           commissioner.

3           B. The chief advocate shall, with the approval  
4           of the commissioner, select other advocates  
5           needed to carry out the intent of this section,  
6           who shall report only to the chief advocate.

7           C. Both the chief advocate and all other advo-  
8           cates shall be classified state employees.

9           3. Duties. The Office of Advocacy, through the  
10          chief advocate and the other advocates, shall:

11          A. Receive or refer complaints made by clients  
12          of the department;

13          B. Intercede on behalf of these clients with  
14          officials of the institutions, facilities and  
15          agencies administered by the department or assist  
16          these clients in the initiation of grievance pro-  
17          ceedings established by the commissioner under  
18          section 1203, subsection 4, except that the  
19          Office of Advocacy may refuse to take action on  
20          any complaint which it deems to be trivial or  
21          moot or for which there is clearly another remedy  
22          available;

23          C. As an information source regarding the rights  
24          of all clients, keep itself informed about all  
25          laws, administrative rules and institutional and  
26          other policies relating to the rights and dignity  
27          of the clients and about relevant legal decisions  
28          and other developments related to the field of  
29          mental health and mental retardation, both in  
30          this State and in other parts of the country; and

31          D. Make and publish reports necessary to the  
32          performance of the duties described in this  
33          section, except that only the chief advocate may  
34          report any findings of the office to groups out-  
35          side the department, such as legislative bodies,  
36          advisory committees to the Governor, boards of  
37          visitors, law enforcement agencies and the press.

38          4. Access to files and records. The Office of  
39          Advocacy, through the chief advocate and the other

1 advocates, has access, limited only by the law, to  
2 the files, records and personnel of any institution,  
3 facility or agency administered by the department.

4 5. Confidentiality. Requests for action shall  
5 be treated confidentially as follows.

6 A. Any client request for action by the office  
7 and all written records or accounts related to  
8 the request shall be confidential as to the iden-  
9 tity of the client.

10 B. The records and accounts may be released only  
11 as provided by law.

12 §1206. Confidentiality of information

13 1. Generally. All orders of commitment, medical  
14 and administrative records, applications and reports,  
15 and facts contained in them, pertaining to any client  
16 shall be kept confidential and may not be disclosed  
17 by any person, except that:

18 A. A client, his legal guardian, if any, or, if  
19 he is a minor, his parent or legal guardian may  
20 give his informed written consent to the disclo-  
21 sure of information, if he has been given the  
22 opportunity to review the information sought to  
23 be disclosed;

24 B. Information may be disclosed if necessary to  
25 carry out any of the statutory functions of the  
26 department, the hospitalization provisions of  
27 chapter 3, subchapter IV or the purposes of Title  
28 22, section 3554, dealing with the investigatory  
29 function of the Protection and Advocacy Agency of  
30 the Developmentally Disabled in Maine;

31 C. Information may be disclosed if ordered by a  
32 court of record, subject to any limitation in the  
33 Maine Rules of Evidence, Rule 503;

34 D. Nothing in this subsection precludes disclo-  
35 sure, upon proper inquiry, of information relat-  
36 ing to the physical condition or mental status of  
37 a client to his spouse or next of kin;

1           E. Nothing in this subsection precludes the dis-  
2           closure of biographical or medical information  
3           concerning a client to commercial or governmental  
4           insurers, or to any other corporation, associa-  
5           tion or agency from which the department or a  
6           licensee of the department may receive reimburse-  
7           ment for the care and treatment, education,  
8           training or support of the client, if the recip-  
9           ient of the information uses it for no other pur-  
10          pose than to determine eligibility for reimburse-  
11          ment and, if eligibility exists, to make reim-  
12          bursement; and

13          F. Nothing in this subsection precludes the dis-  
14          closure or use of any information, including  
15          recorded or transcribed diagnostic and  
16          therapeutic interviews, concerning any client in  
17          connection with any educational or training pro-  
18          gram established between a public hospital and  
19          any college, university, hospital, psychiatric or  
20          counseling clinic or school of nursing, if, in  
21          the disclosure or use of the information as part  
22          of a course of instruction or training program,  
23          the client's identity remains undisclosed.

24           2. Statistical compilations and  
25          research. Confidentiality of records used for sta-  
26          tistical compilations or research is governed as fol-  
27          lows.

28          A. Persons engaged in statistical compilation or  
29          research may have access to treatment records of  
30          clients when needed for research, if:

31                   (1) The access is provided by the chief  
32                   administrative officer of the mental health  
33                   facility or his designee;

34                   (2) The research plan is first submitted to  
35                   and approved by the chief administrative  
36                   officer of the mental health facility, or  
37                   his designee, where the person engaged in  
38                   research or statistical compilation is to  
39                   have access to communications and records;  
40                   and

1           (3) The records are not removed from the  
2           mental health facility which prepared them,  
3           except that data which does not identify  
4           clients or coded data may be removed from a  
5           mental health facility if the key to the  
6           code remains on the premises of the facil-  
7           ity.

8           B. The chief administrative officer of the  
9           mental health facility and the person doing the  
10           research shall preserve the anonymity of the  
11           client and may not disseminate data which refers  
12           to the client by name, number or combination of  
13           characteristics which together could lead to his  
14           identification.

15           3. Use by the commissioner. Confidentiality of  
16           information and records used by the commissioner for  
17           administration, planning or research is governed as  
18           follows.

19           A. Any facility licensed by the department under  
20           section 3606 or a facility which receives funds  
21           from the department or has received or is receiv-  
22           ing funds under the Mental Retardation and Commu-  
23           nity Mental Health Centers Construction Act of  
24           1963, Public Law 88-164, as amended, shall send  
25           information and records to the commissioner, if  
26           requested by the commissioner pursuant to his  
27           obligation to maintain the overall responsibility  
28           for the care and treatment of the mentally ill.

29           B. The commissioner may collect and use the  
30           information and records for administration, plan-  
31           ning or research, under the following conditions.

32           (1) The use of the information is subject  
33           to subsection 1, paragraph C.

34           (2) Data identifying particular clients by  
35           means other than case number or code shall  
36           be removed from all records and reports of  
37           information before issuance from the mental  
38           health facility which prepared the records  
39           and reports.



1                   (3) A code shall be the exclusive means of  
2                   identifying clients and shall be available  
3                   to the commissioner and only the commis-  
4                   sioner.

5                   (4) The key to the code shall remain in the  
6                   possession of the issuing facility and shall  
7                   be available to the commissioner and only  
8                   the commissioner.

9                   (5) Members of the department may not  
10                  release or disseminate to any other person,  
11                  agency or department of government any  
12                  information which refers to a client by  
13                  name, numbers, address, birth date or other  
14                  characteristics or combination of character-  
15                  istics which could lead to the client's  
16                  identification, except as otherwise required  
17                  by law.

18                  4. Prohibited acts. Prohibited acts under this  
19                  section are governed as follows.

20                  A. A person is guilty of unlawful disclosure of  
21                  information if he disseminates, releases or dis-  
22                  closes information in violation of this section.

23                  B. Unlawful disclosure of information is a Class  
24                  D crime.

25                  §1207. Agreements with community agencies

26                  1. Definitions. As used in this section, unless  
27                  the context indicates otherwise, the following terms  
28                  have the following meanings.

29                  A. "Agreement" means a legally binding document  
30                  between 2 parties, including documents commonly  
31                  referred to as accepted application, proposal,  
32                  prospectus, contract, grant, joint or cooperative  
33                  agreement, purchase of service or state aid.

34                  B. "Community agency" means a person, a state  
35                  governmental or private nonprofit organization or  
36                  a firm, partnership or business corporation oper-  
37                  ated for profit, which operates a human service  
38                  program at the community level.

1 C. "Funds" means any and all general funds, ded-  
2 icated funds, fees, special revenue funds, 3rd  
3 party reimbursements, vendor payments or other  
4 funds available for expenditure by the department  
5 in support of the provision of a human service.

6 D. "Human service" means any alcoholism, chil-  
7 dren's community action, corrections, criminal  
8 justice, developmental disability, donated food,  
9 education, elderly, food stamp, income mainte-  
10 nance, health, juvenile, law enforcement, legal,  
11 medical care, mental health, mental retardation,  
12 poverty, public assistance, rehabilitation,  
13 social, substance abuse, transportation, welfare  
14 or youth service operated by a community agency  
15 under an agreement financially supporting the  
16 service, wholly or in part, by funds authorized  
17 for expenditure by the department.

18 E. "Nonprofit organization" means any agency,  
19 institution or organization which is, or is owned  
20 and operated by, one or more corporations or  
21 associations, no part of the net earnings of  
22 which inures, or may lawfully inure, to the benef-  
23 it of any private shareholder or individual and  
24 which has a territory of operations that may  
25 extend to a neighborhood, community, region or  
26 the State.

27 2. Commissioner's powers. The commissioner may  
28 disburse funds to a community agency for the purpose  
29 of financially supporting a human service, only if  
30 the disbursement is covered by a written agreement  
31 between the department and the agency, specifying at  
32 least the following:

33 A. The human service to be provided by the com-  
34 munity agency;

35 B. The method of payment by the department to  
36 the community agency; and

37 C. The criteria for monitoring and evaluating  
38 the performance of the community agency in the  
39 provision of the human service.

40 3. Commissioner's duties. The commissioner's  
41 duties are as follows.

1           A. The commissioner shall promulgate rules con-  
2           sistent with and necessary for the effective  
3           administration of this section.

4           B. When making agreements with community agen-  
5           cies for the provision of a human service, the  
6           commissioner shall use agreement forms and shall  
7           develop uniform procedures.

8           C. When disbursing funds pursuant to an agree-  
9           ment, the commissioner shall require uniform ac-  
10          counts payable forms or uniform supporting docu-  
11          mentation and information.

12          D. When accounting for funds disbursed under an  
13          agreement, the commissioner shall use uniform ac-  
14          counting principles, policies and procedures.

15          §1208. Mental Health Advisory Council

16                 1. Establishment. The Governor, with the advice  
17                 of the commissioner, shall establish a Mental Health  
18                 Advisory Council and appoint its membership.

19                 2. Membership. Membership on the Mental Health  
20                 Advisory Council is determined as follows.

21                         A. The membership of the council shall consist  
22                         of 30 persons, including:

23                                 (1) Representatives of consumers of mental  
24                                 health services, including clients and their  
25                                 families;

26                                 (2) Providers of mental health services;

27                                 (3) Persons who are concerned with the  
28                                 planning, operation or use of mental health  
29                                 services or facilities and who are repre-  
30                                 sentatives of nongovernmental organizations  
31                                 or groups; and

32                                 (4) Representatives of agencies of State  
33                                 Government.

34                         B. A majority, but no more than 60% of the mem-  
35                         bers of the council, shall be neither direct nor  
36                         indirect providers of mental health services.

1           (1) Consumers who are identified as  
2 nonprovider members of community mental  
3 health center boards may be considered as  
4 nonproviders for the purpose of serving on  
5 the council.

6           (2) The nonprovider consumer class of  
7 membership shall include, where possible,  
8 but not be limited to, persons who have been  
9 beneficiaries of the services of a public  
10 mental hospital or community mental health  
11 center, representatives of patient organiza-  
12 tions and representatives of patient advo-  
13 cacy groups.

14           C. No less than 40% of the members of the coun-  
15 cil shall be direct or indirect providers of  
16 mental health services and the provider group  
17 shall include persons from both governmental and  
18 nongovernmental mental health service agencies.

19           D. Both provider and consumer members shall be  
20 representative of the social, economic,  
21 linguistic and racial groups residing in the  
22 State and of the geographic areas of the State.

23           3. Term. The Governor shall appoint members of  
24 the council for terms of 3 years, except that:

25           A. Of the members first appointed, 1/3 shall be  
26 appointed for terms of 3 years, 1/3 shall be  
27 appointed for terms of 2 years and 1/3 shall be  
28 appointed for terms of one year, as designated by  
29 the Governor at the time of appointment; and

30           B. Any member appointed to fill a vacancy occur-  
31 ring prior to the expiration of the term for  
32 which his predecessor was appointed shall be  
33 appointed only for the remainder of the term.

34           4. Vacancy. Vacancies in the council are gov-  
35 erned as follows.

36           A. A vacancy in the council shall be filled in  
37 the same manner by which the original appointment  
38 was made.

1           B. A vacancy in the council does not affect the  
2           council's powers.

3           5. Chairman. The membership of the council  
4           shall elect a chairman.

5           6. Meetings. The council shall meet at least  
6           quarterly.

7           7. Duties. The council shall act in an advisory  
8           capacity to the commissioner in the development of  
9           the state mental health plan and in the appointment  
10           of a Director of the Bureau of Mental Health.

11           §1209. Maine Committee on the Problems of the Men-  
12           tally Retarded

13           There is established the Maine Committee on the  
14           Problems of the Mentally Retarded.

15           1. Composition. The committee shall consist of  
16           12 members to be appointed as follows:

17           A. One member from the House of Representatives  
18           appointed by the Speaker of the House of Repre-  
19           sentatives;

20           B. One member from the Senate appointed by the  
21           President of the Senate;

22           C. The President of the Maine Association for  
23           Retarded Citizens; and

24           D. Nine representative citizens appointed by the  
25           Governor.

26           2. Chairman. The Governor shall designate the  
27           chairman of the committee.

28           3. Duration of appointments. The duration of  
29           appointments shall be as follows.

30           A. Gubernatorial appointments shall be for terms  
31           of 3 years, plus the time period until a succes-  
32           or is appointed.

1           B. Legislative appointments shall be for the  
2           legislative term of office of the person  
3           appointed.

4           4. Compensation. Members of the committee shall  
5           serve without pay, but shall be reimbursed for  
6           expenses on the same basis as state employees.

7           5. Duties. The committee shall act in an advi-  
8           sory capacity to the commissioner and to the Director  
9           of the Bureau of Mental Retardation in assessing  
10          present programs, planning future programs and devel-  
11          oping means to meet the needs of the mentally  
12          retarded in Maine.

13          §1210. State Planning and Advisory Council on Devel-  
14          opmental Disabilities

15          1. Establishment. The Governor shall establish  
16          a State Planning and Advisory Council on Developmen-  
17          tal Disabilities.

18          2. Appointments. Appointments to the council  
19          are governed as follows.

20           A. The Governor shall appoint appropriate repre-  
21           sentatives to the council as are required as a  
22           condition of eligibility for benefits under the  
23           "Amendments to the Developmental Disabilities  
24           Services and Facilities Construction Act of  
25           1978," Public Law 93-288, United States Code,  
26           Title 42, Section 6000 et seq.

27           B. The Governor shall ensure that there is at  
28           least one representative from each of the regions  
29           established by the department, except that  
30           regional representatives may not be in addition  
31           to those required by the United States Code,  
32           Public Law 93-288.

33          3. Duties. The council shall consult with and  
34          coordinate with the commissioner in carrying out the  
35          purposes of the program established under the federal  
36          act specified in subsection 2.

37          4. Departmental role. The department's role  
38          under this section is as follows.

1           A. Except where a single state agency is other-  
2           wise designated or established in accordance with  
3           any other state law, the department is designated  
4           to be the sole agency of the State:

5                   (1) To develop jointly with the council the  
6                   statewide plan required by the federal act  
7                   specified in subsection 2; and

8                   (2) To be the sole administering agency for  
9                   that plan, which plan is now or may later be  
10                  required as a condition to the eligibility  
11                  for benefits under the federal act specified  
12                  in subsection 2.

13           B. The department may receive, administer and  
14           expend any funds that may be available under the  
15           federal act specified in subsection 2 or from any  
16           other sources, public or private, for those pur-  
17           poses.

18                                   SUBCHAPTER III

19                                   INSTITUTIONS GENERALLY

20                                   ARTICLE I

21                                   ADMINISTRATIVE PROVISIONS

22           §1401. Chief administrative officers

23                   1. Appointment. The commissioner may appoint  
24                   chief administrative officers of state institutions  
25                   as necessary for the proper performance of the func-  
26                   tions of the department.

27                   A. To be eligible for appointment as a chief  
28                   administrative officer of a state institution, a  
29                   person shall be experienced in the management of  
30                   the particular type of institution to which he is  
31                   to be assigned.

32                   B. Chief administrative officers of state insti-  
33                   tutions shall report directly to the commis-  
34                   sioner.

1           2. Acting chief administrative officer.  
2           Notwithstanding any other provision of law, the  
3           commissioner may delegate any employee of the depart-  
4           ment to serve as the acting chief administrative  
5           officer of any state institution, if the office of  
6           the chief administrative officer of any state insti-  
7           tution is vacant.

8           A. The acting chief administrative officer shall  
9           serve for a period not to exceed 180 days.

10           B. Service as the acting chief administrative  
11           officer of a state institution is considered a  
12           temporary additional duty for the person so dele-  
13           gated.

14           §1402. Bureaus for community service

15           1. Commissioner's duty. In every state institu-  
16           tion to which a mentally ill or mentally retarded  
17           person may be committed, the commissioner shall  
18           organize and administer under his direction a bureau  
19           for community service in the district served by the  
20           institution.

21           2. Bureau's duties. Each bureau for community  
22           service shall:

23           A. Supervise clients who have left the institu-  
24           tion with a view of their safe care at home,  
25           suitable employment and self-support under good  
26           working and living conditions, and with a view to  
27           prevention of their relapse and return to public  
28           dependency;

29           B. Provide for informing and advising any indi-  
30           gent person, his relatives or friends and the  
31           representatives of any charitable agency as to:

32           (1) The mental condition of the indigent  
33           person;

34           (2) The prevention and treatment of the  
35           condition;

36           (3) The available institutions or other  
37           means of caring for the afflicted person;  
38           and



1                   (4) Any other matter relative to the wel-  
2                   fare of the person; and

3                   C. Acquire and disseminate knowledge of mental  
4                   disease, mental retardation and allied conditions  
5                   with a view to promoting a better understanding  
6                   and the most enlightened public sentiment and  
7                   policy in these matters, and in this work the  
8                   bureau may cooperate with local authorities,  
9                   schools and social agencies.

10           §1403. Boards of visitors

11                   1. Appointment. The Governor shall appoint a  
12                   board of 5 visitors for each state institution under  
13                   the department and for the Governor Baxter School for  
14                   the Deaf within the Department of Educational and  
15                   Cultural Services.

16                   A. The term of the visitors is for one year.

17                   B. Members of boards of visitors are eligible  
18                   for reappointment at the expiration of their  
19                   terms.

20                   C. No member of the Legislature may serve on any  
21                   board of visitors.

22                   D. Members of boards of visitors are not enti-  
23                   tled to compensation.

24                   2. Powers. Each board of visitors may inspect  
25                   the institution to which it is assigned and may make  
26                   recommendations on the management of the institution  
27                   to the commissioner.

28                   3. Duties. Boards of visitors have the follow-  
29                   ing duties.

30                   A. Boards of visitors shall send copies of all  
31                   recommendations to the members of the joint  
32                   standing committee of the Legislature having  
33                   jurisdiction over health and institutional ser-  
34                   vices.

35                   B. Each board of visitors shall appear before  
36                   the joint standing committee of the Legislature

1 having jurisdiction over health and institutional  
2 services upon request.

3 §1404. Legal actions

4 1. Contract actions. Actions founded on any  
5 contract made with the State Purchasing Agent, or  
6 with any official of the department under the author-  
7 ity granted by the State Purchasing Agent, on behalf  
8 of any of the state institutions may be brought by  
9 the official making the contract or his successor in  
10 office.

11 2. Actions for injuries to property. Actions  
12 for injuries to the real or personal property of the  
13 State, used by any state institution and under the  
14 management of the chief administrative officer of the  
15 institution, may be prosecuted in the name of the  
16 officer or his successor in office.

17 §1405. Emergencies

18 When emergency situations are certified by the  
19 chief administrative officer of a state institution  
20 to exist at the institution, the commissioner may,  
21 with the approval of the Governor, assign departmen-  
22 tal personnel as may be necessary to assist in con-  
23 trolling the emergency situation.

24 1. Temporary assignment. The assignment of per-  
25 sonnel shall be only for the period during which the  
26 emergency exists.

27 2. Compensation. Any personnel transferred are  
28 entitled to receive compensation as required by the  
29 Personnel Law, rules and contract terms.

30 §1406. Improper conduct of institutional officers

31 The commissioner may inquire into any improper  
32 conduct imputed to state institutional officers in  
33 relation to the concerns of their institutions, and  
34 for that purpose may:

35 1. Subpoenas. Issue subpoenas for witnesses and  
36 compel their attendance and the production of papers  
37 and writings by punishment for contempt in case of  
38 willful failure, neglect or refusal;

1           2. Examination of witnesses. Examine witnesses  
2 under oath; and

3           3. Adjudication. Adjudicate cases of alleged  
4 improper conduct in a manner similar to and with  
5 similar effect as cases of arbitration.

6           §1407. Appointment of physician

7           In every state institution to which a mentally  
8 ill or mentally retarded person may be committed, the  
9 commissioner shall appoint a physician experienced in  
10 the care and treatment of such persons and the neces-  
11 sary assistants to the physician.

12           §1408. Cooperation with state departments

13           Whenever it is deemed advisable, the chief admin-  
14 istrative officer of any institution for the mentally  
15 ill or mentally retarded may cooperate with state  
16 departments to examine upon request and recommend  
17 suitable treatment and supervision for:

18           1. Mental or nervous disorder. Persons thought  
19 to be afflicted with a mental or nervous disorder;

20           2. School children. School children who are  
21 nervous, psychopathic, retarded, defective or  
22 incorrigible; and

23           3. Juvenile Court. Children brought before any  
24 Juvenile Court.

25           §1409. Payment for care and treatment of residents

26           1. Definitions. As used in this section, unless  
27 the context otherwise indicates, the following terms  
28 have the following meanings.

29           A. "Care and treatment" includes all goods and  
30 services provided, or caused to be provided, to a  
31 resident by the State.

32           B. "Liable person" means a person liable for the  
33 care and treatment of a resident under subsection  
34 3.

1           2. Charges. Charges under this section are gov-  
2 erned as follows.

3           A. The commissioner shall establish charges for  
4 the care and treatment of residents at any state  
5 institution.

6           B. Charges made under this section are a debt of  
7 the resident, or any person legally liable for  
8 the resident's care and treatment under this  
9 section, and are recoverable in any court of com-  
10 petent jurisdiction in a civil action brought in  
11 the name of the State.

12          3. Liable persons. Each resident, his spouse,  
13 his adult child and his parent are jointly and sever-  
14 ally liable for the care and treatment of the resi-  
15 dent, whether the resident was committed or otherwise  
16 legally admitted, from the date of the resident's  
17 admission to a state institution, except that:

18          A. A parent is not liable for a child resident's  
19 care and treatment, unless the child resident was  
20 wholly or partially dependent for support upon  
21 the parent at the time of admission;

22          B. A child is not liable for a parent resident's  
23 care and treatment, if:

24                 (1) The parent resident willfully failed to  
25 support the child prior to the child's 18th  
26 birthday; and

27                 (2) The child provides the department with  
28 clear and convincing evidence substantiating  
29 such a claim; and

30          C. The department may not charge any parent for  
31 the care and treatment of a child resident beyond  
32 the child's 18th birthday, or beyond 6 months  
33 from the date of the child's admission, whichever  
34 occurs later.

35          4. Financial statement forms. Financial state-  
36 ment forms are governed as follows.

37          A. The commissioner shall prescribe financial  
38 statement forms which shall be completed by:

- 1           (1) The resident;  
2           (2) Any person liable for the resident's  
3           care and treatment under this section; or  
4           (3) Any fiduciary acting on behalf of the  
5           resident or person liable for the resident.

6           B. The form in each case shall be witnessed.

7           5. Determination of ability to pay. After a  
8           resident is admitted into any state institution, the  
9           department shall:

10          A. Investigate to determine what property, real  
11          and personal, the resident has, and, in determin-  
12          ing ability to pay, the department shall consider  
13          all income, debts, expenses, obligations and the  
14          number and condition of dependents; and

15          B. Investigate to determine whether there exist  
16          any persons liable under subsection 3 for the  
17          payment of charges for the resident's care and  
18          treatment.

19                 (1) The department shall ascertain the  
20                 financial condition of the persons, if any,  
21                 and shall determine whether each person is  
22                 financially able to pay the charges.

23                 (2) In determining the person's ability to  
24                 pay, the department shall consider all  
25                 income, debts, expenses, obligations and the  
26                 number and condition of dependents.

27          6. Obtaining information. The obtaining of  
28          information under this section is governed as fol-  
29          lows.

30          A. Every agency and department of the State  
31          shall render all reasonable assistance to the  
32          department in obtaining all information necessary  
33          for the proper implementation of the purposes of  
34          this section.

35          B. To carry out the purposes of this section,  
36          the commissioner may administer oaths, take

1 testimony, subpoena and compel the attendance of  
2 witnesses, and subpoena and compel the production  
3 of books, papers, records and documents deemed  
4 material or pertinent in connection with the com-  
5 missioner's duty of securing payments for care  
6 and treatment as provided in this section.

7 (1) Any person failing to obey a subpoena  
8 may, upon petition of the commissioner to  
9 any Justice of the Superior Court, be  
10 ordered by the justice to appear and show  
11 cause for his disobedience of the subpoena.

12 (2) The justice, after hearing, may order  
13 that the subpoena be obeyed or, if it is  
14 made to appear to the justice that the sub-  
15 poena was for any reason inappropriately  
16 issued, may dismiss the petition.

17 C. Upon request of the commissioner, banking  
18 organizations, insurance companies, brokers or  
19 fiduciaries shall furnish to the commissioner  
20 full information concerning the earnings of,  
21 income of, funds deposited to the credit of or  
22 funds owing to any resident, or any person liable  
23 under subsection 3 for the resident.

24 (1) The information shall be provided in  
25 writing and shall be duly certified.

26 (2) The certified statement is admissible  
27 in evidence in any action or proceeding to  
28 compel payment for the care and treatment of  
29 the resident.

30 (3) The certified statement is prima facie  
31 evidence of the facts stated in the state-  
32 ment.

33 7. Inability to pay. When it is determined that  
34 any resident or liable person is unable to pay all or  
35 part of the charges for care and treatment, the com-  
36 missioner may cancel, suspend or reduce charges in  
37 accordance with the resident's or liable person's  
38 ability to pay.

1           8. Postponement of billing. The commissioner  
2 may enter into an agreement with any resident or lia-  
3 ble person to postpone billing for care and treatment  
4 for any period of time.

5           9. Benefit payments. The chief administrative  
6 officer of any state institution may receive as payee  
7 any benefits from social security, veterans' adminis-  
8 tration, railroad retirement or any other like bene-  
9 fits paid on behalf of any resident.

10           A. The chief administrative officer shall apply  
11 the benefits toward the care and treatment of the  
12 resident in accordance with charges made by the  
13 department.

14           B. Any surplus from the payments shall be held  
15 in a personal account at the hospital in the name  
16 of the resident and shall be available for the  
17 resident's personal needs.

18           10. Claims against estates. The State has a  
19 claim against the estate of any resident, and the  
20 estate of any liable person, for any amount due to  
21 the State at the date of death of the resident or the  
22 liable person, including any claim arising under an  
23 agreement entered into under this section, enforce-  
24 able in the Probate Court.

25           A. The state's claim has priority over all unse-  
26 cured claims against the estate, except:

27                   (1) Administrative expenses, including pro-  
28                   bate fees and taxes;

29                   (2) Expenses of the last sickness; and

30                   (3) Funeral expenses, not exceeding \$400,  
31 exclusive of the clergymen's honorarium and  
32 cemetery expenses.

33           B. The Attorney General shall collect any claim  
34 which the State may have against the estate.

35           C. The State may not enforce a claim against any  
36 real estate while it is occupied as a home by the  
37 surviving spouse of the resident or liable person

1           and while the surviving spouse remains unmarried.

2           11. Reimbursement of providers. Notwithstanding  
3 any other law, if part of the care and treatment of a  
4 resident under this section is provided by a party  
5 other than the State, the commissioner shall pay to  
6 the other party, from the fee collected by the  
7 department for the care and treatment of the resi-  
8 dent, the portion of those costs borne by the other  
9 party in the same ratio as the fee collected to the  
10 total charge made, except that:

11           A. This subsection may not be construed as a  
12 limitation on compensation for providers of resi-  
13 dent care and treatment; and

14           B. This subsection may not be construed as a  
15 limitation on contractual arrangements between  
16 the providers and the State.

17           12. Prohibited acts. A person is guilty of con-  
18 tempt if he fails to obey a subpoena when ordered to  
19 do so by a Justice of the Superior Court under sub-  
20 section 6, upon application by the commissioner to  
21 the Superior Court for an order of contempt.

22           §1410. Posting of political material

23           The chief administrative officer of each state  
24 institution shall provide in at least one accessible  
25 area in each institution an appropriate space for the  
26 posting of written political material sent for that  
27 purpose to the chief administrative officer by candi-  
28 dates for state or federal office.

29           1. One item limit. Not more than one item of  
30 written political material may be posted in one place  
31 on behalf of any one candidate.

32           2. Removal. Written political material shall be  
33 removed after the elections for which it is intended  
34 for use.

35           3. Voting place. If there is a voting place  
36 within the institution, the posting place may not be  
37 located within 250 feet of the entrance to the voting  
38 place.



1           4. Violation. The posting of written political  
2 material under this section is not a violation of  
3 Title 21, section 1575-A or section 1579, subsection  
4 7.

5           §1411. Public ways and parking areas

6           1. Rules. The chief administrative officers of  
7 state institutions may promulgate and enforce rules,  
8 subject to the approval of the commissioner, govern-  
9 ing the use of public ways and parking areas main-  
10 tained by the State at the state institutions.

11           A. The rules shall be promulgated in accordance  
12 with the Maine Administrative Procedure Act,  
13 Title 5, chapter 375.

14           B. The Secretary of State shall forward a copy  
15 of the rules, attested under the Great Seal of  
16 the State, to the District Court in the area of  
17 jurisdiction.

18           2. Special police officers. The chief adminis-  
19 trative officers of state institutions may appoint  
20 and employ, subject to the Personnel Law, special  
21 police officers for the purpose of enforcing rules  
22 promulgated under subsection 1.

23           A. The special police officers shall:

24                   (1) Patrol all the public ways and parking  
25                   areas subject to this section;

26                   (2) Enforce rules promulgated under this  
27                   section; and

28                   (3) Arrest and prosecute violators of the  
29                   rules.

30           B. The State Police, sheriffs, deputy sheriffs,  
31 police officers and constables who have jurisdic-  
32 tion over the areas in which the institutions are  
33 located shall, insofar as possible, cooperate  
34 with the special police officers in the enforce-  
35 ment of the rules promulgated under subsection 1.

1           3. Court procedure. The District Court in the  
2 areas in which the institutions are located has  
3 jurisdiction in all proceedings brought under this  
4 section.

5           A. The District Court shall take judicial notice  
6 of all rules promulgated under subsection 1.

7           B. In any prosecution for a violation of the  
8 rules, the complaint may allege the offense as in  
9 prosecutions under a general statute and need not  
10 recite the rule.

11           4. Prohibited acts. Prohibited acts under this  
12 section are governed as follows.

13           A. A person is guilty of a public way or parking  
14 violation if he violates any rule promulgated  
15 pursuant to this section.

16           B. Upon conviction of a public way or parking  
17 violation, a person shall pay a fine as follows:

18                   (1) For the first offense in any calendar  
19 year, a fine of \$1;

20                   (2) For the 2nd offense in any calendar  
21 year, a fine of \$2; and

22                   (3) For each offense in excess of 2 in any  
23 calendar year, a fine of \$5.

24           C. Notwithstanding any other law, the fines and  
25 costs of court paid under this section shall  
26 inure to the municipality in which the proceed-  
27 ings take place.

28           D. Offenses not covered by the rules promulgated  
29 under subsection 1 shall be dealt with as other-  
30 wise provided by law.

31 §1412. Military and Naval Children's Home

32           1. Departmental control. The department shall  
33 have charge of the affairs of the Military and Naval  
34 Children's Home.

1           2. Chief administrative officer. The chief  
2 administrative officer of the Military and Naval  
3 Children's Home is called the superintendent.

4           3. Purpose. The purpose of the Military and  
5 Naval Children's Home is the shelter and care of  
6 children of this State who are in need of shelter and  
7 care for one or more of the following reasons:

8           A. Lack of appropriate alternative shelter and  
9 care;

10          B. Potential or actual abuse and neglect; or

11          C. Family crisis and upheaval.

12           4. Veteran's preference. Preference in admis-  
13 sion to the Military and Naval Children's Home shall  
14 be given to the children of veterans of Maine who  
15 have served in the various wars in which the United  
16 States has been engaged.

17           5. Training programs. Any child in residence at  
18 the Military and Naval Children's Home, who at the  
19 expiration of his minority is a participant in an  
20 educational or vocational training program, the  
21 interruption or cessation of which will be caused by  
22 discharge from the home, may, with the approval of  
23 the superintendent, voluntarily elect to remain in  
24 residence at the home until completion of all or part  
25 of the educational or vocational training program.

26          §1413. Residential facility for children

27           1. Stevens School. The department has control  
28 over the facility formerly known as the Stevens  
29 School, located at Hallowell.

30           2. Commissioner's power. The commissioner,  
31 after consulting with the Commissioner of Human Ser-  
32 vices, the Commissioner of Educational and Cultural  
33 Services and other public and private agencies,  
34 including community mental health centers, and with  
35 the approval of the Governor, may make any arrange-  
36 ments he deems necessary, with funds available to the  
37 department, for the establishment and maintenance of  
38 a residential facility, located at the site of the

1 facility formerly known as the Stevens School, pro-  
2 viding a broad range of educational, psychological  
3 and other related services to children with severe  
4 emotional, mental and behavioral disturbances.

5 3. Budget report. Before January 15th of each  
6 year after a facility has been established under sub-  
7 section 2, the commissioner shall send a budget  
8 report for the facility to the Legislature and the  
9 report shall include for the current, past and next  
10 year:

11 A. The actual and estimated amount of all reve-  
12 nuces available to the facility, by sources;

13 B. The actual and estimated amounts of expendi-  
14 tures, shown by object of the expenditure and by  
15 program;

16 C. A list of programs, the objectives of each  
17 program and a description and evaluation of ac-  
18 tivities to attain the objectives, including a  
19 statement of the number of clients served;

20 D. The name and address of any contractor or  
21 subcontractor or, for contracts not yet entered  
22 into, a description of the nature of the contrac-  
23 tor's or subcontractor's business and the ser-  
24 vices to be provided by each, if the names and  
25 addresses are not known;

26 E. A description of the terms of any contract,  
27 including a description of services to be pro-  
28 vided, indicating when they are to be performed  
29 and to whom the final product or services have  
30 been or will be provided; and

31 F. A listing of the total amount to be paid  
32 under any contract and the times and conditions  
33 of payment.

34 ARTICLE II

35 CLIENTS GENERALLY

36 §1430. Rights

1        Any resident of a state institution has a right  
2 to nutritious food in adequate quantities, adequate  
3 professional medical care, an acceptable level of  
4 sanitation, ventilation and light, a reasonable  
5 amount of space per person in any sleeping area, a  
6 reasonable opportunity for physical exercise and  
7 recreational activities, protection against any  
8 physical or psychological abuse and a reasonably  
9 secure area for the maintenance of permitted personal  
10 effects.

11        §1431. Indefinite convalescent status

12        1. Definitions. As used in this section, unless  
13 the context otherwise indicates, the following terms  
14 have the following meanings.

15        A. "Living conditions" includes, but is not  
16 limited to, the physical conditions of a residen-  
17 tial facility, the individual treatment plan pro-  
18 vided for each outpatient client and the programs  
19 for treatment available to and appropriate for  
20 each outpatient client.

21        B. "Residential facility" means a boarding home,  
22 nursing home, foster home, group home or halfway  
23 house licensed by the Department of Human Ser-  
24 vices or used by the Department of Mental Health  
25 and Mental Retardation.

26        2. Requirements. The chief administrative offi-  
27 cer of any state institution, or a person designated  
28 by him, may place any person who has been hospital-  
29 ized as mentally ill or mentally retarded, except  
30 residents described in chapter 3, subchapter IV,  
31 Article II, on indefinite convalescence status, if  
32 the officer or his designee determines that the resi-  
33 dential facility in which the person will be residing  
34 is at least equivalent in the quality of living con-  
35 ditions to the state institution in which the person  
36 is hospitalized.

37        3. Standards. The commissioner shall establish  
38 standards for assessing whether or not living condi-  
39 tions in residential facilities are equivalent to the  
40 existing living conditions in state institutions.

1     §1432. Administration of medication

2             The administration of medication in state insti-  
3 tutions shall be in accordance with rules established  
4 by the State Board of Nursing.

5             1. Maine Administrative Procedure Act. The  
6 State Board of Nursing shall establish rules in ac-  
7 cordance with the Maine Administrative Procedure Act,  
8 Title 5, chapter 375.

9             2. Considerations. In establishing rules for  
10 each type of state institution, the State Board of  
11 Nursing shall consider, among other factors:

12             A. The general health of the persons likely to  
13 receive medication;

14             B. The number of persons served by the institu-  
15 tion; and

16             C. The number of persons employed at the insti-  
17 tution.

18     §1433. Aliens

19             1. Notification of immigration officer. When a  
20 person is admitted or committed to a state, county,  
21 city or private institution which is supported wholly  
22 or in part by public funds, the chief administrative  
23 officer of the institution shall inquire at once into  
24 the nationality of the person and, if it appears that  
25 the person is an alien, the chief administrative  
26 officer shall notify immediately the United States  
27 immigration officer, in charge of the district in  
28 which the institution is located, of:

29             A. The date of and the reason for the alien's  
30 admission or commitment;

31             B. The length of time for which the alien is  
32 admitted or committed;

33             C. The country of which the alien is a citizen;  
34 and

35             D. The date on which and the port at which the  
36 alien last entered the United States.

1           2. Copy of record to immigration officer. Upon  
2 the official request of the United States immigration  
3 officer in charge of the territory or district in  
4 which is located any court committing an alien to a  
5 state, county, city or private institution which is  
6 supported wholly or in part by public funds, the  
7 clerk of the court shall furnish without charge a  
8 certified copy of any record pertaining to the  
9 alien's case.

10           §1434. Resident's abandoned property

11           Any property abandoned or unclaimed by a resident  
12 of a state institution shall be disposed of according  
13 to Title 33, chapter 27.

14           §1435. Unnatural death of resident

15           When the death of any resident in a state insti-  
16 tution is not clearly the result of natural causes,  
17 an examination and inquest shall be held as in other  
18 cases, and the commissioner or the chief administra-  
19 tive officer of the institution shall cause a medical  
20 examiner to be immediately notified for that purpose.

21   CHAPTER 3

22   MENTAL HEALTH

23   SUBCHAPTER I

24   BUREAU OF MENTAL HEALTH

25           §3001. Establishment

26           There is established, within the Department of  
27 Mental Health and Mental Retardation, the Bureau of  
28 Mental Health, which is responsible for the direction  
29 of the mental health programs in the state insti-  
30 tutions and for the promotion and guidance of mental  
31 health programs within the several communities of the  
32 State.

33           §3002. Director

1       1. Appointment. The commissioner shall, with  
2 the advice of the Mental Health Advisory Council,  
3 appoint and set the salary for the Director of the  
4 Bureau of Mental Health.

5       A. Notwithstanding any other provision of law,  
6 the commissioner may delegate any employee of the  
7 department to serve, for a period not to exceed  
8 180 days, as the acting director, if the office  
9 of the director is vacant.

10       B. Service as the acting director is considered  
11 a temporary additional duty for the person so  
12 delegated.

13       2. Qualifications. To be eligible for appoint-  
14 ment as director, a person shall have training and  
15 experience in mental health program administration or  
16 satisfactory experience in the direction of work of a  
17 comparable nature.

18       3. Term. The appointment of the director shall  
19 be for an indeterminate term and until a successor is  
20 appointed and qualified or during the pleasure of the  
21 commissioner.

22       4. Duties. In addition to other duties set out  
23 in this Title, the director shall:

24       A. Report directly to the commissioner; and

25       B. Carry out the purpose of the bureau.

26       §3003. Rules

27       1. Promulgation. The director shall promulgate  
28 rules, subject to the Maine Administrative Procedure  
29 Act, Title 5, chapter 375, for the enhancement and  
30 protection of the rights of clients receiving ser-  
31 vices from the department, from any hospital pursuant  
32 to subchapter IV or from any program or facility ad-  
33 ministered or licensed by the department under  
34 section 3606.

35       2. Requirements. The rules shall include, but  
36 are not limited to:



- 1           A. Establishment of the right to provision of  
2           treatment and related services in the least re-  
3           strictive appropriate setting;
- 4           B. Establishment of the right to an  
5           individualized treatment or service plan, to be  
6           developed with the participation of the client;
- 7           C. Standards for informed consent to treatment  
8           and guidelines for exceptions to informed consent  
9           as permitted under applicable law or in emergency  
10           situations;
- 11           D. Standards for participation in experimenta-  
12           tion and research;
- 13           E. Standards pertaining to the use of seclusion  
14           and restraint;
- 15           F. Establishment of the right to appropriate  
16           privacy and to a humane treatment environment;
- 17           G. Establishment of the right to confidentiality  
18           of records and procedures pertaining to a  
19           person's right to access to his mental health  
20           care records;
- 21           H. Establishment of the right to receive visi-  
22           tors and to communicate by telephone and mail;
- 23           I. Procedures to ensure that clients are noti-  
24           fied of their rights;
- 25           J. The right to assistance in protecting a right  
26           or advocacy service in the exercise or protection  
27           of a right; and
- 28           K. Provisions for a fair, timely and impartial  
29           grievance procedure for the purpose of ensuring  
30           appropriate administrative resolution of griev-  
31           ances with respect to infringement of rights.
- 32           3. Public hearing. The director shall hold a  
33           public hearing before adopting these rules and shall  
34           give notice of the public hearing pursuant to the  
35           Maine Administrative Procedure Act, Title 5, section  
36           8053.

1           4. Legislative review. When a rule is proposed  
2 or adopted under this section, a copy of the proposed  
3 or adopted rule shall be sent to the legislative com-  
4 mittee having jurisdiction over health and institu-  
5 tional services.

6           A. The committee may review the rule and, if it  
7 determines that an adopted rule should be  
8 stricken or amended, the committee may prepare  
9 legislation to accomplish that purpose and submit  
10 the legislation to the full Legislature in accord-  
11 dance with legislative rules.

12           B. The adopted rule shall remain in effect  
13 unless the full Legislature acts to strike or  
14 amend it, or it is repealed or amended by the  
15 director in accordance with the Maine Administra-  
16 tive Procedure Act, Title 5, chapter 375.

17   SUBCHAPTER II

18   STATE MENTAL HEALTH INSTITUTES

19           §3201. Maintenance

20           The commissioner shall maintain 2 state mental  
21 health institutes for the mentally ill, one at Bangor  
22 called the Bangor Mental Health Institute and the  
23 other at Augusta called the Augusta Mental Health  
24 Institute.

25           §3202. Superintendent

26           1. Chief administrative officer. The chief  
27 administrative officer of each state mental health  
28 institute is called the superintendent.

29           2. Qualifications. To be eligible to be  
30 appointed superintendent, a person shall be a quali-  
31 fied psychologist, qualified hospital administrator,  
32 qualified psychologist or a person with a master's  
33 degree in social work, public administration or  
34 public health.

35           3. Appointment. The commissioner shall, with  
36 the advice of the Advisory Committee on Mental  
37 Health, appoint and set the salaries for the superin-  
38 tendent of each state mental health institute.

1           A. The commissioner and the advisory committee  
2           shall give due consideration to the appointee's  
3           qualifications and experience in administration  
4           and to his qualifications and experience in  
5           health matters.

6           B. The appointments are at the pleasure of the  
7           commissioner.

8           4. Duties. The superintendent shall:

9           A. Have general superintendence of the state  
10           mental health institute and grounds under the  
11           direction of the commissioner; and

12           B. Receive all persons legally sent to the state  
13           mental health institute who are in need of spe-  
14           cial care and treatment, if accommodations  
15           permit, subject to the rules of the department.

16                                       SUBCHAPTER III

17                                       COMMUNITY MENTAL HEALTH SERVICES

18           §3601. Definition

19           As used in the subchapter, unless the context  
20           otherwise indicates, "mental health services" means  
21           out-patient counselling, other psychological, psychi-  
22           atric, diagnostic or therapeutic services and other  
23           allied services.

24           §3602. Purpose

25           The purpose of this subchapter is to expand com-  
26           munity mental health services, encourage participa-  
27           tion in a program of community mental health services  
28           by persons in local communities, obtain better under-  
29           standing of the need for those services and secure  
30           aid for programs of community mental health services  
31           by state aid and local financial support.

32           §3603. Commissioner's duties

33           The commissioner shall promulgate rules relating  
34           to the administration of the services authorized by  
35           this subchapter and to licensing under this subchap-  
36           ter.

1     §3604. Commissioner's powers

2           1. Provision of services. The commissioner may  
3 provide mental health services throughout the State  
4 and for that purpose may cooperate with other state  
5 agencies, municipalities, persons, unincorporated  
6 associations and nonstock corporations.

7           2. Funding sources. The commissioner may  
8 receive and use for the purpose of this subchapter  
9 money appropriated by the State, grants by the Fed-  
10 eral Government, gifts from individuals and gifts  
11 from any other sources.

12          3. Grants. The commissioner may make grants of  
13 funds to any state or local governmental unit, or  
14 branch of a governmental unit, or to a person, unin-  
15 corporated association or nonstock corporation to be  
16 used in the conduct of its mental health services if:

17           A. The entity or person applies for the funds;  
18 and

19           B. The programs administered by the entity or  
20 person provide for adequate standards of profes-  
21 sional services.

22     §3605. Governmental agencies

23           Any state department, municipality or other gov-  
24 ernmental unit, or any branch or composite of a state  
25 department, municipality or other governmental unit  
26 may, through its authorized representative or govern-  
27 ing body approved by the commissioner, adopt and con-  
28 duct a program of mental health services established  
29 or approved by the commissioner.

30     §3606. Licenses

31           The commissioner may, in accordance with the  
32 rules of the department, issue a license to any  
33 person, firm, association or corporation to operate,  
34 conduct or maintain a facility for the provision of  
35 mental health services.

36           1. Term. The term of the license is for one  
37 year.

1           2. Fee. The annual fee for the license is \$25.

2           3. Temporary and conditional licenses. If a  
3 licensee, upon inspection by the department, fails to  
4 meet any requirement imposed by this section or by  
5 rules promulgated under this section, the commis-  
6 sioner may:

7           A. Upon payment of a fee of \$10, issue a tempo-  
8 rary license for a specified period, not to  
9 exceed 90 days, during which time the licensee  
10 shall make corrections specified by the depart-  
11 ment to bring the licensee into compliance with  
12 this section and rules promulgated under this  
13 section;

14           B. Upon payment of a fee of \$10, issue a condi-  
15 tional license setting forth conditions and, if  
16 the conditions are not met by the licensee to the  
17 satisfaction of the department, the commissioner  
18 shall immediately void the conditional license  
19 by:

20                 (1) Personally serving written notice on  
21 the conditional licensee; or

22                 (2) If the licensee cannot be reached for  
23 personal service, leaving notice at the li-  
24 censed premises; or

25           C. Refuse to issue any temporary or conditional  
26 license.

27           4. New application for regular license. The  
28 commissioner may consider a new application for a  
29 regular license if:

30           A. The conditions imposed by the commissioner at  
31 the time of issuance of the temporary or condi-  
32 tional license have been met; and

33           B. Satisfactory evidence of this fact has been  
34 given to the department.

35           5. Suspension or revocation. Suspension or  
36 revocation of licenses under this section is governed  
37 as follows.

1 A. A license issued under this section may be  
2 suspended or revoked for just cause.

3 B. When the commissioner believes a license  
4 should be suspended or revoked, he shall file a  
5 complaint with the Administrative Court under the  
6 Maine Administrative Procedure Act, Title 5,  
7 chapter 375.

8 6. Refusal to issue license. A person aggrieved  
9 by the refusal of the commissioner to issue a license  
10 may file a complaint with the Administrative Court,  
11 under the Maine Administrative Procedure Act, Title  
12 5, chapter 375.

13 7. Prohibited acts. Prohibited acts under this  
14 section are governed as follows.

15 A. Any person, firm, association or corporation,  
16 except an individual or corporate professional  
17 practice of one or more psychologists or psychia-  
18 trists, is guilty of unlicensed operation of a  
19 mental health service facility, if he or it oper-  
20 ates, conducts or maintains such a facility with-  
21 out a license from the commissioner.

22 B. Notwithstanding Title 17-A, section 4-A,  
23 unlicensed operation of a mental health service  
24 facility is punishable by a fine of not more than  
25 \$500 or by imprisonment for not more than 60  
26 days.

27 SUBCHAPTER IV

28 HOSPITALIZATION

29 ARTICLE I

30 GENERAL PROVISIONS

31 §3801. Definitions

32 As used in this subchapter, unless the context  
33 otherwise indicates, the following terms have the  
34 following meanings.

35 1. Hospital. "Hospital" means:

1           A. A state mental health institute; or

2           B. A nonstate mental health institution.

3           2. Licensed physician. "Licensed physician"  
4 means a person licensed under the laws of the State  
5 to practice medicine or osteopathy or a medical offi-  
6 cer of the Federal Government while in this State in  
7 the performance of his official duties.

8           3. Licensed psychologist. "Licensed psychol-  
9 ogist" means a person licensed under the laws of the  
10 State as a psychologist and who practices clinical  
11 psychology.

12           4. Likelihood of serious harm. "Likelihood of  
13 serious harm" means:

14           A. A substantial risk of physical harm to the  
15 person himself as manifested by evidence of  
16 recent threats of, or attempts at, suicide or  
17 serious bodily harm to himself and, after consid-  
18 eration of less restrictive treatment settings  
19 and modalities, a determination that community  
20 resources for his care and treatment are unavail-  
21 able;

22           B. A substantial risk of physical harm to other  
23 persons as manifested by recent evidence of homici-  
24 dal or other violent behavior or recent evi-  
25 dence that others are placed in reasonable fear  
26 of violent behavior and serious physical harm to  
27 them and, after consideration of less restrictive  
28 treatment settings and modalities, a determina-  
29 tion that community resources for his care and  
30 treatment are unavailable; or

31           C. A reasonable certainty that severe physical  
32 or mental impairment or injury will result to the  
33 person alleged to be mentally ill as manifested  
34 by recent evidence of his actions or behavior  
35 which demonstrate his inability to avoid or pro-  
36 tect himself from such impairment or injury, and,  
37 after consideration of less restrictive treatment  
38 settings and modalities, a determination that  
39 suitable community resources for his care are  
40 unavailable.

1           5. Mentally ill person. "Mentally ill person"  
2 means a person having a psychiatric or other disease  
3 which substantially impairs his mental health,  
4 including persons suffering from the effects of the  
5 use of drugs, narcotics, hallucinogens or intoxi-  
6 cants, including alcohol, but not including mentally  
7 retarded or sociopathic persons.

8           6. Nonstate mental health institution.  
9 "Nonstate mental health institution" means a public  
10 institution, a private institution or a mental health  
11 center, which is administered by an entity other than  
12 the State and which is equipped to provide inpatient  
13 care and treatment for the mentally ill.

14           7. Patient. "Patient" means a person under  
15 observation, care or treatment in a hospital or resi-  
16 dential care facility pursuant to this subchapter.

17           8. Residential care facility. "Residential care  
18 facility" means a licensed or approved boarding care,  
19 nursing care or foster care facility which supplies  
20 supportive residential care to individuals due to  
21 their mental illness.

22           9. State mental health institute. "State mental  
23 health institute" means the Augusta Mental Health  
24 Institute or the Bangor Mental Health Institute.

25 §3802. Commissioner's powers

26 The commissioner may:

27           1. Rules. Promulgate such rules, not incon-  
28 sistent with this subchapter, as he may find to be  
29 reasonably necessary for proper and efficient hospi-  
30 talization of the mentally ill;

31           2. Investigation. Investigate, by personal  
32 visit, complaints made by any patient or by any  
33 person on behalf of a patient;

34           3. Visitation. Visit each hospital or residen-  
35 tial care facility regularly to review the commitment  
36 procedures of all new patients admitted between  
37 visits;



1           4. Reports. Require reports from the chief  
2 administrative officer of any hospital or residential  
3 care facility relating to the admission, examination,  
4 diagnosis, release or discharge of any patient; and

5           5. Forms. Prescribe the form of applications,  
6 records, reports and medical certificates provided  
7 for under this subchapter and prescribe the informa-  
8 tion required to be contained in them.

9           §3803. Patient's rights

10           A patient in a hospital or residential care  
11 facility under this subchapter has the following  
12 rights.

13           1. Civil rights. Every patient is entitled to  
14 exercise all civil rights, including, but not limited  
15 to, the right to civil service status, the right to  
16 vote, rights relating to the granting, renewal, for-  
17 feiture or denial of a license, permit, privilege or  
18 benefit pursuant to any law, the right to enter into  
19 contractual relationships and the right to manage his  
20 property, unless:

21           A. The chief administrative officer of the  
22 hospital or residential care facility determines  
23 that it is necessary for the medical welfare of  
24 the patient to impose restrictions on the exer-  
25 cise of these rights and, if restrictions are  
26 imposed, the restrictions and the reasons for  
27 them shall be made a part of the clinical record  
28 of the patient;

29           B. A patient has been adjudicated incompetent  
30 and has not been restored to legal capacity; or

31           C. The exercise of these rights is specifically  
32 restricted by other statute or rule, but not  
33 solely because of the fact of admission to a  
34 hospital or residential care facility.

35           2. Humane care and treatment. Every patient is  
36 entitled to humane care and treatment and, to the  
37 extent that facilities, equipment and personnel are  
38 available, to medical care and treatment in accor-  
39 dance with the highest standards accepted in medical  
40 practice.

1           3. Restraints and seclusion. Restraint, includ-  
2 ing any mechanical means of restricting movement, and  
3 seclusion, including isolation by means of doors  
4 which cannot be opened by the patient, may not be  
5 used on a patient, unless the chief administrative  
6 officer of the hospital or residential care facility  
7 or his designee determines that either is required by  
8 the medical needs of the patient.

9           A. The chief administrative officer of the  
10 hospital or facility shall record and make avail-  
11 able for inspection every use of mechanical  
12 restraint or seclusion and the reasons for its  
13 use.

14           B. The limitation of the use of seclusion in  
15 this section does not apply to maximum security  
16 installations.

17           4. Communication. Patient communication rights  
18 are as follows.

19           A. Every patient is entitled to communicate by  
20 sealed envelopes with the department, a clergy-  
21 man, his attorney and the court which ordered his  
22 hospitalization, if any.

23           B. Every patient is entitled to communicate by  
24 mail in accordance with the rules of the hospi-  
25 tal.

26           5. Visitors. Every patient is entitled to  
27 receive visitors unless definitely contraindicated by  
28 his medical condition, except that he may be visited  
29 by his clergyman or his attorney at any reasonable  
30 time.

31           6. Sterilization. A patient may not be steril-  
32 ized except in accordance with chapter 7.

33           §3804. Habeas corpus

34           Any person detained pursuant to this subchapter  
35 is entitled to the writ of habeas corpus, upon proper  
36 petition by himself or by a friend to any justice  
37 generally empowered to issue the writ of habeas cor-  
38 pus in the county in which the person is detained.

1     §3805. Prohibited acts

2             1. Unwarranted hospitalization. A person is  
3 guilty of causing unwarranted hospitalization, if he  
4 willfully causes the unwarranted hospitalization of  
5 any person under this Title.

6             2. Denial of rights. A person is guilty of  
7 causing a denial of rights if he willfully causes the  
8 denial to any person of any of the rights accorded to  
9 him by this Title.

10            3. Penalty. Causing unwarranted hospitalization  
11 or causing a denial of rights is a Class C crime.

12                                    ARTICLE II

13                                    VOLUNTARY HOSPITALIZATION

14     §3831. Admission

15             Any person desiring admission to a hospital for  
16 the mentally ill for care and treatment of a mental  
17 illness may be admitted without making a formal  
18 application under the following conditions.

19             1. Availability of accommodations. Except in  
20 cases of medical emergency, voluntary admission is  
21 subject to the availability of suitable accommoda-  
22 tions.

23             2. Standard hospital information. Standard  
24 hospital information may be elicited from the person  
25 if, after examination, the chief administrative offi-  
26 cer of the hospital deems the person suitable for  
27 admission, care and treatment.

28             3. Persons under 18 years of age. Any person  
29 under 18 years of age must have the consent of his  
30 parent or guardian.

31             4. State mental health institute. Any person  
32 under 18 years of age must have the consent of the  
33 commissioner for admission to a state mental health  
34 institute.

35     §3832. Freedom to leave

1           1. Patient's right. A patient admitted under  
2 section 3831 is free to leave the hospital at any  
3 time after admission, except that admission of the  
4 person under section 3863 is not precluded, if at any  
5 time such an admission is considered necessary in the  
6 interest of the person and of the community.

7           2. Notice. The chief administrative officer of  
8 the hospital shall cause every patient admitted under  
9 section 3831 to be informed, at the time of admis-  
10 sion, of:

11           A. His status as an informally admitted patient;  
12 and

13           B. His freedom to leave the hospital at any time  
14 under this section.

### 15                                   ARTICLE III

#### 16                                   INVOLUNTARY HOSPITALIZATION

#### 17   §3861. Reception of involuntary patients

18           1. Nonstate mental health institution. The  
19 chief administrative officer of a nonstate mental  
20 health institution may receive for observation, diag-  
21 nosis, care and treatment in the institution any  
22 person whose admission is applied for under any of  
23 the procedures in this subchapter.

24           2. State mental health institute. The chief  
25 administrative officer of a state mental health  
26 institute:

27           A. May receive for observation, diagnosis, care  
28 and treatment in the hospital any person whose  
29 admission is applied for under section 3831 or  
30 3863; and

31           B. Shall receive for observation, diagnosis,  
32 care and treatment in the hospital any person  
33 whose admission is applied for under section 3864  
34 or is ordered by a court.

#### 35   §3862. Protective custody

1           1. Law enforcement officer's power. If a law  
2 enforcement officer has reasonable grounds to  
3 believe, based upon his personal observation, that a  
4 person may be mentally ill and that due to his condi-  
5 tion he presents a threat of imminent and substantial  
6 physical harm to himself or to other persons, he:

7           A. May take the person into protective custody;  
8           and

9           B. If the officer does take the person into pro-  
10 ductive custody, shall deliver the person forth-  
11 with for examination by an available licensed  
12 physician or licensed psychologist, as provided  
13 in section 3863.

14           2. Certificate not executed. If a certificate  
15 relating to the person's likelihood of serious harm  
16 is not executed by the examiner under section 3863,  
17 the officer shall:

18           A. Release the person from protective custody  
19 and, with his permission, return him forthwith to  
20 his place of residence, if within the territorial  
21 jurisdiction of the officer;

22           B. Release the person from protective custody  
23 and, with his permission, return him forthwith to  
24 the place where he was taken into protective cus-  
25 tody; or

26           C. If the person is also under arrest for a  
27 violation of law, retain him in custody until he  
28 is released in accordance with the law.

29           3. Certificate executed. If the certificate is  
30 executed by the examiner under section 3863, the  
31 officer shall undertake forthwith to secure the  
32 endorsement of a judicial officer under section 3863  
33 and may detain the person for a reasonable period of  
34 time, not to exceed 18 hours pending that endorse-  
35 ment.

36           4. Transportation costs. The costs of trans-  
37 portation under this section shall be paid in the  
38 manner provided under section 3863.

1     §3863. Emergency procedure

2             A person may be admitted to a mental hospital on  
3 an emergency basis according to the following proced-  
4 ures.

5             1. Application. Any health officer, law  
6 enforcement officer or other person may make a writ-  
7 ten application to admit a person to a mental hospi-  
8 tal, subject to the prohibitions and penalties of  
9 section 3805, stating:

10            A. His belief that the person is mentally ill  
11 and, because of his illness, poses a likelihood  
12 of serious harm; and

13            B. The grounds for this belief.

14            2. Certifying examination. The written applica-  
15 tion shall be accompanied by a dated certificate,  
16 signed by a licensed physician or a licensed psychol-  
17 ogist who practices clinical psychology, stating:

18            A. He has examined the person on the date of the  
19 certificate, which date may not be more than 3  
20 days before the date of admission to the hospi-  
21 tal; and

22            B. He is of the opinion that the person is men-  
23 tally ill and, because of his illness, poses a  
24 likelihood of serious harm.

25            3. Judicial review. The application and accom-  
26 panying certificate shall be reviewed by a Justice of  
27 the Superior Court, Judge of the District Court,  
28 Judge of Probate or a complaint justice.

29            A. If the judge or justice finds the application  
30 and accompanying certificate to be regular and in  
31 accordance with the law, he shall endorse them.

32            B. No person may be held against his will in the  
33 hospital under this section, whether informally  
34 admitted under section 3831 or sought to be  
35 involuntarily admitted under this section, unless  
36 the application and certificate have been  
37 endorsed by a judge or justice, except that a

1 person for whom an examiner has executed the cer-  
2 tificate under subsection 2 may be detained in a  
3 hospital for a reasonable period of time, not to  
4 exceed 18 hours, pending endorsement by a judge  
5 or justice, if:

6 (1) For persons informally admitted under  
7 section 3831, the chief administrative offi-  
8 cer of the hospital undertakes to secure the  
9 endorsement forthwith upon execution of the  
10 certificate by the examiner; and

11 (2) For persons sought to be involuntarily  
12 admitted under this section, the person or  
13 persons transporting him to the hospital  
14 undertake to secure the endorsement forth-  
15 with upon execution of the certificate by  
16 the examiner.

17 4. Custody and transportation. Custody and  
18 transportation under this section are governed as  
19 follows.

20 A. Upon endorsement of the application and cer-  
21 tificate by the judge or justice, any health  
22 officer, law enforcement officer or other person  
23 designated by the judge or justice may take the  
24 person into custody and transport him to the  
25 hospital designated in the application.

26 B. The county in which the person is found is  
27 responsible for any expenses of transportation  
28 under this section, including return from the  
29 hospital if admission is declined.

30 5. Continuation of hospitalization. If the  
31 chief administrative officer of the hospital recom-  
32 mends further hospitalization of the person, he shall  
33 determine the suitability of admission, care and  
34 treatment of the patient as an informally admitted  
35 patient, as described in section 3831.

36 A. If the chief administrative officer of the  
37 hospital determines that admission of the person  
38 as an informally admitted patient is suitable, he  
39 shall admit the person on this basis, if the  
40 person so desires.

1 B. If the chief administrative officer of the  
2 hospital determines that admission of the person  
3 as an informally admitted patient is not suit-  
4 able, or if the person declines admission as an  
5 informally admitted patient, the chief adminis-  
6 trative officer of the hospital may file an  
7 application for the issuance of an order for  
8 hospitalization under section 3864.

9 (1) The application shall be made to the  
10 District Court having territorial jurisdic-  
11 tion over the hospital.

12 (2) The application shall be filed within 5  
13 days from the admission of the patient under  
14 this section, excluding the day of admission  
15 and any Saturday, Sunday or legal holiday.

16 C. If neither readmission nor application to the  
17 District Court is effected under this subsection,  
18 the chief administrative officer of the hospital  
19 shall discharge the person forthwith.

20 6. Notice. Upon admission of a person under  
21 this section, and after consultation with the person,  
22 the chief administrative officer of the hospital  
23 shall mail notice of the fact of admission to:

24 A. His legal guardian, if known;

25 B. His spouse;

26 C. His parent;

27 D. His adult child; or

28 E. One of next of kin or a friend, if none of  
29 the listed persons exists.

30 7. Post-admission examination. Every patient  
31 admitted to a hospital shall be examined as soon as  
32 practicable after his admission.

33 A. The chief administrative officer of the  
34 hospital shall arrange for examination by a staff  
35 physician or clinical psychologist of every  
36 patient hospitalized under this section.



1           B. The examiner may not be the certifying exam-  
2           iner under this section or under section 3864.

3           C. If the post-admission examination is not held  
4           within 24 hours after the time of admission, or  
5           if a staff physician or clinical psychologist  
6           fails or refuses after the examination to certify  
7           that, in his opinion, the person is mentally ill  
8           and due to his mental illness poses a likelihood  
9           of serious harm, the person shall be immediately  
10          discharged.

11          §3864. Judicial procedure and commitment

12           1. Application. An application to the District  
13          Court to admit a person to a mental hospital, filed  
14          under section 3863, subsection 5, paragraph B, shall  
15          be accompanied by:

16           A. The emergency application under section 3863,  
17           subsection 1;

18           B. The accompanying certificate of the physician  
19           or psychologist under section 3863, subsection 2;  
20           and

21           C. The certificate of the physician or psychol-  
22           ogist under section 3863, subsection 7, that:

23                   (1) He has examined the patient; and

24                   (2) It is his opinion that the patient is a  
25                   mentally ill person and, because of his ill-  
26                   ness, poses a likelihood of serious harm.

27           2. Detention pending judicial determina-  
28          tion. Notwithstanding any other provisions of this  
29          subchapter, no person, with respect to whom proceed-  
30          ings for judicial hospitalization have been com-  
31          menced, may be released or discharged during the  
32          pendency of the proceedings, unless:

33           A. The District Court orders release or dis-  
34           charge upon the application of the patient, his  
35           legal guardian, parent, spouse or next of kin;

1 B. The District Court orders release or dis-  
2 charge upon the report of the chief administra-  
3 tive officer of the hospital that the person may  
4 be discharged with safety; or

5 C. A court orders release or discharge upon a  
6 writ of habeas corpus under section 3804.

7 3. Notice of receipt of application. The giving  
8 of notice of receipt of application under this  
9 section is governed as follows.

10 A. Upon receipt by the District Court of the  
11 application and accompanying documents specified  
12 in subsection 1, the court shall cause written  
13 notice of the application:

14 (1) To be given personally or by mail to  
15 the person within a reasonable time before  
16 the hearing, but not less than 3 days before  
17 the hearing; and

18 (2) To be mailed to the person's legal  
19 guardian, if known, and to his spouse, his  
20 parent or one of his adult children or, if  
21 none of these persons exist or if none of  
22 them can be located, to one of his next of  
23 kin or a friend.

24 B. A docket entry is sufficient evidence that  
25 notice under this subsection has been given.

26 4. Examination. Examinations under this section  
27 are governed as follows.

28 A. Upon receipt by the District Court of the  
29 application and the accompanying documents speci-  
30 fied in subsection 1, the court shall forthwith  
31 cause the person to be examined by 2 examiners.

32 (1) Each examiner must be either a licensed  
33 physician or a licensed psychologist who  
34 practices clinical psychology.

35 (2) One of the examiners shall be a physi-  
36 cian or psychologist chosen by the person or  
37 by his counsel, if the chosen physician or

1                    psychologist is reasonably available.

2                    (3) Neither examiner appointed by the court  
3                    may be the certifying examiner under section  
4                    3863, subsection 2 or 7.

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

9                    C. If the report of the examiners is to the  
10                   effect that the person is not mentally ill or  
11                   does not pose a likelihood of serious harm, the  
12                   application shall be ordered discharged forth-  
13                   with.

14                   D. If the report of the examiners is to the  
15                   effect that the person is mentally ill or poses a  
16                   likelihood of serious harm, the hearing shall be  
17                   held on the date, or on the continued date, which  
18                   the court has set for the hearing.

19                   5. Hearing. Hearings under this section are  
20                   governed as follows.

21                   A. The District Court shall hold a hearing on  
22                   the application not later than 15 days from the  
23                   date of the application.

24                   (1) On a motion by any party, the hearing  
25                   may be continued for cause for a period not  
26                   to exceed 10 additional days.

27                   (2) If the hearing is not held within the  
28                   time specified, or within the specified con-  
29                   tinuance period, the court shall dismiss the  
30                   application and order the person discharged  
31                   forthwith.

32                   (3) In computing the time periods set forth  
33                   in this paragraph, the District Court Civil  
34                   Rules shall apply.

35                   B. The hearing shall be conducted in as informal  
36                   a manner as may be consistent with orderly proce-  
37                   dure and in a physical setting not likely to have

1 harmful effect on the mental health of the  
2 person.

3 C. The court shall receive all relevant and  
4 material evidence which may be offered in accor-  
5 dance with accepted rules of evidence and accept-  
6 ed judicial dispositions.

7 (1) The person, the applicant and all other  
8 persons to whom notice is required to be  
9 sent shall be afforded an opportunity to  
10 appear at the hearing to testify and to  
11 present and cross-examine witnesses.

12 (2) The court may, in its discretion,  
13 receive the testimony of any other person  
14 and may subpoena any witness.

15 D. The person shall be afforded an opportunity  
16 to be represented by counsel, and, if neither the  
17 person nor others provide counsel, the court  
18 shall appoint counsel for the person.

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

22 (1) By evidence of the patient's actions  
23 and behavior, that the patient poses a  
24 likelihood of serious harm; and

25 (2) That, after full consideration of less  
26 restrictive treatment settings and  
27 modalities, inpatient hospitalization is the  
28 best available means for the treatment of  
29 the person.

30 F. In each case, the applicant shall submit to  
31 the court, at the time of the hearing, testimony  
32 indicating the individual treatment plan to be  
33 followed by the hospital staff, if the person is  
34 committed under this section, and shall bear any  
35 expense for witnesses for this purpose.

36 G. A stenographic or electronic record shall be  
37 made of the proceedings in all judicial hospi-  
38 talization hearings.

1                   (1) The record and all notes, exhibits and  
2                   other evidence shall be confidential.

3                   (2) The record and all notes, exhibits and  
4                   other evidence shall be retained as part of  
5                   the District Court records for a period of 2  
6                   years from the date of the hearing.

7                   H. The hearing shall be confidential and no  
8                   report of the proceedings may be released to the  
9                   public or press, except by permission of the  
10                   person or his counsel and with approval of the  
11                   presiding District Court Judge, except that the  
12                   court may order a public hearing on the request  
13                   of the person or his counsel.

14                   6. Court findings. Procedures dealing with the  
15                   District Court's findings under this section are as  
16                   follows.

17                   A. The District Court shall so state in the  
18                   record, if it finds upon completion of the hear-  
19                   ing and consideration of the record:

20                   (1) Clear and convincing evidence that the  
21                   person is mentally ill and that his recent  
22                   actions and behavior demonstrate that his  
23                   illness poses a likelihood of serious harm;

24                   (2) That inpatient hospitalization is the  
25                   best available means for treatment of the  
26                   patient; and

27                   (3) That it is satisfied with the indi-  
28                   vidual treatment plan offered by the hospi-  
29                   tal.

30                   B. If the District Court makes the findings de-  
31                   scribed in paragraph A, subparagraphs 1 and 2,  
32                   but is not satisfied with the individual treat-  
33                   ment plan as offered, it may continue the case  
34                   for not longer than 10 days, pending reconsidera-  
35                   tion and resubmission of an individual treatment  
36                   plan by the hospital.

37                   7. Commitment. Upon making the findings de-  
38                   scribed in subsection 6, the court may order commit-

1 ment to a mental hospital for a period not to exceed  
2 4 months in the first instance and not to exceed one  
3 year after the first and all subsequent hearings.

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

8 B. If the court does not issue an order of com-  
9 mitment within 24 hours of the completion of the  
10 hearing, it shall dismiss the application and  
11 order the patient discharged forthwith.

12 8. Continued involuntary hospitalization. If  
13 the chief administrative officer of the hospital  
14 determines that continued involuntary hospitalization  
15 is necessary for a person who has been ordered by the  
16 District Court to be committed, he shall, not later  
17 than 30 days prior to the expiration of a period of  
18 commitment ordered by the court, make application in  
19 accordance with this section to the District Court  
20 which has territorial jurisdiction over the hospital  
21 for a hearing to be held under this section.

22 9. Transportation. Unless otherwise directed by  
23 the court, the sheriff of the county in which the  
24 District Court has jurisdiction and in which the  
25 hearing takes place shall provide transportation to  
26 any hospital to which the court has committed the  
27 person.

28 10. Expenses. With the exception of expenses  
29 incurred by the applicant pursuant to subsection 5,  
30 paragraph F, the District Court shall be responsible  
31 for any expenses incurred under this section, includ-  
32 ing fees of appointed counsel, witness and notice  
33 fees and expenses of transportation for the person.

34 11. Appeals. A person ordered by the District  
35 Court to be committed to a hospital may appeal from  
36 that order to the Superior Court.

37 A. The appeal is on questions of law only.

38 B. Any findings of fact of the District Court  
39 may not be set aside unless clearly erroneous.

1           C. The order of the District Court shall remain  
2           in effect pending the appeal.

3           D. The District Court Civil Rules of Procedure  
4           and the Maine Rules of Civil Procedure apply to  
5           the conduct of the appeals, except as otherwise  
6           specified in this subsection.

7           §3865. Hospitalization by federal agency

8           If a person ordered to be hospitalized under  
9           section 3864 is eligible for hospital care or treat-  
10          ment by any agency of the United States, the court,  
11          upon receipt of a certificate from the agency showing  
12          that facilities are available and that the person is  
13          eligible for care or treatment in the facilities, may  
14          order him to be placed in the custody of the agency  
15          for hospitalization.

16          1. Rules and rights. A person admitted under  
17          this section to any hospital or institution operated  
18          by any agency of the United States, within or without  
19          the State, is subject to the rules of the agency, but  
20          retains all rights to release and periodic court  
21          review granted by this subchapter.

22          2. Powers of chief administrative officer. The  
23          chief administrative officer of any hospital or  
24          institution operated by a federal agency in which the  
25          person is hospitalized has, with respect to the  
26          person, the same powers as the chief administrative  
27          officer of hospitals or the commissioner within this  
28          State with respect to detention, custody, transfer,  
29          conditional release or discharge of patients.

30          3. Court jurisdiction. Every order of hospi-  
31          talization issued under this section is conditioned  
32          on the retention of jurisdiction in the courts of  
33          this State to, at any time:

34                A. Inquire into the mental condition of a person  
35                hospitalized; and

36                B. Determine the necessity for continuance of  
37                his hospitalization.

38          §3866. Members of the Armed Forces

1       1. Admission to hospital. Any member of the  
2 Armed Forces of the United States who was a resident  
3 of the State at the time of his induction into the  
4 service and who is determined by a federal board of  
5 medical officers to have a mental disease not incur-  
6 red in line of duty shall be received, at the discre-  
7 tion of the commissioner and without formal commit-  
8 ment, at either of the state hospitals for the men-  
9 tally ill, upon delivery at the hospital designated  
10 by the commissioner of:

11       A. The member of the Armed Forces; and

12       B. The findings of the board of medical officers  
13 that he is mentally ill.

14       2. Status. After delivery of the member of the  
15 Armed Forces at the hospital designated by the com-  
16 missioner, his status shall be the same as if he had  
17 been committed to the hospital under section 3864.

18       §3867. Transfer from out-of-state institutions

19       1. Commissioner's authority. The commissioner  
20 may, upon request of a competent authority of the  
21 District of Columbia or of a state which is not a  
22 member of the Interstate Compact on Mental Health,  
23 authorize the transfer of a mentally ill patient  
24 directly to a state mental health institute in Maine,  
25 if:

26       A. The patient has resided in this State for a  
27 consecutive period of one year during the 3-year  
28 period immediately preceding commitment in the  
29 other state or the District of Columbia;

30       B. The patient is currently confined in a recog-  
31 nized institution for the care of the mentally  
32 ill as the result of proceedings considered legal  
33 by that state or by the District of Columbia;

34       C. A duly certified copy of the original commit-  
35 ment proceedings and a copy of the patient's case  
36 history is supplied;

37       D. The commissioner, after investigation, deems  
38 the transfer justifiable; and



1           E. All expenses of the transfer are borne by the  
2           agency requesting it.

3           2. Receipt of patient. When the commissioner  
4           has authorized a transfer under this section, the  
5           superintendent of the state mental health institute  
6           designated by the commissioner shall receive the  
7           patient as having been regularly committed to the  
8           mental health institute under section 3864.

9           §3868. Transfer to other institutions

10           1. To other hospitals. The commissioner may  
11           transfer, or authorize the transfer of, a patient  
12           from one hospital to another, either inside or out-  
13           side the State, if the commissioner determines that  
14           it would be consistent with the medical needs of the  
15           patient to do so.

16           A. Whenever a patient is transferred, the com-  
17           missioner shall give written notice of the trans-  
18           fer to the patient's legal guardian, his parents  
19           or spouse or, if none of these persons exists or  
20           can be located, to his next of kin or friend.

21           B. In making all such transfers, the commis-  
22           sioner shall give due consideration to the rela-  
23           tionship of the patient to his family, legal  
24           guardian or friends, in order to maintain rela-  
25           tionships and encourage visits beneficial to the  
26           patient.

27           2. To federal agency. Upon receipt of a certif-  
28           icate of an agency of the United States that facili-  
29           ties are available for the care or treatment of any  
30           involuntarily hospitalized person and that the person  
31           is eligible for care and treatment in a hospital or  
32           institution of the agency, the chief administrative  
33           officer of the hospital may cause his transfer to the  
34           agency of the United States for hospitalization.

35           A. Upon making such a transfer, the chief admin-  
36           istrator of the hospital shall notify the court  
37           which ordered hospitalization and the persons  
38           specified in subsection 1, paragraph A.

1 B. No person may be transferred to an agency of  
2 the United States if he is confined pursuant to  
3 conviction of any felony or misdemeanor or if he  
4 has been acquitted of the charge solely on the  
5 ground of mental illness, unless before the  
6 transfer the court originally ordering confine-  
7 ment of the person enters an order for transfer  
8 after appropriate motion and hearing.

9 C. Any person transferred under this section to  
10 an agency of the United States is deemed to be  
11 hospitalized by the agency pursuant to the orig-  
12 inal order of hospitalization.

13 §3869. Return from unauthorized absence

14 If any patient committed under section 3864  
15 leaves the grounds of the hospital without authoriza-  
16 tion of the chief administrative officer of the  
17 hospital or his designee, or refuses to return to the  
18 hospital from a community pass when requested to do  
19 so by the chief administrative officer or his desig-  
20 nee, law enforcement personnel of the State or of any  
21 of its subdivisions may, upon request of the chief  
22 administrative officer or his designee, assist in the  
23 return of the patient to the hospital.

24 §3870. Convalescent status

25 1. Authority. The chief administrative officer  
26 of a state mental health institute may release an  
27 improved patient on convalescent status when he  
28 believes that the release is in the best interest of  
29 the patient.

30 A. Release on convalescent status may include  
31 provisions for continuing responsibility to and  
32 by the state mental health institute, including a  
33 plan of treatment on an outpatient or nonhospital  
34 basis.

35 B. Before release on convalescent status under  
36 this section, the chief administrative officer of  
37 a state mental health institute shall make a good  
38 faith attempt to notify, by telephone, personal  
39 communication or letter, of the intent to release  
40 the patient on convalescent status and of the  
41 plan of treatment, if any:

1                   (1) The parent or guardian of a minor  
2                   patient;

3                   (2) The legal guardian of an adult incompe-  
4                   tent patient, if any is known; or

5                   (3) The spouse or adult next of kin of an  
6                   adult competent patient, if any is known,  
7                   unless the patient requests in writing that  
8                   the notice not be given.

9                   C. The state mental health institute is not lia-  
10                  ble when good faith attempts to notify parents,  
11                  spouse or guardian have failed.

12                  2. Reexamination. Before a patient has spent a  
13                  year on convalescent status, and at least once a year  
14                  thereafter, the chief administrative officer of the  
15                  state mental health institute shall reexamine the  
16                  facts relating to the hospitalization of the patient  
17                  on convalescent status.

18                  3. Discharge. Discharge from convalescent  
19                  status is governed as follows.

20                  A. If the chief administrative officer of the  
21                  state mental health institute determines that, in  
22                  view of the condition of the patient, convales-  
23                  cent status is no longer necessary, he shall dis-  
24                  charge the patient and make a report of the dis-  
25                  charge to the commissioner.

26                  B. The chief administrative officer shall termi-  
27                  nate the convalescent status of voluntary  
28                  patients within 10 days after the day he receives  
29                  from the patient a request for discharge from  
30                  convalescent status.

31                  4. Rehospitalization. Rehospitalization of  
32                  patients under this section is governed as follows.

33                  A. If, prior to discharge, there is reason to  
34                  believe that it is in the best interest of an  
35                  involuntarily committed patient on convalescent  
36                  status to be rehospitalized, the commissioner or  
37                  the chief administrative officer of the state  
38                  mental health institute may issue an order for

1 the immediate rehospitalization of the patient.

2 B. If the order is not complied with, and if the  
3 order is endorsed by a District Court Judge or  
4 complaint justice in the county in which the  
5 patient has his legal residence or is present,  
6 any health officer or police officer may take the  
7 patient into custody and transport him to:

8 (1) The state mental health institute, if  
9 the order is issued by the chief administra-  
10 tive officer of the state mental health  
11 institute; or

12 (2) A hospital designated by the commis-  
13 sioner, if the order is issued by the com-  
14 missioner.

15 5. Notice of change of status. Notice of the  
16 change of convalescent status of patients is governed  
17 as follows.

18 A. If the convalescent status of a patient in a  
19 state mental health institute is to be changed,  
20 either because of a decision of the chief admin-  
21 istrative officer of the state mental health  
22 institute or because of a request made by a  
23 voluntary patient, the chief administrative offi-  
24 cer of the state mental health institute shall  
25 immediately make a good faith attempt to notify,  
26 by telephone, personal communication or letter,  
27 of the contemplated change:

28 (1) The parent or guardian of a minor  
29 patient;

30 (2) The legal guardian of an adult incompe-  
31 tent patient, if any is known; or

32 (3) The spouse or adult next of kin of an  
33 adult competent patient, unless the patient  
34 requests in writing that the notice not be  
35 given.

36 B. If the change in convalescent status is due  
37 to the request of a voluntary patient, the chief  
38 administrative officer of the state mental health

1 institute shall give the required notice within  
2 10 days after the day he receives the request.

3 C. The state mental health institute is not lia-  
4 ble when good faith attempts to notify parents,  
5 spouse or guardian have failed.

6 §3871. Discharge

7 1. Examination. The chief administrative offi-  
8 cer of a state mental health institute shall, as  
9 often as practicable, but no less often than every 12  
10 months, examine or cause to be examined every patient  
11 to determine his mental status and need for continu-  
12 ing hospitalization.

13 2. Conditions for discharge. The chief adminis-  
14 trative officer of a state mental health institute  
15 shall discharge, or cause to be discharged, any  
16 patient when:

17 A. Conditions justifying hospitalization no  
18 longer obtain;

19 B. The patient is transferred to another hospi-  
20 tal for treatment for his mental or physical con-  
21 ditions;

22 C. The patient is absent from the state mental  
23 health institute unlawfully for a period of 90  
24 days;

25 D. Notice is received that the patient has been  
26 admitted to another hospital, inside or outside  
27 the State, for treatment for his mental or physi-  
28 cal condition; or

29 E. Although lawfully absent from the state  
30 mental health institute, the patient is admitted  
31 to another hospital inside or outside the State  
32 for treatment of his mental or physical condi-  
33 tion, except that, if the patient is directly  
34 admitted to another hospital and it is the opin-  
35 ion of the chief administrative officer of the  
36 state mental health institute that the patient  
37 will directly reenter the state mental health  
38 institute within the foreseeable future, the  
39 patient need not be discharged.

1           3. Discharge against medical advice. The chief  
2 administrative officer of a state mental health  
3 institute may discharge, or cause to be discharged,  
4 any patient even though the patient is mentally ill  
5 and appropriately hospitalized in the state mental  
6 health institute, if:

7           A. The patient and either the legal guardian,  
8 spouse or next of kin of the patient request his  
9 discharge; and

10           B. In the opinion of the chief administrative  
11 officer of the hospital, the patient does not  
12 pose a likelihood of serious harm due to his  
13 mental illness.

14           4. Reports. The chief administrative officer of  
15 a state mental health institute shall send a report  
16 of the discharge of any patient to the commissioner.

17           5. Notice. Notice of discharge is governed as  
18 follows.

19           A. When a patient is discharged under this  
20 section, the chief administrative officer of the  
21 state mental health institute shall immediately  
22 make a good faith attempt to notify, by tele-  
23 phone, personal communication or letter, that the  
24 discharge has or will take place:

25                   (1) The parent or guardian of a minor  
26                   patient;

27                   (2) The legal guardian of an adult incompe-  
28                   tent patient, if any is known; or

29                   (3) The spouse or adult next of kin of an  
30 adult competent patient, if any is known,  
31 unless the patient requests in writing that  
32 the notice not be given or unless the  
33 patient was transferred from or will be  
34 returned to a state correctional facility.

35           B. The state mental health institute is not lia-  
36 ble when good faith attempts to notify parents,  
37 spouse or guardian have failed.

1 CHAPTER 5

2 MENTAL RETARDATION

3 SUBCHAPTER I

4 GENERAL PROVISIONS

5 §5001. Definitions

6 As used in this chapter, unless the context indi-  
7 cates otherwise, the following terms have the follow-  
8 ing meanings.

9 1. Bureau. "Bureau" means the Bureau of Mental  
10 Retardation.

11 2. Incapacitated person. "Incapacitated person"  
12 means any person who is impaired by reason of mental  
13 retardation to the extent that he lacks sufficient  
14 understanding or capacity to make, communicate or  
15 implement responsible decisions concerning his person  
16 or property.

17 3. Mental retardation. "Mental retardation"  
18 means a condition of significantly subaverage intel-  
19 lectual functioning manifested during a person's  
20 developmental period, existing concurrently with dem-  
21 onstrated defects in adaptive behavior.

22 4. Protective services. "Protective services"  
23 means services whose object is to protect an inca-  
24 pacitated person from himself and from others,  
25 including, but not limited to:

26 A. Arrangements for appropriate living quarters;

27 B. Obtaining financial benefits to which the  
28 person is entitled;

29 C. Obtaining medical services and supplies;

30 D. Obtaining legal services;

31 E. Seeking the appointment of a public or pri-  
32 rate guardian for the person, when exploitation,  
33 prevention of injury, protection of the person

1 and his property and serving the necessities or  
2 amenities of life are at issue;

3 F. Evaluation of the need for services; and

4 G. Mobilization of appropriate existing services  
5 on the person's behalf.

6 5. Region. "Region" means any of the regions  
7 established by the bureau.

8 6. Supportive services. "Supportive services"  
9 means services to make it possible for an incapaci-  
10 tated person to become rehabilitated or  
11 self-sufficient to the maximum extent possible  
12 including, but not limited to:

13 A. Counseling;

14 B. Transportation;

15 C. Assistance in obtaining adequate housing;

16 D. Medical and psychiatric care; and

17 E. Nutritional services.

18 7. Ward. "Ward" means a person for whom the  
19 bureau has been duly appointed guardian under Title  
20 18-A, Article V, Part 6.

21 §5002. Policy

22 1. Services. It is the policy of the State to  
23 provide education, training and habilitative services  
24 to mentally retarded persons who need those services,  
25 except that nothing in this chapter may replace or  
26 limit the right of any mentally retarded person to  
27 treatment by spiritual means alone, through prayer,  
28 if that treatment is requested by the person or by  
29 his next of kin or legal guardian.

30 2. Setting. It is the policy of the State that  
31 the setting for the services described in subsection  
32 1 shall, consistent with adequate care and treatment:

33 A. Impose the fewest possible restrictions on  
34 the liberty of mentally retarded persons; and



1           B. Be as close as possible to the patterns and  
2           norms of the mainstream of society.

3           §5003. System of care for mentally retarded clients

4           1. System of care. The Legislature declares  
5           that the system of care, through which the State pro-  
6           vides services to and programs for mentally retarded  
7           persons, shall be designed not only to protect the  
8           integrity of the legal and human rights of these per-  
9           sons, but also to meet the needs of these persons.

10           2. Responsibilities of the department. To  
11           facilitate the development of a system which meets  
12           the needs of mentally retarded persons, the commis-  
13           sioner, through the bureau, shall:

14           A. Provide a mechanism for the identification,  
15           evaluation, treatment and reassessment of and the  
16           provision of services to mentally retarded per-  
17           sons, including an habilitation program for every  
18           client served by the bureau;

19           B. Divert mentally retarded persons from insti-  
20           tutional care, whenever professional diagnosis  
21           and evaluation, the personal preference of the  
22           client or his legal guardian, and the availabil-  
23           ity of appropriate services indicate that these  
24           persons should be placed in community environ-  
25           ments and programs;

26           C. Provide programs, so far as resources permit,  
27           for the proper habilitation and treatment of men-  
28           tally retarded persons, which shall include, but  
29           need not be limited to, comprehensive medical  
30           care, education, recreation, physical therapy,  
31           training, social services and habilitation and  
32           rehabilitation services suited to the needs of  
33           the individual regardless of age, degree of  
34           retardation, handicapping condition or ability to  
35           pay;

36           D. Work toward effectuating the normalization  
37           principle through the establishment of community  
38           services for the mentally retarded person as a  
39           viable and practical alternative to institutional  
40           care at each stage of individual life develop-

1 ment, but, if care in an institutional facility  
2 becomes necessary, it should be in the least re-  
3 strictive setting, consistent with the proper  
4 care of the mentally retarded person;

5 E. Eliminate its own duplicative and unnecessary  
6 administrative procedures and practices in the  
7 system of care for mentally retarded persons,  
8 encourage other departments to do the same, and  
9 clearly define areas of responsibility in order  
10 to economically utilize present resources;

11 F. Strive toward having a sufficient number of  
12 personnel who are qualified and experienced to  
13 provide treatment which is beneficial to the men-  
14 tally retarded clients; and

15 G. Encourage other departments to provide to  
16 mentally retarded persons those services which  
17 are required by law, and in particular:

18 (1) The commissioner shall work actively to  
19 ensure that mentally retarded clients, as  
20 provided for in Title 20, chapter 404, shall  
21 receive educational and training services  
22 beginning at age 6 years regardless of the  
23 degree of retardation, or accompanying dis-  
24 abilities or handicaps;

25 (2) The commissioner shall advise the  
26 Department of Human Services about standards  
27 and policies pertaining to administration,  
28 staff, quality of care, quality of treat-  
29 ment, health and safety of clients, rights  
30 of clients, community relations and licens-  
31 ing procedures and other areas which affect  
32 mentally retarded persons residing in facil-  
33 ities licensed by the Department of Human  
34 Services; and

35 (3) The commissioner shall inform the joint  
36 standing committee of the Legislature having  
37 jurisdiction over health and institutional  
38 services about areas where increased cooper-  
39 ation by other departments is necessary in  
40 order to improve the delivery of services to  
41 mentally retarded persons.

1           3. Plan. The commissioner through the bureau,  
2 shall prepare a plan, subject to the following provi-  
3 sions.

4           A. The plan shall indicate the most effective  
5 and efficient manner in which to implement ser-  
6 vices and programs for mentally retarded persons,  
7 while safeguarding and respecting the legal and  
8 human rights of these persons.

9           B. The plan shall be prepared once every 2 years  
10 and shall be submitted to the joint standing com-  
11 mittee of the Legislature having jurisdiction  
12 over health and institutional services by no  
13 later than January 15th of every odd-numbered  
14 year.

15           C. The committee shall study the plan and make  
16 recommendations to the Legislature with respect  
17 to funding improvements in programs and services  
18 to mentally retarded persons.

19                                   SUBCHAPTER II

20                           BUREAU OF MENTAL RETARDATION

21           §5201. Establishment

22           There is established, within the Department of  
23 Mental Health and Mental Retardation, the Bureau of  
24 Mental Retardation, which is responsible for:

25           1. Institutional programs. The supervision of  
26 mental retardation programs in the institutions of  
27 the department;

28           2. Statewide system. The planning, promotion,  
29 coordination and development of a complete and inte-  
30 grated statewide system of mental retardation ser-  
31 vices;

32           3. Liaison. Serving as liaison, coordinator and  
33 consultant to the several state departments in order  
34 to develop the statewide system of mental retardation  
35 services;

1           4. Community-based services. Ensuring that men-  
2 tally retarded persons residing in community residen-  
3 tial facilities, including nursing homes, boarding  
4 homes, foster homes, group homes or halfway houses  
5 licensed by the Department of Human Services are pro-  
6 vided with, insofar as possible, residential accommo-  
7 datations and access to habilitation services appropri-  
8 ate to their needs; and

9           5. Protective and supportive ser-  
10 vices. Providing protective and supportive services,  
11 in accordance with section 5203, to incapacitated  
12 persons who, with some assistance, are capable of  
13 living and functioning in society.

14 §5202. Director

15           1. Appointment. The commissioner shall, with  
16 the consent of the Maine Committee on Problems of the  
17 Mentally Retarded, appoint and set the salary for,  
18 subject to the approval of the Governor, the Director  
19 of the Bureau of Mental Retardation.

20           A. Notwithstanding any other provision of law,  
21 the commissioner may delegate any employee of the  
22 department to serve, for a period not to exceed  
23 180 days, as the acting director, if the office  
24 of the director is vacant.

25           B. Service as the acting director is considered  
26 a temporary additional duty for the person so  
27 delegated.

28           2. Qualifications. To be eligible for appoint-  
29 ment as director, a person must have training and  
30 experience in mental retardation program administra-  
31 tion or satisfactory experience in the direction of  
32 work of a comparable nature.

33           3. Term. The director shall serve at the pleas-  
34 ure of the commissioner.

35           4. Duties. In addition to other duties set out  
36 in this Title, the director shall:

37           A. Report directly to the commissioner; and

1           B. Carry out the purposes of the bureau.

2           §5203. Protective and supportive services

3           1. Bureau authority. The bureau may provide  
4 protective or supportive services in response to com-  
5 plaints concerning, and requests for assistance from  
6 or on behalf of, all incapacitated persons, under the  
7 following conditions.

8           A. Except for seeking the appointment of a  
9 guardian, protective or supportive services may  
10 be initiated only:

11                   (1) With the acquiescence of the incapacitated  
12 person; and

13                   (2) After consultation, insofar as possible,  
14 with the family or the guardian of  
15 the incapacitated persons.

16           B. The role of the bureau shall be primarily  
17 that of supervision and coordination.

18           2. Payment for services. Payment for services  
19 under this section is governed as follows.

20           A. The bureau may pay for protective and sup-  
21 portive services to incapacitated persons from  
22 its own resources, by mobilizing available commu-  
23 nity resources or by purchase of services from  
24 voluntary or state agencies.

25           B. To the extent that assets are available to  
26 incapacitated persons or wards, the cost of ser-  
27 vices shall be borne by the estate of persons  
28 receiving the services.

29           C. The department, through the bureau and its  
30 other agents, may receive as payee any benefits  
31 from social security, veterans administration,  
32 railroad retirement or any other like benefits  
33 paid on behalf of any incapacitated person, and  
34 shall apply those benefits toward the care and  
35 treatment of the incapacitated person.

36           3. Rules. Promulgation, amendment and appeal of  
37 rules under this section are governed as follows.

1 A. The bureau shall promulgate, and may amend or  
2 repeal, rules governing the administration of  
3 this section, in accordance with the Maine Admin-  
4 istrative Procedure Act, Title 5, chapter 375.

5 B. The bureau shall, in accordance with the  
6 Maine Administrative Procedure Act, Title 5,  
7 chapter 375, hold a public hearing before promul-  
8 gating, amending or repealing the rules, and give  
9 notice of the public hearing.

10 SUBCHAPTER III

11 SERVICES FOR MENTALLY RETARDED PERSONS

12 ARTICLE I

13 STATE-OPERATED FACILITIES

14 FOR MENTALLY RETARDED PERSONS

15 §5401. Maintenance of facilities

16 The department shall maintain the following 3  
17 residential facilities for the care and treatment of  
18 mentally retarded persons:

19 1. Pineland Center;

20 2. Aroostook Residential Center; and

21 3. Elizabeth Levinson Center.

22 §5402. Pineland Center

23 1. Establishment. There is established the  
24 Pineland Center at New Gloucester in Cumberland  
25 County, which:

26 A. Shall be maintained for the training, educa-  
27 tion, treatment and care of persons who are men-  
28 tally retarded; and

29 B. May be maintained for the training, educa-  
30 tion, treatment and care of persons between the  
31 ages of 3 and 16 who are mentally ill.

1           2. Applicable laws. The provisions of Article  
2 III shall, in all relevant aspects, apply to the men-  
3 tally ill persons described in subsection 1, para-  
4 graph B.

5           3. Superintendent. The chief administrative  
6 officer of the Pineland Center is called the superin-  
7 tendent.

8           A. The commissioner shall, with the advice of  
9 the Maine Committee on Problems of the Mentally  
10 Retarded, appoint and set the salary for the  
11 superintendent.

12           B. The appointment is for an indefinite term and  
13 until his successor is appointed and qualified,  
14 or during the pleasure of the commissioner.

15           C. In making the appointment, the commissioner  
16 and the committee shall give due consideration to  
17 the appointee's qualifications and experience in  
18 mental retardation matters.

19           D. In order to qualify for appointment as super-  
20 intendent, a person shall have sufficient train-  
21 ing and experience to deal with the problems of  
22 mentally retarded persons, and shall be either a  
23 psychiatrist, hospital administrator, psychol-  
24 ogist or a person with a master's degree in edu-  
25 cation, social work, public administration,  
26 public health or rehabilitation.

27           4. Duties of the superintendent. The superin-  
28 tendent shall:

29           A. Be responsible for the training, education,  
30 treatment and care of all persons received into  
31 Pineland Center;

32           B. Be responsible for the discharge of all such  
33 persons, except those placed in Pineland Center  
34 under Title 15, section 101 or 103; and

35           C. Have direct supervision, management and con-  
36 trol of the grounds, buildings, property, offices  
37 and employees of Pineland Center, subject to the  
38 approval of the commissioner.

1     §5403. Aroostook Residential Center

2             1. Establishment. There is established the  
3 Aroostook Residential Center at Presque Isle in  
4 Aroostook County, which:

5             A. Shall be maintained for the training, educa-  
6 tion, treatment and care of mentally retarded  
7 persons; and

8             B. May provide living accommodations for men-  
9 tally retarded persons in order that they may  
10 attend educational and training programs.

11            2. Director. The chief administrative officer  
12 of the Aroostook Residential Center is called the  
13 director.

14            A. The commissioner shall, with the advice of  
15 the Maine Committee on Problems of the Mentally  
16 Retarded, appoint and set the salary for the  
17 director.

18            B. The appointment is for an indefinite term and  
19 until his successor is appointed and qualified,  
20 or during the pleasure of the commissioner.

21            C. In order to qualify for appointment as the  
22 director, a person shall have sufficient educa-  
23 tion and experience to administer a facility pro-  
24 viding services to the mentally retarded.

25            3. Duties of the director. The director shall:

26            A. Be responsible for the training, education,  
27 treatment and care of all persons received into  
28 or receiving services from the Aroostook Residen-  
29 tial Center;

30            B. Be responsible for the discharge of all per-  
31 sons received into the Aroostook Residential Cen-  
32 ter; and

33            C. Have direct supervision, management and con-  
34 trol of the grounds, buildings, property, offi-  
35 cers and employees of the Aroostook Residential  
36 Center, subject to the approval of the commis-  
37 sioner.



1       §5404. Elizabeth Levinson Center

2           1. Establishment. There is established the  
3 Elizabeth Levinson Center at Bangor in Penobscot  
4 County, which shall be maintained for the training,  
5 education, treatment and care of persons who are men-  
6 tally retarded.

7           2. Director. The chief administrative officer  
8 of the Elizabeth Levinson Center is called the direc-  
9 tor.

10           A. The commissioner shall, with the advice of  
11 the Maine Committee on Problems of the Mentally  
12 Retarded, appoint and set the salary for the  
13 director.

14           B. The appointment is for an indefinite term and  
15 until his successor is appointed and qualified,  
16 or during the pleasure of the commissioner.

17           C. In order to qualify for appointment as the  
18 director, a person shall have sufficient educa-  
19 tion and experience to administer a facility pro-  
20 viding services to the mentally retarded.

21           3. Duties of the director. The director shall:

22           A. Be responsible for the training, education,  
23 treatment and care of all persons received into  
24 or receiving services from the Elizabeth Levinson  
25 Center;

26           B. Be responsible for the discharge of all per-  
27 sons received into the Elizabeth Levinson Center;  
28 and

29           C. Have direct supervision, management and con-  
30 trol of the grounds, buildings, property, offi-  
31 cers and employees of the Elizabeth Levinson Cen-  
32 ter, subject to the approval of the commissioner.

33                               ARTICLE II

34                               COMMUNITY-BASED SERVICES

35       §5431. Purpose

1       The purpose of this Article is to assist in the  
2 establishment and expansion of community-based mental  
3 retardation programs for mentally retarded persons  
4 residing in the community and residing in privately  
5 operated residential care facilities.

6       §5432. Commissioner's duties

7           The commissioner shall:

8           1. Community participation. Encourage persons  
9 in local communities to participate in the provision  
10 of supportive services for mentally retarded persons,  
11 so that persons in the community may have a better  
12 understanding of the need for those services;

13           2. Financial assistance. When offering assis-  
14 tance to community-based programs, follow the proce-  
15 dures set forth in this Article; and

16           3. Rules. Through the Director of the Bureau of  
17 Mental Retardation, promulgate rules relating to the  
18 administration of the services authorized by this  
19 Article.

20       §5433. Commissioner's powers

21           The commissioner may:

22           1. Financial aid. Allocate money for the devel-  
23 opment of group homes, capital construction, purchase  
24 of buildings, supportive services and for other ac-  
25 tivities, but only those applicants for funds whose  
26 programs provide for adequate standards of profes-  
27 sional service qualify for funds from the department;

28           2. Services and programs. Provide and help  
29 finance mental retardation services and programs  
30 throughout the State for mentally retarded persons  
31 residing in the community and residing in privately  
32 operated residential care facilities;

33           3. Cooperation. Cooperate with other state  
34 agencies, municipalities, other governmental units,  
35 unincorporated associations and nonstock corporations  
36 in order to provide and help finance services and  
37 programs for mentally retarded persons; and

1           4. Available funds. Receive and use for the  
2 purpose of this Article money appropriated by the  
3 State, grants by the Federal Government, gifts from  
4 individuals and money from any other sources.

5           §5434. Municipalities and other governmental units

6           1. Authorization. A municipality or other gov-  
7 ernmental unit, such as a county, school district or  
8 health district, through its local board of health or  
9 other town or governmental agency approved by the  
10 commissioner, may adopt and carry out a program of  
11 mental retardation services established or approved  
12 by the commissioner and appropriate money for that  
13 purpose.

14           2. Joint ventures. A municipality or other gov-  
15 ernmental unit may join with another municipality or  
16 governmental unit to carry out such a program.

17           3. Grants. Upon application to the department  
18 by a municipality or other governmental unit, the  
19 commissioner may grant to the applicant money to be  
20 used for carrying out its mental retardation ser-  
21 vices, including any necessary capital expenditures  
22 or purchase of buildings.

23           §5435. Nongovernmental units

24           1. Department grants. Upon application to the  
25 department by an unincorporated association or non-  
26 stock corporation organized for the improvement of  
27 community health and welfare, the commissioner may  
28 grant to the applicant money to be used for carrying  
29 out its mental retardation services, including any  
30 necessary capital expenditures or purchase of build-  
31 ings.

32           2. Bureau grants. The Bureau of Mental Retarda-  
33 tion may make grants to nonprofit corporations for  
34 amounts which are reasonable relative to the quantity  
35 and quality of services to be provided by the  
36 grantee.

37           A. The bureau may request a display of effort on  
38 the part of the grantee that appropriate local  
39 governmental and other funding sources have been

1 sought to assist in the financing of the services  
2 for which the bureau is making the grant.

3 B. The bureau shall give consideration to the  
4 ability of the municipality or governmental unit  
5 to support the mental retardation services, as  
6 reflected by the state's evaluation of the compo-  
7 nent communities.

8 C. In making grants to unincorporated associa-  
9 tions or nonstock corporations, the bureau shall  
10 take into account all income and resources.

11 §5436. Fees

12 1. Authority. Fees may be charged for services  
13 provided directly to individuals by any program  
14 authorized by the department, if the individual is  
15 financially able to pay.

16 2. Use. Fees received by a municipality, gov-  
17 ernmental unit, unincorporated association or non-  
18 stock corporation shall be used by each entity in  
19 carrying out its programs approved under this Arti-  
20 cle.

21 ARTICLE III

22 PROCEDURES

23 §5461. Definitions

24 As used in this Article, unless the context  
25 otherwise indicates, the following terms have the  
26 following meanings.

27 1. Advocate. "Advocate" means a person:

28 A. Who is familiar with the procedures involved  
29 both in admitting mentally retarded persons to a  
30 facility and in providing services to those per-  
31 sons; and

32 B. Who is capable of advocating solely on behalf  
33 of a mentally retarded person.

1           2. Client. "Client" means a person asking the  
2 department for mental retardation services or the  
3 person for whom those services are asked.

4           3. Community. "Community" means the municipal-  
5 ity or other area in which the client resides when  
6 applying for services.

7           4. Comprehensive evaluation. "Comprehensive  
8 evaluation" means a comprehensive set of evaluations  
9 which:

10           A. Results in the distinguishing of mental  
11 retardation from other conditions;

12           B. Determines the severity of disability result-  
13 ing from mental retardation and other conditions;  
14 and

15           C. Estimates the degree to which mental retarda-  
16 tion and other conditions can be ameliorated.

17           5. Facility. "Facility" means a residential  
18 facility operated by the department for mentally  
19 retarded clients.

20           6. Habilitation. "Habilitation" means a process  
21 by which a person is assisted to acquire and maintain  
22 skills which:

23           A. Enable him to cope more effectively with the  
24 demands of his own person and of the environment;

25           B. Raise the level of his physical, mental and  
26 social efficiency; and

27           C. Upgrade his sense of well-being.

28           7. Interdisciplinary team. "Interdisciplinary  
29 team" means a team of persons, including at least one  
30 professional, which team is established and conducted  
31 in accordance with professional standards for the  
32 purpose of evaluating mentally retarded clients and  
33 recommending services for these clients.

34           8. Person in need of institutional ser-  
35 vices. "Person in need of institutional services"

1 means a person who, because of mental retardation and  
2 other severely disabling conditions, is unable to  
3 care for himself and to avoid or protect himself from  
4 severe physical or psychological impairment, and who  
5 needs habilitation in an institutional setting  
6 designed to improve his ability to care for and pro-  
7 tect himself.

8 9. Prescriptive program plan. "Prescriptive  
9 program plan" means a detailed written plan, formu-  
10 lated by an appropriately constituted  
11 interdisciplinary team, outlining a mentally retarded  
12 client's specific needs for education, training,  
13 treatment and habilitation services, along with the  
14 methods to be utilized in providing treatment, educa-  
15 tion and habilitation to the client.

16 10. Professional. "Professional" means a person  
17 who is licensed by the State to practice medicine or  
18 psychology and who has had training and experience in  
19 the diagnosis and treatment of mentally retarded per-  
20 sons.

21 11. Service agreement. "Service agreement"  
22 means a written form in which the persons designated  
23 in section 5471 agree to the type of services and  
24 programs for and the manner of providing services to  
25 the client.

26 12. Voluntary admission. "Voluntary admission"  
27 means the reception into a facility of a mentally  
28 retarded client who understands the nature, purpose  
29 and proposed duration of the admission and his right  
30 to leave the facility and thus to terminate the  
31 admission at any time, and who consents to the admis-  
32 sion, or a mentally retarded client whose eligibility  
33 for admission to the facility has been certified by  
34 the District Court under section 5475.

35 §5462. Procedure policies

36 1. Steps. It is the policy of the State that,  
37 in order to ensure that mentally retarded persons  
38 receive, to the extent possible, needed services, the  
39 following steps shall be taken for each person found  
40 by the department to be mentally retarded and in need  
41 of services:

- 1           A. An assessment of the person's needs;  
2           B. The development of a prescriptive program of  
3           services for the person;  
4           C. A determination of the suitability and qual-  
5           ity of needed services which are available to the  
6           person, first in the community and 2nd in  
7           state-operated facilities; and  
8           D. Insofar as possible, obtaining high quality  
9           and suitable services for the person.

10           2. Persons involved with procedures. It is the  
11           policy of the State that:

12           A. To the extent possible, the mentally retarded  
13           person and his legal guardian or next of kin be  
14           involved with the steps specified in subsection  
15           1; and

16           B. An advocate be available to the mentally  
17           retarded person throughout the steps specified in  
18           subsection 1.

19           §5463. Notice

20           The commissioner shall provide the client, if he  
21           is competent, the client's next of kin or legal  
22           guardian, if any exists, and the client's advocate  
23           with timely written notice in advance of procedures  
24           and actions to be taken with respect to the develop-  
25           ment, implementation and assessment of prescriptive  
26           program plans.

27           §5464. Correspondence and reports

28           The commissioner shall provide the client, if he  
29           is competent, the client's next of kin or legal  
30           guardian, if any exists, and the client's advocate  
31           with access to copies of correspondence and reports  
32           concerning the client, in accordance with section  
33           1206.

34           §5465. Rules

1       1. Duty. The commissioner shall promulgate  
2 rules for the effective implementation of this Arti-  
3 cle.

4       2. Requirements. The rules shall include, but  
5 need not be limited to, information on:

6       A. The membership, functions and procedures of  
7 the interdisciplinary teams;

8       B. The procedures to be used in developing  
9 prescriptive programs and service agreements;

10       C. The rights of clients while at a facility or  
11 while in departmental programs; and

12       D. The rights and procedures for administrative  
13 review if there is dissatisfaction with any step  
14 of the process of receiving services specified in  
15 this Article or if there is any grievance arising  
16 during the course of voluntary admission to or  
17 treatment in any facility, including provisions  
18 for the development of regional committees to  
19 review any grievance or dissatisfaction.

20       3. Review. The joint standing committee of the  
21 Legislature having jurisdiction over health and  
22 institutional services shall review all rules promul-  
23 gated by the department pursuant to this Article by  
24 no later than March of each year.

25       4. Public hearing and notice. The commissioner  
26 shall hold at least one public hearing before promul-  
27 gating these rules and notice of any public hearing  
28 shall be given pursuant to the Maine Administrative  
29 Procedure Act, Title 5, section 8053.

30       5. Amendment or repeal. The commissioner may  
31 amend or repeal rules at any time after giving notice  
32 and holding a hearing, as prescribed in subsection 4,  
33 with respect to the rules amended or repealed.

34       §5466. Advocate

35       1. Entitlement. Each client who receives ser-  
36 vices under sections 5467 to 5474 is entitled to  
37 representation by an advocate.



1           2. List. The commissioner shall develop a list  
2 of advocates, including attorneys, for each region of  
3 the Bureau of Mental Retardation.

4           §5467. Application and preliminary procedures

5           1. Application. An application for mental  
6 retardation services, on a form provided by the com-  
7 missioner, shall be initiated at or referred to a  
8 regional office of the Bureau of Mental Retardation.

9           2. Preliminary procedures. Within 5 work days  
10 from the day of application, the department shall:

11           A. Observe the client in his current environ-  
12 ment;

13           B. Obtain a brief family survey;

14           C. Make a preliminary assessment of the client's  
15 abilities and needs and of the relevant services  
16 presently available to the client; and

17           D. Ensure the client's representation by an  
18 advocate throughout the process of mental retar-  
19 dation services under sections 5467 to 5474,  
20 unless the client refuses that representation.

21           §5468. Evaluation

22           After completing the tasks specified in section  
23 5467, subsection 2, the commissioner shall forthwith  
24 cause a comprehensive evaluation of the client,  
25 including a consideration of physical, emotional,  
26 social and cognitive factors to be conducted.

27           1. Location. The comprehensive evaluation shall  
28 be conducted locally, except where resources required  
29 to carry out the evaluation are not available.

30           2. Interdisciplinary team. The comprehensive  
31 evaluation shall be conducted by an interdisciplinary  
32 team.

33           §5469. Report

1       Within 30 days of the day of the application made  
2 under section 5467, the interdisciplinary team shall  
3 give a report of its findings to the department, and  
4 the professional on the team shall state specifically  
5 in the report whether or not the client is mentally  
6 retarded.

7       1. Client not mentally retarded. If the report  
8 of the interdisciplinary team concludes that the  
9 client is not mentally retarded, the department shall  
10 deny the application for services, care and treat-  
11 ment, but shall make appropriate referrals in cases  
12 where clear needs of the client exist.

13       2. Client mentally retarded. If the report of  
14 the interdisciplinary team concludes that the client  
15 is mentally retarded and is in need of services, the  
16 department, through the interdisciplinary team, shall  
17 develop and begin to implement a prescriptive program  
18 plan for this client within 60 days of the day of  
19 application made under section 5467.

20       3. Preschool child. If the report of the  
21 interdisciplinary team concludes that a preschool  
22 child, aged 0 to 5 years, is developmentally delayed  
23 and is in need of infant development center services,  
24 the department, through the interdisciplinary team,  
25 shall develop and begin to implement a prescriptive  
26 program plan for this client within 60 days of the  
27 day of application made under section 5467.

28       §5470. Prescriptive program plan

29       1. Individually tailored plan. Each  
30 prescriptive program plan shall be individually tai-  
31 lored to the client's age, sex, condition, abilities,  
32 experiences and needs.

33       2. Contents of plan. Each prescriptive program  
34 plan shall:

35       A. Define training and treatment goals for the  
36 client without regard to service availability;

37       B. List all available and applicable programs of  
38 treatment, education and habilitation;

1           C. Weigh the advantages of each program in para-  
2           graph B in terms of cost, effectiveness, conven-  
3           ience and the client's needs;

4           D. Recommend the optimal course of action; and

5           E. Include plans for the active and continued  
6           exploration of suitable program alternatives.

7           3. Implementation. Implementation of all parts  
8           of a prescriptive program plan shall occur at the  
9           earliest possible time and shall be governed by  
10           section 5471, subsection 4.

11           4. Agreement. All parts of a prescriptive pro-  
12           gram plan shall be agreed to, prior to implementa-  
13           tion, by the client, if he is able, and by his next  
14           of kin or legal guardian, if that person exists and  
15           is available.

16           5. Recommendations of plan. Each prescriptive  
17           program plan shall recommend that the client be  
18           admitted to a facility, receive services in the com-  
19           munity under the supervision of a regional office or  
20           cease to receive services from the department.

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

25           A. A written report prepared by the  
26           interdisciplinary team supporting the following  
27           conclusions:

28                   (1) The client is mentally retarded;

29                   (2) The client requires treatment, educa-  
30                   tion and habilitation of an intensive  
31                   nature;

32                   (3) The client can benefit from programs at  
33                   the facility; and

34                   (4) Appropriate programs for treatment,  
35                   education and habilitation are not presently  
36                   available in the community or the facility

1 is the treatment setting of the client's  
2 choice;

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

6 C. Plans to facilitate, at the earliest possible  
7 time, the client's return to the community.

8 7. Major changes. Any major changes in a  
9 client's prescriptive program plan may be made only  
10 in accordance with section 5471, subsection 6.

11 §5471. Service agreements

12 1. Service agreement required. Each  
13 prescriptive program plan shall be carried out pur-  
14 suant to a written service agreement.

15 2. Signatures. Each service agreement shall be  
16 signed and dated by at least:

17 A. The client, if he is able;

18 B. The client's legal guardian or next of kin,  
19 if that person exists and is available;

20 C. A client advocate, if the client has no legal  
21 guardian;

22 D. The individual program plan coordinator of  
23 the interdisciplinary team which developed the  
24 individual program plan for the client;

25 E. The chief administrative officer of the  
26 appropriate regional office, if a client is being  
27 admitted to or discharged from a facility or if a  
28 client is under the supervision of the regional  
29 office;

30 F. The chief administrative officer of the  
31 facility or his agent, if a client is being  
32 admitted to, treated in or discharged from a  
33 facility; and

1           G. The chief administrative officer, or his  
2           agent, of other public or private agencies or  
3           groups which agree to provide services to the  
4           client.

5           3. Contents. Each service agreement shall  
6           include at least the following information.

7           A. It shall specify the respective responsibili-  
8           ties, where applicable, of the client, the family  
9           or legal guardian of the client, the regional  
10          office, the facility, and each public and private  
11          agency which intends to provide services to the  
12          client.

13          B. It shall identify by job classification or  
14          other description each individual who is respon-  
15          sible for carrying out each portion of the  
16          prescriptive program plan.

17          C. It shall specify the date on which the review  
18          required in subsection 5 shall occur.

19          4. Implementation of prescriptive program  
20          plan. Implementation of a prescriptive program plan  
21          is governed as follows.

22          A. No part of a prescriptive program plan may be  
23          implemented until each person required to sign  
24          the service agreement under subsection 2 has  
25          signed it, except that, if a client is to be  
26          admitted to a facility, the service agreement  
27          need not be completed until 5 days after the date  
28          of admission.

29          B. Any existing prescriptive program plan is  
30          considered to be in effect until all persons re-  
31          quired to sign under subsection 2 have signed the  
32          new service agreement.

33          C. No prescriptive program plan may be in effect  
34          longer than one year and 2 weeks from the day on  
35          which the last person signed the service agree-  
36          ment for the plan.

37          5. Review. At least 30 days prior to the termi-  
38          nation of a service agreement, an interdisciplinary

1 team shall meet to assess the present prescriptive  
2 program plan and, if further services are recom-  
3 ended, to prepare a new plan.

4 6. Amendment. Any major changes in a client's  
5 prescriptive program plan may occur only after the  
6 service agreement has been amended and signed by the  
7 persons specified in subsection 2.

8 §5472. Preadmission visit

9 Any client may be detained by a facility up to 48  
10 hours, if the purpose of the detention is a  
11 preadmission visit solely to observe and evaluate the  
12 client.

13 §5473. Voluntary admissions

14 1. Respite care. Respite care may be provided  
15 to any client by a facility without full compliance  
16 with the procedures for admission by judicial certi-  
17 fication under section 5475, if it is recommended by  
18 an interdisciplinary team and a service agreement has  
19 been completed.

20 A. The purpose of the respite care is for evalu-  
21 ation, diagnosis or other clearly stated and  
22 broadly defined therapeutic purposes of the  
23 client or his family.

24 B. Respite care may be provided, upon applica-  
25 tion to the regional office of the bureau by the  
26 client, legal guardian or parent, for not more  
27 than 21 days at a time and not more than 60 days  
28 during any 12-month period.

29 C. Continuing placement in the facility beyond  
30 the time periods stated in paragraph B, if indi-  
31 cated, may be accomplished only upon full compli-  
32 ance with procedures described by this chapter.

33 2. Regular admission. A client may be admitted  
34 for extended treatment and care if the following  
35 steps have been complied with.

36 A. An application for admission has been made by  
37 the client, a representative of his choice, the

1 client's legal guardian, the client's next of kin  
2 or any other responsible person.

3 B. The director of a regional office or his des-  
4 ignee has certified that he believes that the  
5 compelling needs of the client are not being met  
6 and has stated the factual basis of that belief.

7 C. An initial prescriptive program plan has been  
8 developed according to section 5470.

9 D. The requirements of informed consent under  
10 subsection 3 or of judicial certification under  
11 section 5475 have been met.

12 3. Admission by informed consent. The client  
13 may be admitted to a facility by informed consent if  
14 the chief administrative officer of the facility or  
15 his designee has determined that:

16 A. The client has been informed of and under-  
17 stands both the nature, purpose and proposed  
18 duration of the admission, and the provisions of  
19 section 5480 regarding the client's right to  
20 leave and the limitations on that right; and

21 B. The client voluntarily consents to the pro-  
22 posed admission.

23 4. Medical admission to the Benda Hospital at  
24 Pineland Center. Any mentally retarded person re-  
25 quiring medical or dental treatment, including  
26 post-operative care, may be admitted to the Benda  
27 Hospital only if, and as long as, a signed consent to  
28 admission is given and remains unrevoked by the  
29 client, a parent or a legal guardian.

30 A. The consent is consent to admission only.

31 B. The consent may not be construed as a substi-  
32 tute for informed consent under subsection 3.

33 §5474. Involuntary admissions

34 1. Short-term evaluation. When considered  
35 necessary by the interdisciplinary team and with the  
36 consent of the director, persons may be admitted to

1 the Elizabeth Levinson Center short-term evaluation  
2 program for a period of 40 program days, excluding  
3 weekends, without certification.

4 2. Admission by judicial certification or judi-  
5 cial commitment. If the chief administrative officer  
6 of a facility or his designee has determined that the  
7 client is not capable of giving informed consent to  
8 admission, a client may be admitted for extended care  
9 and treatment only after judicial certification under  
10 to section 5475 or after judicial commitment under  
11 section 5476.

12 3. Emergency admission. When immediate deten-  
13 tion of a person believed to be mentally retarded is  
14 necessary, the person may be temporarily restrained  
15 in accordance with section 5477.

16 §5475. Judicial certification procedures

17 If the chief administrative officer of a facility  
18 or his designee has determined that a client is not  
19 capable of giving informed consent to admission, the  
20 client may be admitted for extended care and treat-  
21 ment only after judicial certification pursuant to  
22 the following procedures.

23 1. Petition. A petition to admit a client by  
24 judicial certification may be filed in the District  
25 Court with jurisdiction over the place where the  
26 client is residing.

27 A. Only a chief administrative officer of a  
28 regional office or facility may file the peti-  
29 tion.

30 B. The petition may not be filed by the chief  
31 administrative officer of a regional office until  
32 he has obtained approval for the admission by the  
33 chief administrative officer of the facility  
34 under rules promulgated by the commissioner under  
35 section 1203, subsection 3.

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



1           2. Prehearing duties of the court. Upon receipt  
2 by the District Court of the petition, the court  
3 shall:

4           A. Schedule a certification hearing to be held  
5 as soon as practicable, except that if the client  
6 is being detained under section 5477, subsection  
7 4, the hearing shall be held no later than 15  
8 days from the day the petition was filed, unless  
9 the court, for cause shown, grants a continuance  
10 of not more than 10 additional days;

11           B. Cause written notice of the petition and  
12 hearing to be given personally or by mail to the  
13 client who is the subject of the proceeding and  
14 to the client's legal guardian, spouse, parent or  
15 adult child, if any is known.

16                   (1) If none of these persons is known or if  
17 none can be located, the notice shall be  
18 given to one of the client's next of kin or  
19 to a next friend.

20                   (2) A docket entry is sufficient evidence  
21 that the notice has been given;

22           C. Unless waived by a parent or guardian, cause  
23 the client who is the subject of the proceeding  
24 to be examined by a professional.

25                   (1) The client or his counsel may choose  
26 the professional, if the professional he  
27 chooses is reasonably available.

28                   (2) The professional may not be the same  
29 one who performed any part of the evaluation  
30 required under section 5468 or who partici-  
31 pated in the development of the prescriptive  
32 program plan.

33                   (3) Upon completion of the examination, the  
34 professional shall report to the court his  
35 opinion whether the client is mentally  
36 retarded and therefore requires treatment,  
37 stating his reasons for his opinion;

38           D. Appoint counsel for any indigent client not  
39 already represented;

1 E. Furnish counsel with copies of the petition  
2 and the reports of the court-appointed examiner;  
3 and

4 F. Cancel the certification hearing if a parent  
5 or guardian having legal custody of the person of  
6 the client so requests.

7 3. Certification hearing. The certification  
8 hearing shall be governed as follows.

9 A. The certification hearing shall be conducted  
10 in accordance with the Maine Rules of Evidence  
11 and in an informal manner consistent with orderly  
12 procedure.

13 B. The certification hearing shall be confiden-  
14 tial and shall be electronically or  
15 stenographically recorded.

16 C. No report of the certification hearing pro-  
17 ceedings may be released to the public or press,  
18 except by permission of the client or his counsel  
19 and with the approval of the court.

20 4. Certification. The court shall certify the  
21 client's eligibility for admission only if the peti-  
22 tioner proves, by clear and convincing evidence,  
23 that:

24 A. The client is a person in need of institu-  
25 tionalized services;

26 B. The needed services are available at the  
27 facility named in the application; and

28 C. There is no less restrictive alternative to  
29 the care provided by the facility, consistent  
30 with the best interest of the client.

31 5. Effect of certification. The certification  
32 of a client's eligibility for admission may not be  
33 construed as a judicial commitment of the client, but  
34 only empowers the chief administrative officer of the  
35 facility to admit the client as a resident for treat-  
36 ment, education or habilitation, subject to the  
37 provisions for discharge of section 5480.

1       6. Period of certification. The court shall  
2 order the certification to remain in effect for a  
3 period of not more than 2 years from the day the cer-  
4 tification order was issued.

5       7. Expenses. The District Court is responsible  
6 for any expenses incurred under this section, includ-  
7 ing fees of appointed counsel, witness fees and the  
8 expenses resulting from a court-appointed examiner.

9       8. Appeals. A client certified under this  
10 section may appeal the certification order to the  
11 Superior Court.

12       A. The appeal is limited to questions of law.

13       B. Any findings of fact of the District Court  
14 may not be set aside unless clearly erroneous.

15       C. The order of the District Court shall remain  
16 in effect pending the appeal.

17       D. The District Court Rules of Civil Procedure  
18 and the Maine Rules of Civil Procedure shall  
19 apply to the conduct of the appeals, except as  
20 otherwise specified in this subsection.

21       9. Exceptions. This section does not apply to  
22 the Aroostook Residential Center.

23       §5476. Judicial commitment

24       Judicial commitment of clients is governed as  
25 follows.

26       1. Eligibility. Any client recommended for  
27 regular admission to a facility pursuant to section  
28 5470 may be admitted by judicial commitment.

29       2. Procedure. The procedure for judicial com-  
30 mitment to a mental retardation facility for care,  
31 training and treatment shall follow the procedures  
32 set forth in section 3864 for the involuntary commit-  
33 ment of mentally ill persons, except that, where a  
34 finding of mental illness is required, a finding of  
35 mental retardation as defined by section 5001, sub-  
36 section 3, shall be substituted.

1     §5477. Emergency procedures

2           1. Protective custody. If a law enforcement  
3 officer has reasonable grounds to believe, based upon  
4 his personal observation, that a person may be men-  
5 tally retarded, that due to his condition he presents  
6 a threat of imminent and substantial physical harm to  
7 himself or to other persons and that an emergency  
8 exists requiring immediate residential placement:

9           A. The officer may take the person into protec-  
10 tive custody; and

11           B. If the officer does take the person into pro-  
12 ductive custody, the officer shall deliver the  
13 person forthwith, within 18 hours, for examina-  
14 tion by an available licensed physician or li-  
15 icensed psychologist as provided in subsection 4.

16           2. Certificate not executed. If a certificate  
17 relating to the person's likelihood of serious harm  
18 is not executed by the examiner under subsection 4,  
19 the officer shall:

20           A. Release the person from protective custody  
21 and, with his permission, return him forthwith to  
22 his place of residence, if within the territorial  
23 jurisdiction of the officer;

24           B. Release the person from protective custody  
25 and, with his permission, return him to the place  
26 where he was taken into protective custody; or

27           C. If the person is also under arrest for viola-  
28 tion of law, retain him in custody until he is  
29 released in accordance with the law.

30           3. Certificate executed. If the certificate is  
31 executed by the examiner under subsection 4, the  
32 officer shall undertake forthwith, within 18 hours,  
33 to obtain the endorsement by a judicial officer under  
34 subsection 4 and may detain the person for as long as  
35 necessary to obtain the endorsement.

36           4. Admission. A person may be admitted to a  
37 facility after the facility has received an applica-  
38 tion and certificate according to the following  
39 procedures.

1 A. Any health officer, law enforcement officer  
2 or other person may make a written application to  
3 admit a person to a facility, subject to the pro-  
4 hibitions and penalties of section 3805, stating:

5 (1) His belief that the person is in need  
6 of institutional services;

7 (2) That an emergency exists requiring  
8 immediate placement in a facility; and

9 (3) The grounds for this belief.

10 B. The written application shall be accompanied  
11 by a dated certificate, signed by a licensed  
12 physician or a licensed psychologist who prac-  
13 tices clinical psychology, stating:

14 (1) He has examined the person on the date  
15 of the certificate, which date may not be  
16 more than 3 days before the date of admis-  
17 sion to the facility; and

18 (2) He is of the opinion that the person is  
19 a mentally retarded person in need of insti-  
20 tutional services.

21 C. The application and accompanying certificate  
22 shall be reviewed by a Justice of the Superior  
23 Court, a Judge of the District Court, a Judge of  
24 Probate or a complaint justice.

25 (1) If the judge or justice finds the  
26 application and accompanying certificate to  
27 be regular and in accordance with the law,  
28 he shall endorse them.

29 (2) No person may be held against his will  
30 in the facility under this subsection unless  
31 the application and certificate have been  
32 endorsed by a judge or justice, except that  
33 a person for whom an examiner has executed  
34 the certificate provided for under this sub-  
35 section may be detained in a facility for as  
36 long as is necessary to obtain the endorse-  
37 ment by a judge or justice, if the person or  
38 persons transporting the person to the

1 facility undertake to secure the endorsement  
2 forthwith upon execution of the certificate  
3 by the examiner.

4 D. Upon endorsement by the judge or justice of  
5 the application and certificate, any health offi-  
6 cer, police officer or other person designated by  
7 the judge or justice may take the person into  
8 custody and transport him to the facility desig-  
9 nated in the application.

10 E. The county in which the person is found is  
11 responsible for any expenses of transportation  
12 for the person under this subsection, including  
13 return from the facility if admission is  
14 declined.

15 F. Under this subsection, a facility may admit  
16 the client for no longer than 5 days, but if a  
17 petition for judicial certification is filed, the  
18 facility may admit the client for an additional  
19 period not to exceed 25 days from the date of  
20 application.

21 §5478. Continuation of treatment in a facility

22 1. Authority to continue treatment. A client  
23 who has been admitted to a facility by judicial cer-  
24 tification, or who has been retained in a facility  
25 pursuant to this section, may continue extended care  
26 and treatment in that facility for an additional  
27 period, not to exceed 2 years, only after judicial  
28 certification under section 5475 or after waiver of  
29 that process by the District Court as provided in  
30 this section, except that waiver of the judicial cer-  
31 tification process is not permitted for any mentally  
32 retarded person under public guardianship.

33 2. Waiver of judicial certification. A petition  
34 to waive judicial certification under section 5475  
35 may be filed in District Court by the facility where  
36 the client is residing. The court may waive judicial  
37 certification upon a finding that:

38 A. A prescriptive program plan, as provided in  
39 section 5470, has been agreed to by the superin-  
40 tendent of the facility and the guardian;

1           B. The guardian has been informed of and under-  
2           stands the nature, purpose and proposed duration  
3           of the admission and the provisions of section  
4           5480 regarding the client's right to leave and  
5           the limitations on that right;

6           C. The guardian has consented to the continued  
7           extended care and treatment of the client in the  
8           facility; and

9           D. Continued care and treatment is necessary and  
10          there is no less restrictive alternative to the  
11          care and treatment provided by the facility, con-  
12          sistent with the best interest of the client.

13          §5479. Post-admission responsibilities of the  
14          department

15                 1. Provision of care and treat-  
16          ment. Post-admission care and treatment in a facil-  
17          ity is governed as follows.

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

25                     B. While residing in the facility, the client  
26                     shall receive care, treatment and services only  
27                     according to the procedures set forth in this  
28                     section and in sections 5470 and 5471.

29                     2. Preparation for discharge. Preparation for a  
30          client's discharge from a facility is governed as  
31          follows.

32                     A. When an interdisciplinary team finds that the  
33                     client may be ready for discharge and determines  
34                     that temporary placement of the client in the  
35                     community is required to assist in its evaluation  
36                     of the client, the team may recommend that place-  
37                     ment and shall develop a prescriptive program  
38                     plan and service agreement which shall include  
39                     provisions to ensure that:

1           (1) The client's money is adequately man-  
2           aged;

3           (2) The client has a legal representative,  
4           if required;

5           (3) The client receives needed services in  
6           the community; and

7           (4) The client's parent or legal guardian,  
8           if available, continues to be involved with  
9           the client.

10          B. The chief administrative officer of the  
11          facility may release the client pursuant to such  
12          a recommendation for community placement through  
13          the regional office.

14          3. Role of the regional office. The role of the  
15          regional office under this section is as follows.

16          A. The regional office which will have responsi-  
17          bility for the client shall be included in the  
18          preparation of the prescriptive program plan and  
19          service agreement specified in subsection 2.

20          B. The regional office shall be responsible for  
21          implementing the client's release.

22          C. The regional office, shall, along with the  
23          other members of the interdisciplinary team,  
24          evaluate the success of the client's  
25          reintegration into the community and shall assist  
26          in obtaining the client's discharge when assured  
27          that the provisions of the prescriptive program  
28          plan and service agreement have been met.

29          §5480. Client's right to leave facility

30          1. Client's request. Any client admitted by  
31          informed consent may leave the facility at his own  
32          request, subject only to section 5477, subsection 4.

33          2. Discharge. When a judicially certified  
34          client is prepared for discharge, under section 5479,  
35          subsection 2, he shall be discharged if the regional  
36          office and the interdisciplinary team so recommend.



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

5   SUBCHAPTER IV

6   RIGHTS OF MENTALLY RETARDED PERSONS

7         §5601. Definitions

8           As used in this chapter, unless the context  
9 otherwise indicates, the following terms have the  
10 following meanings.

11           1. Client. "Client" means any mentally retarded  
12 person receiving services from the bureau or from an  
13 agency or facility licensed or funded to provide ser-  
14 vices to mentally retarded persons, except those  
15 presently serving sentences for crime.

16           2. Day facility. "Day facility" means any non-  
17 residential facility owned, operated, licensed or  
18 funded, in whole or in part, by the department or  
19 through the Department of Human Services.

20           3. Express and informed consent. "Express and  
21 informed consent" means consent voluntarily given  
22 with sufficient knowledge and comprehension of the  
23 subject matter involved so as to enable the person  
24 giving consent to make an understanding and enlight-  
25 ened decision, without any element of force, fraud,  
26 deceit, duress or other form of constraint or coer-  
27 cion.

28           4. Habilitation. "Habilitation" means the pro-  
29 cess by which an individual is assisted to acquire  
30 and maintain those life skills which enable him to  
31 cope with the demands of his own person and environ-  
32 ment, to raise the level of his physical, mental and  
33 social efficiency and to upgrade his sense of well-  
34 being, including, but not limited to, programs of  
35 formal, structured education and treatment.

36           5. Normalization principle. "Normalization  
37 principle" means the principle of letting the men-  
38 tally retarded persons obtain an existence as close

1 to normal as possible and making available to them  
2 patterns and conditions of every day life which are  
3 as close as possible to the norms and patterns of the  
4 mainstream of society.

5 6. Residential facility. "Residential facility"  
6 means a facility providing 24-hour residential care  
7 for mentally retarded persons which is owned, oper-  
8 ated, licensed or funded, in whole or in part, by the  
9 department or through the Department of Human Ser-  
10 vices.

11 7. Seclusion. "Seclusion" means the placement  
12 of a client alone in a locked room for a period in  
13 excess of one hour.

14 8. Treatment. "Treatment" means the prevention,  
15 amelioration or cure of a client's physical and  
16 mental disabilities or illness.

17 §5602. Purpose

18 It is the intent of the Legislature to guarantee  
19 individual dignity, liberty, pursuit of happiness and  
20 the protection of the civil and legal rights of men-  
21 mentally retarded persons and to articulate rights of  
22 mentally retarded persons, so that these rights may  
23 be exercised and protected.

24 §5603. Entitlement

25 Each mentally retarded person is entitled to the  
26 rights enjoyed by citizens of the State and of the  
27 United States, unless some of these rights have been  
28 suspended as the result of court guardianship pro-  
29 ceedings.

30 §5604. Protection

31 The Legislature finds and declares that the  
32 rights of mentally retarded persons can be protected  
33 best under a system of care which operates according  
34 to the principles of normalization and that the  
35 state's system of care shall operate according to  
36 these principles with the goals of:

1           1. Community-based services. Continuing the  
2 development of community-based services which provide  
3 reasonable alternatives to institutionalization in  
4 settings that are least restrictive to the client;  
5 and

6           2. Independence and productivity. Providing  
7 habilitation, education and other training to men-  
8 mentally retarded persons which will maximize their  
9 potential to lead independent and productive lives  
10 and which will afford opportunities for outward  
11 mobility from institutions.

12       §5605. Rights and basic protections of mentally  
13 retarded clients

14           Mentally retarded clients are entitled to the  
15 following rights and basic protections.

16           1. Humane care. Clients are entitled to dig-  
17 nity, privacy and humane care.

18           2. Practice of religion. Clients are entitled  
19 to religious freedom and practice without any re-  
20 striction or forced infringement on a client's right  
21 to religious preference and practice.

22           3. Communication. Clients are entitled to pri-  
23 vate communications.

24           A. Each client is entitled to receive, send and  
25 mail sealed, unopened correspondence, and no  
26 person who owns or is employed by a day facility  
27 or a residential facility may delay, hold or cen-  
28 sor any incoming or outgoing correspondence of  
29 any client, or open any such correspondence with-  
30 out the consent of the client or his legal  
31 guardian.

32           B. Clients in residential facilities are enti-  
33 tled to reasonable opportunities for telephone  
34 communication.

35           C. Clients are entitled to an unrestricted right  
36 to visitations during reasonable hours, except  
37 that nothing in this provision may be construed  
38 to permit infringement upon other clients' rights  
39 to privacy.

1           4. Work. Clients engaged in work programs which  
2 require compliance with state and federal wage and  
3 hour laws are entitled to fair compensation for labor  
4 in compliance with regulations of the United States  
5 Department of Labor.

6           5. Vote. No client may be denied the right to  
7 vote for reasons of mental illness, as provided in  
8 the Constitution of Maine, Article II, Section 1,  
9 unless under guardianship.

10          6. Personal property. Each client is entitled  
11 to the possession and use of his own clothing, per-  
12 sonal effects and money, except that, when necessary  
13 to protect the client or others from imminent injury,  
14 the chief administrator of a day facility or a resi-  
15 dential facility may take temporary custody of cloth-  
16 ing or personal effects which he shall immediately  
17 return when the emergency ends.

18          7. Nutrition. Each client in a residential  
19 facility is entitled to nutritious food in adequate  
20 quantities and meals may not be withheld for disci-  
21 plinary reasons.

22          8. Medical care. Each client is entitled to  
23 receive prompt and appropriate medical and dental  
24 treatment and care for physical and mental ailments  
25 and for the prevention of any illness or disability,  
26 and medical treatment shall be consistent with the  
27 accepted standards of medical practice in the commu-  
28 nity, unless the religion of the client so prohibits.

29           A. Medication may be administered only at the  
30 written order of a physician.

31           B. Medication may not be used as punishment, for  
32 the convenience of staff, as a substitute for a  
33 habilitation plan or in unnecessary or excessive  
34 quantities.

35           C. Daily notation of medication received by each  
36 client in a residential facility shall be kept in  
37 the client's records.

38           D. Periodically, but no less frequently than  
39 every 6 months, the drug regimen of each client

1 in a residential facility shall be reviewed by  
2 the attending physician or other appropriate mon-  
3 itoring body, consistent with appropriate stan-  
4 dards of medical practice.

5 E. All prescriptions shall have a termination  
6 date.

7 F. Pharmacy services at each residential facil-  
8 ity operated by the department shall be directed  
9 or supervised by a professionally competent  
10 pharmacist licensed according to the provisions  
11 of Title 32, chapter 41.

12 G. Prior to instituting a plan of experimental  
13 medical treatment or carrying out any surgical  
14 procedure, the express and informed consent shall  
15 be obtained from the client, unless the client  
16 has been found to be legally incompetent, in  
17 which case the guardian of the client's person  
18 may consent.

19 (1) Before making a treatment or surgical  
20 decision, the client shall be given informa-  
21 tion, including, but not limited to, the  
22 nature and consequences of the procedures,  
23 the risks, benefits and purposes of the  
24 procedures and the availability of alternate  
25 procedures.

26 (2) The client or, if legally incompetent,  
27 his guardian may withdraw his express and  
28 informed consent at any time, with or with-  
29 out cause, before treatment or surgery.

30 H. Notwithstanding the absence of express and  
31 informed consent, emergency medical care, treat-  
32 ment or surgical procedure may be provided to any  
33 client who has been injured or who is suffering  
34 from an acute illness, disease or condition, if,  
35 within a reasonable degree of medical certainty,  
36 delay in initiation of emergency medical care or  
37 treatment would endanger the health of the  
38 client.

39 9. Sterilization. A client may not be steril-  
40 ized, except in accordance with chapter 7.

1           10. Social activity. Each client is entitled to  
2 suitable opportunities for behavioral and leisure  
3 time activities which include social interaction.

4           11. Physical exercise. Each client is entitled  
5 to opportunities for appropriate physical exercise,  
6 including the use of available indoor and outdoor  
7 facilities and equipment.

8           12. Discipline. Discipline of clients is gov-  
9 erned as follows.

10           A. The chief administrative officer of each  
11 facility shall prepare a written statement of  
12 policies and procedures for the control and dis-  
13 cipline of clients, which is directed to the goal  
14 of maximizing the growth and development of the  
15 clients.

16                   (1) Clients are entitled to participate, as  
17 appropriate, in the formulation of the poli-  
18 cies and procedures.

19                   (2) Copies of the statement of policies and  
20 procedures shall be given to each client  
21 and, if the client has been adjudged incom-  
22 petent, to his parent or legal guardian.

23                   (3) Copies of the statement of policies and  
24 procedures shall be posted in each residen-  
25 tial and day facility.

26           B. Corporal punishment or any form of inhumane  
27 discipline is not permitted.

28           C. Seclusion is not permitted.

29           D. The placement of a resident alone in a locked  
30 room for less than an hour is permitted, but:

31                   (1) Is only permitted in emergencies to  
32 protect the client or others from imminent  
33 injury; and

34                   (2) A staff person shall visually check a  
35 client so placed at 10 minute intervals  
36 throughout the duration of the placement.

1           13. Behavior modification. Behavior modification  
2           of clients is governed as follows.

3           A. No client may be subjected to a treatment  
4           program to eliminate bizarre or unusual behavior  
5           without first being examined by a physician to  
6           rule out the possibility that such behaviors are  
7           organically caused.

8           B. Treatment programs involving the use of nox-  
9           ious or painful stimuli may be used only to cor-  
10           rect behavior more harmful to the client than the  
11           treatment program:

12                   (1) On the recommendation of a physician or  
13                   psychologist; and

14                   (2) With the approval, following a  
15                   case-by-case review, of the chief adminis-  
16                   trative officer of the residential facility  
17                   and a client advocate of the department.

18           14. Physical restraints. Clients are entitled  
19           to be free from physical restraints, but physical  
20           restraints may be employed only in emergencies to  
21           protect the client from imminent injury to himself or  
22           others.

23           A. Physical restraints may not be used as pun-  
24           ishment, for the convenience of the staff or as a  
25           substitute for habilitative services.

26           B. Physical restraints may impose only the least  
27           possible restrictions consistent with their pur-  
28           pose and shall be removed when the emergency  
29           ends.

30           C. Physical restraints may not cause physical  
31           injury to the client and shall be designed to  
32           allow the greatest possible comfort.

33           D. Mechanical supports used in normative situa-  
34           tions to achieve proper body position and balance  
35           are not considered restraints, but mechanical  
36           supports shall be prescriptively designed and  
37           applied under the supervision of a qualified pro-  
38           fessional with concern for principles of good

1 body alignment, circulation and allowance for  
2 change of position.

3 E. Daily reports on the use of restraints shall  
4 be made to the appropriate chief administrative  
5 officer of the facility.

6 (1) The reports shall summarize all cases  
7 involving the use of restraints, the type of  
8 restraints used, the duration of usage and  
9 the reasons for the usage.

10 (2) A monthly summary of the reports shall  
11 be relayed to the Office of Advocacy.

12 15. Records. All client records shall remain  
13 confidential as provided in section 1206.

14 A. The client or, if the client is incompetent,  
15 his parent or legal guardian is entitled to ac-  
16 cess to records upon request.

17 B. The commissioner is entitled to the records  
18 of a day facility or a residential facility if  
19 necessary to carry out the statutory functions of  
20 his office.

21 §5606. Violations

22 1. Report and investigation. Any alleged viola-  
23 tion of a client's rights shall be reported immedi-  
24 ately to the Office of Advocacy of the department and  
25 to the Attorney General's office.

26 A. The Office of Advocacy shall conduct an  
27 investigation of each alleged violation pursuant  
28 to section 1205.

29 B. The Office of Advocacy shall submit a written  
30 report of the findings and results of the inves-  
31 tigation to the chief administrative officer of  
32 the facility in which the client's rights were  
33 allegedly violated and to the commissioner within  
34 2 working days after the day of the occurrence or  
35 discovery of the alleged incident.



1           2. Civil liability. Any person who violates or  
2 abuses any rights or privileges of clients granted by  
3 this subchapter is liable for damages as determined  
4 by law.

5           A. Civil damages may be awarded for negligent or  
6 intentional violations of this subchapter.

7           B. Good-faith compliance with the provisions of  
8 this subchapter in connection with evaluation,  
9 admission, habilitation programming, education,  
10 treatment or discharge of a client is a defense  
11 to a civil action under this subchapter.

12           3. Prohibited acts. A person is guilty of  
13 violation of the rights of a mentally retarded client  
14 if he intentionally violates or abuses any rights or  
15 privileges of clients granted by this subchapter.

16           A. Violation of the rights of a mentally  
17 retarded client is a Class E crime.

18           B. Good-faith compliance with the provisions of  
19 this subchapter in connection with evaluation,  
20 admission, habilitation programming, education,  
21 treatment or discharge of a client is a defense  
22 to prosecution under this subchapter.

23 §5607. Notice of rights

24           The commissioner shall provide a written copy of  
25 this subchapter and of section 1206 to each client  
26 and, if the client has been adjudged incompetent, to  
27 the parent or legal guardian of the client.

28           1. Prompt notification. Each client shall be  
29 promptly informed in clear language of the legal  
30 rights of mentally retarded persons.

31           2. Posting requirement. A copy of this subchap-  
32 ter shall be posted in each residential and day  
33 facility.

34 §5608. Client government

35           Upon request of a client, the chief administra-  
36 tive officer of a residential facility shall initiate

1 and develop a program of client government to hear  
2 the views and represent the interests of all clients  
3 served by the facility.

4 1. Composition. The client government shall be  
5 composed of residents elected by other residents and  
6 staff advisors skilled in the administration of com-  
7 munity organizations.

8 2. Duties. The client government shall work  
9 closely with the bureau and the Office of Advocacy to  
10 promote the interests and welfare of all residents in  
11 the facility.

## 12 CHAPTER 7

### 13 DUE PROCESS IN STERILIZATION ACT OF 1982

#### 14 §7001. Short title

15 This chapter may be cited as the "Due Process in  
16 Sterilization Act of 1982."

#### 17 §7002. Legislative intent

18 The Legislature finds and declares that steril-  
19 ization procedures are generally irreversible and  
20 represent potentially permanent and highly signifi-  
21 cant consequences for the patient involved. The  
22 Legislature recognizes that certain legal safeguards  
23 are necessary to prevent indiscriminate and unnec-  
24 essary sterilization and to assure equal access to  
25 desired medical procedures for all Maine citizens.

#### 26 §7003. Definitions

27 As used in this chapter, unless the context indi-  
28 cates otherwise, the following terms have the follow-  
29 ing meanings.

30 1. Disinterested expert. "Disinterested expert"  
31 means an appropriately licensed or certified profes-  
32 sional not associated with an institution serving the  
33 person for whom sterilization is being sought and not  
34 personally related to the petitioner.

1           2. Guardian. "Guardian" means the legal  
2 guardian of a person as appointed by a court of com-  
3 petent jurisdiction.

4           3. Informed consent. "Informed consent" means  
5 consent that is:

6           A. Based upon an actual understanding by the  
7 person to be sterilized of the nature of steril-  
8 ization, its potentially permanent consequences,  
9 all alternative methods of contraception and all  
10 reasonably foreseeable risks and benefits of  
11 sterilization; and

12           B. Wholly voluntary and free from express or  
13 implied coercion.

14           4. Parent. "Parent" means a natural or adoptive  
15 mother or father of a person.

16           5. Physician. "Physician" means any person li-  
17 censed to practice medicine under Title 32, chapter  
18 48, subchapter II.

19           6. Psychiatrist. "Psychiatrist" means a physi-  
20 cian licensed to practice medicine under Title 32,  
21 chapter 48, subchapter II, who specializes in the  
22 diagnosis and treatment of mental disorders.

23           7. Psychologist. "Psychologist" means any  
24 person licensed to practice psychology under Title  
25 32, chapter 48, subchapter II.

26           8. Sterilization. "Sterilization" means a medi-  
27 cal or surgical procedure, the purpose of which is to  
28 render an individual permanently incapable of  
29 procreation. Sterilization does not refer to proce-  
30 dures which must be performed for distinct and urgent  
31 medical reasons and which have the unavoidable  
32 secondary effect of rendering the individual  
33 infertile.

34           §7004. Informed consent required for sterilization

35           1. Informed consent required. Except as pro-  
36 vided in this chapter, prior to initiating steriliza-  
37 tion procedures on any individual, a physician shall

1 obtain and record the informed consent of that indi-  
2 vidual.

3 2. Hearing required to determine ability to give  
4 informed consent for sterilization. A hearing to  
5 determine ability to give informed consent for  
6 sterilization is required when sterilization is  
7 sought for:

8 A. Persons under age 18 years and not married or  
9 otherwise emancipated;

10 B. Persons presently under public or private  
11 guardianship or conservatorship;

12 C. Persons residing in a state institution pro-  
13 viding care, treatment or security, or otherwise  
14 in state custody; or

15 D. Persons from whom a physician could not  
16 obtain informed consent.

17 §7005. Sterilization authorized by court

18 1. Court order required. A District Court order  
19 authorizing sterilization is required before the  
20 sterilization of any person described in section  
21 7004, subsection 2.

22 2. Determination prior to issuance of  
23 order. Before an order may be issued, the court  
24 shall determine whether the person seeking steriliza-  
25 tion or for whom sterilization is sought is able to  
26 give informed consent for sterilization and, if so,  
27 whether he has given informed consent for steriliza-  
28 tion.

29 §7006. Contents of petition for determination of  
30 ability to give informed consent for steril-  
31 ization

32 The petition for determination of ability to give  
33 informed consent for sterilization shall be executed  
34 under oath and shall set forth:

35 1. Person seeking sterilization or for whom  
36 sterilization is sought. Name, age and residence of

1 the person seeking sterilization or for whom steril-  
2 ization is sought;

3       2. Parent, guardian or spouse. Names and resi-  
4 dences of any parents, spouse or legal guardian of  
5 the person seeking sterilization or for whom steril-  
6 ization is sought;

7       3. Basis of petition. A statement of the fac-  
8 tors, including any listed in section 7004, subsec-  
9 tion 2, and mental condition, when appropriate, which  
10 necessitate a determination of the ability of the  
11 person seeking sterilization or for whom steriliza-  
12 tion is sought to give informed consent for steril-  
13 ization;

14       4. Reasons for sterilization. A statement of  
15 the reasons for which sterilization is sought; and

16       5. Person initiating petition. The name, ad-  
17 dress, position and statement of interest of the  
18 person initiating the petition or any person assist-  
19 ing with a self-initiated petition.

20 §7007. Submitting petition to determine informed  
21 consent; notice of hearing

22       1. Petition submission. The petition for a  
23 determination of ability to give informed consent  
24 shall be submitted to the District Court in the divi-  
25 sion of residence of the person seeking sterilization  
26 or for whom sterilization is sought.

27       2. Notice of hearing. Upon the receipt of a  
28 petition to determine informed consent, the District  
29 Court shall assign a time, not later than 30 days  
30 thereafter, and a place for hearing the petition.  
31 The court may, at its discretion, hold the hearing on  
32 the petition at a place within the division other  
33 than the usual courtroom if it would facilitate the  
34 presence of the person seeking sterilization or for  
35 whom sterilization is sought.

36       3. Service of notice. The court shall cause a  
37 copy of the petition and notice of hearing to be  
38 served on the person seeking sterilization or for  
39 whom sterilization is sought and his legal guardian

1 or custodian, if any, at least 7 days prior to the  
2 hearing date. If a legal guardian or custodian of  
3 the person seeking sterilization or for whom steril-  
4 ization is sought is not a resident of this State,  
5 notice may be served by registered mail. If the  
6 residence of a legal guardian or custodian is  
7 unknown, an affidavit so stating shall be filed in  
8 lieu of service.

9 §7008. Hearing upon a petition to determine informed  
10 consent for sterilization

11 1. Counsel. If the person seeking sterilization  
12 or for whom sterilization is sought requests counsel  
13 and cannot afford counsel, the court shall appoint  
14 counsel to represent that person at public expense.  
15 If the person is not represented by counsel and  
16 appears to the court unable to request counsel, the  
17 court shall order that counsel be retained or shall  
18 appoint counsel to represent the person at public  
19 expense if the person cannot afford counsel. A  
20 reasonable fee shall be set for appointed counsel by  
21 the District Court. Counsel, or the person seeking  
22 sterilization or for whom sterilization is sought,  
23 may present evidence, call witnesses and cross-  
24 examine witnesses who testify or present evidence at  
25 any hearing on the petition.

26 2. Appointment of disinterested experts. For  
27 the purpose of determining a person's ability to  
28 give informed consent, the court shall appoint not  
29 less than 2 disinterested experts experienced in the  
30 field of developmental disabilities or mental health,  
31 including at least one licensed psychologist or psy-  
32 chiatrist, to examine the person, to report on that  
33 examination and to testify at the hearing as to his  
34 competency. Other evidence regarding the person's  
35 capabilities may be introduced at the hearing by any  
36 party.

37 3. Preference of person seeking sterilization or  
38 for whom sterilization is sought. If the person  
39 seeking sterilization or for whom sterilization is  
40 sought has any preference as to a disinterested  
41 expert by whom he would prefer to be examined, the  
42 court shall make a reasonable effort to accommodate  
43 that preference.

1           4. Person's presence at hearing. The person  
2 seeking sterilization or for whom sterilization is  
3 sought shall be present at any hearing regarding his  
4 ability to give informed consent for sterilization,  
5 unless that right is waived by the person, personally  
6 or through his attorney, and that waiver is approved  
7 by the court. The court shall inquire at the time of  
8 the hearing as to the types and effects of any  
9 medications being administered to or taken by the  
10 person.

11           5. Determination that person is able to give  
12 informed consent for sterilization. If the court  
13 determines by clear and convincing evidence that the  
14 person is able to give informed consent for steril-  
15 ization and that the person does consent to steril-  
16 ization, it shall issue an order so stating and per-  
17 mitting the sterilization to be performed. Prior to  
18 the performance of the sterilization, the physician  
19 and hospital involved shall also obtain the written  
20 consent of the person for sterilization.

21 If the court determines by clear and convincing evi-  
22 dence that the person is able to give informed con-  
23 sent for sterilization, but determines that the  
24 person does not consent to sterilization, it shall  
25 issue an order so stating and forbidding steriliza-  
26 tion of the person, unless that person later makes a  
27 different choice and only after a rehearing under  
28 this section.

29           6. Determination that person is not able to give  
30 informed consent for sterilization. If the court  
31 determines that the person is not able to give  
32 informed consent for sterilization, it shall issue an  
33 order so stating and forbidding sterilization of the  
34 person, unless a determination is made under section  
35 7013 that sterilization is in the best interest of  
36 the person.

37           §7009. Limitations

38           1. Consent not to be a condition for exercise of  
39 any right, privilege or freedom. Consent to steril-  
40 ization shall not be made a condition for release  
41 from or confinement in any institution nor shall it  
42 be made a condition for the exercise of any right,

1 privilege or freedom, nor shall it be made a condi-  
2 tion for receiving any form of public assistance,  
3 nor as a prerequisite for any other service. The  
4 consent shall be free from express or implied induc-  
5 ements or constraints.

6 2. Guarantees and limitations to be given to  
7 person to be sterilized. The guarantees and limita-  
8 tions provided in this section shall be communicated  
9 to the person seeking sterilization or for whom  
10 sterilization is sought by the court prior to issuing  
11 an order under section 7008. These guarantees and  
12 limitations shall also appear prominently at the top  
13 of the consent document used by a physician or hospi-  
14 tal to obtain written consent for sterilization.

15 §7010. Determination of the best interests of a  
16 person unable to give informed consent for  
17 sterilization

18 The parent, spouse, legal guardian or custodian  
19 of any person found unable to give informed consent  
20 for sterilization may petition the District Court, in  
21 the county of residence of the person being consid-  
22 ered for sterilization, to determine if sterilization  
23 is in the best interest of that person. The court  
24 shall have sole jurisdiction and authority to order  
25 that a sterilization procedure may be performed when  
26 a person is incapable of giving informed consent, as  
27 determined by the hearing required in section 7008.

28 §7011. Contents of petition for consideration of  
29 sterilization of a person based upon a deter-  
30 mination of best interest

31 The petition for determination if sterilization  
32 is in the best interest of a person shall be executed  
33 under oath and shall set forth:

34 1. Person being considered for sterilization.  
35 The name, age and residence of the person being con-  
36 sidered for sterilization;

37 2. Parents, spouse, custodian or guardian of  
38 person being considered for sterilization. The names  
39 and residences of any parents, spouse or legal  
40 guardian of the person being considered for steril-  
41 ization;



1           3. Mental condition. The mental condition of  
2 and effects of any medications being administered to  
3 or taken by the person being considered for steril-  
4 ization;

5           4. Reasons sterilization is sought. A state-  
6 ment, in terms of the best interest of the person, of  
7 the reasons for which sterilization is sought;

8           5. Petitioner. The name and relationship of the  
9 petitioner to the person being considered for steril-  
10 ization;

11           6. Alternatives. Less drastic alternative con-  
12 traceptive methods which have been tried or the  
13 reason those methods are believed to be unworkable or  
14 inappropriate for the person being considered for  
15 sterilization;

16           7. Physiological capability to procreate. A  
17 medical statement assessing the physiological capa-  
18 bility of the person to procreate;

19           8. Risk to life or health. A medical statement  
20 regarding the potential risk to the life or health of  
21 the person which could be caused by procreation or  
22 child rearing;

23           9. Person's attitudes or desires regarding  
24 sterilization. Any attitudes or desires expressed by  
25 the person regarding sterilization; and

26           10. Informed consent order. The date and con-  
27 tents of the order issued under section 7008 concern-  
28 ing the ability to give informed consent for steril-  
29 ization of the person being considered for steril-  
30 ization.

31           §7012. Notice of hearing upon the petition to deter-  
32 mine the best interest of a person being con-  
33 sidered for sterilization

34           Upon the receipt of a petition, the court shall  
35 assign a time, not later than 30 days thereafter, and  
36 a place for a hearing on the petition. The court  
37 may, at its discretion, hold the hearing on the peti-  
38 tion at a place within the county other than the

1 usual courtroom, if it would facilitate the presence  
2 of the person being considered for sterilization.  
3 The court shall cause the petition and notice of the  
4 hearing to be served on the person being considered  
5 for sterilization and his legal guardian or custo-  
6 dian at least 20 days prior to the hearing date. The  
7 court shall direct that personal service be made upon  
8 the person being considered for sterilization and his  
9 legal guardian or custodian. If the legal guardian  
10 or custodian of the person being considered for  
11 sterilization is not a resident of this State, notice  
12 may be served by registered mail. If the residence  
13 of the guardian or custodian of the person being con-  
14 sidered for sterilization is unknown, an affidavit so  
15 stating shall be filed in lieu of service.

16 §7013. Hearing upon a petition to determine the best  
17 interest of a person being considered for  
18 sterilization

19 1. Ability to give or withhold informed consent.  
20 In all instances where the issue of whether steril-  
21 ization is in the best interest of a person is to be  
22 considered, a prior determination, as required by  
23 section 7008, that the person cannot give or withhold  
24 informed consent shall be required.

25 2. Presence of person; counsel; findings. The  
26 person being considered for sterilization shall be  
27 physically present throughout the entire best inter-  
28 est hearing, unless that right is waived by the  
29 person, personally or through his attorney, and that  
30 waiver is approved by the court. The person being  
31 considered for sterilization shall be represented by  
32 counsel and provided the right and opportunity to be  
33 confronted with and to cross-examine all witnesses.  
34 The right to counsel may not be waived. If the  
35 person cannot afford counsel, the court shall appoint  
36 an attorney, not less than 20 days before the sched-  
37 uled hearing, to represent the person at public  
38 expense. A reasonable fee shall be set for appointed  
39 counsel by the District Court. Counsel shall repre-  
40 sent the person being considered for sterilization  
41 in assuring that information and evidence in opposi-  
42 tion to sterilization without informed consent is  
43 fully represented. All stages of the hearing shall  
44 be recorded by a tape recorder or a court reporter,

1 as the court may direct. In all cases, the court  
2 shall issue written findings to support its decision.

3 3. Disinterested experts; evidence. The court  
4 shall hear the petition to determine whether sterilization  
5 is in the best interest of the person being  
6 considered for sterilization. The court shall  
7 appoint not less than 3 disinterested experts with  
8 experience related to the condition of the person as  
9 alleged in the petition, including at least one licensed  
10 physician and one licensed psychologist or  
11 psychiatrist, to examine the person and to testify at  
12 the hearing. The court shall hear and consider evidence  
13 on the following:

14 A. All issues raised by the petition executed  
15 under section 7011; and

16 B. The beneficial or detrimental psychological  
17 and physiological effects of sterilization on the  
18 person being considered for sterilization.

19 Any other relevant evidence concerning the mental and  
20 physical condition of the person being considered for  
21 sterilization may be introduced at the hearing.

22 4. Burden of proof. The burden of proof by  
23 clear and convincing evidence that sterilization is  
24 in the best interest of the person being considered  
25 for sterilization shall rest with the party seeking  
26 to establish that sterilization is the appropriate  
27 course of action.

28 5. Finding that sterilization is in person's  
29 best interest. The court shall find that sterilization  
30 is in the best interest of the person being considered  
31 for sterilization if it is shown by clear and  
32 convincing evidence that:

33 A. Methods of contraception less drastic than  
34 sterilization have proven to be unworkable or  
35 inappropriate for the person; and

36 B. Sterilization is necessary to preserve the  
37 physical or mental health of the person.

1           6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

15           7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

22    §7014. Confidentiality; court costs

23           1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter shall be confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through his attorney, requests that the proceedings be open to the public. Records of the court proceedings shall not be open to inspection by the public, except under section 7017, without the consent, personally or through his attorney, of the person seeking sterilization or for whom sterilization is being considered.

35           2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

39    §7015. Penalties

40           1. Violations. Anyone knowingly or willfully violating section 7009, subsection 1, is guilty of a Class D crime.

1           2. Falsification of petition; aiding or procur-  
2 ing unlawful sterilization. Anyone knowingly or  
3 willfully falsifying a petition under this chapter or  
4 otherwise aiding or procuring the performance of a  
5 sterilization without a court order in a situation  
6 covered by this chapter is guilty of a Class D crime.

7           §7016. Liability

8           1. Participation in sterilization. Nothing in  
9 this chapter requires any hospital or any person to  
10 participate in performing any sterilization proced-  
11 ure, nor may any hospital or any person be civilly  
12 or criminally liable for refusing to participate in  
13 performing any sterilization procedure.

14           2. Immunity. A physician, psychiatrist or psy-  
15 chologist acting nonnegligently and in good faith in  
16 his professional capacity under this chapter is  
17 immune from any civil liability that might otherwise  
18 result from his actions. In a proceeding regarding  
19 immunity from liability, there shall be a rebuttable  
20 presumption of good faith.

21           §7017. Sterilization procedures review committee

22           A committee shall be established whose purpose  
23 shall be to review annually the authorization of  
24 sterilizations under this chapter for the purpose of  
25 assessing the need for any changes in the procedures  
26 or standards set forth in this chapter. The commit-  
27 tee shall consist of not less than 6 members, includ-  
28 ing representatives of the Maine court system, the  
29 medical community, a designee from the Department of  
30 Mental Health and Mental Retardation, a designee from  
31 the Department of Human Services, a member of the  
32 joint standing committee of the Legislature having  
33 jurisdiction over health and institutional services,  
34 and a member of the joint standing committee of the  
35 Legislature having jurisdiction over the judiciary.  
36 The representatives of the 2 joint standing legis-  
37 lative committees shall be appointed by the chairmen  
38 of those legislative committees. Other members of  
39 the review committee shall be appointed annually by  
40 the Governor who shall also designate the chairman of  
41 the committee.

1                                    CHAPTER 9

2                                    INTERSTATE COMPACT ON MENTAL HEALTH

3    §9001. Purpose--Article I

4            The party states find that the proper and expeditious  
5 treatment of the mentally ill and mentally  
6 deficient can be facilitated by cooperative action,  
7 to the benefit of the patients, their families and  
8 society as a whole. The party states find that the  
9 necessity of and desirability for furnishing such  
10 care and treatment bears no primary relation to the  
11 residence or citizenship of the patient, but that, on  
12 the contrary, the controlling factors of community  
13 safety and humanitarianism require that facilities  
14 and services be made available for all who are in  
15 need of them. Consequently, it is the purpose of  
16 this compact and of the party states to provide the  
17 necessary legal basis for the institutionalization or  
18 other appropriate care and treatment of the mentally  
19 ill and mentally deficient under a system that recog-  
20 nizes the paramount importance of patient welfare and  
21 to establish the responsibilities of the party states  
22 in term of such welfare.

23   §9002. Definitions--Article II

24            As used in this compact, unless the context  
25 otherwise indicates, the following words have the  
26 following meanings.

27            1. Aftercare. "Aftercare" means care, treatment  
28 and services provided a patient, as defined, on con-  
29 valescent status or conditional release.

30            2. Institution. "Institution" means any hospi-  
31 tal or other facility maintained by a party state or  
32 political subdivision thereof for the care and treat-  
33 ment of mental illness or mental deficiency.

34            3. Mental deficiency. "Mental deficiency" means  
35 mental deficiency as defined by appropriate clinical  
36 authorities to such extent that a person so afflicted  
37 is incapable of managing himself and his affairs, but  
38 shall not include mental illness.

1           4. Mental illness. "Mental illness" means  
2 mental disease to such extent that a person so  
3 afflicted requires care and treatment for his own  
4 welfare or the welfare of others or of the community.

5           5. Patient. "Patient" means any person subject  
6 to or eligible, as determined by the laws of the  
7 sending state, for institutionalization or other  
8 care, treatment or supervision pursuant to this com-  
9 compact.

10          6. Receiving state. "Receiving state" means a  
11 party state to which a patient is transported pur-  
12 suant to the compact or to which it is contemplated  
13 that a patient may be so sent.

14          7. Sending state. "Sending state" means a party  
15 state from which a patient is transported pursuant to  
16 the compact or from which it is contemplated that a  
17 patient may be so sent.

18          8. State. "State" means any state, territory or  
19 possession of the United States, the District of  
20 Columbia and the Commonwealth of Puerto Rico.

21       §9003. Care and treatment--Article III

22           1. Eligibility. Whenever a person physically  
23 present in any party state shall be in need of insti-  
24 tutionalization by reason of mental illness or mental  
25 deficiency, he shall be eligible for care and treat-  
26 ment in an institution in that state irrespective of  
27 his residence, settlement or citizenship qualifica-  
28 tions.

29           2. Transfer. Subsection 1 to the contrary not-  
30 withstanding, any patient may be transferred to an  
31 institution in another state whenever there are fac-  
32 tors based upon clinical determinations indicating  
33 that the care and treatment of said patient would be  
34 facilitated or improved thereby. Any such institu-  
35 tionalization may be for the entire period of care  
36 and treatment or for any portion or portions thereof.  
37 The factors referred to in this subsection shall  
38 include the patient's full record with due regard for  
39 the location of the patient's family, character of  
40 the illness and probable duration thereof, and such  
41 other factors as shall be considered appropriate.

1           3. Duties of receiving and sending states. No  
2 state shall be obliged to receive any patient pur-  
3 suant to subsection 2 unless the sending state has  
4 given advance notice of its intention to send the  
5 patient; furnished all available medical and other  
6 pertinent records concerning the patient; given the  
7 qualified medical or other appropriate clinical  
8 authorities of the receiving state an opportunity to  
9 examine the patient if said authorities so wish; and  
10 unless the receiving state shall agree to accept the  
11 patient.

12           4. Priorities. In the event that the laws of  
13 the receiving state establish a system of priorities  
14 for the admission of patients, an interstate patient  
15 under this compact shall receive the same priority as  
16 a local patient and shall be taken in the same order  
17 and at the same time that he would be taken if he  
18 were a local patient.

19           5. Review and further transfer. Pursuant to  
20 this compact, the determination as to the suitable  
21 place of institutionalization for a patient may be  
22 reviewed at any time and such further transfer of the  
23 patient may be made as seems likely to be in the best  
24 interest of the patient.

25   §9004. Aftercare--Article IV

26           1. Investigation. Whenever, pursuant to the  
27 laws of the state in which a patient is physically  
28 present, it shall be determined that the patient  
29 should receive aftercare or supervision, such care or  
30 supervision may be provided in a receiving state. If  
31 the medical or other appropriate clinical authorities  
32 having responsibility for the care and treatment of  
33 the patient in the sending state shall have reason to  
34 believe that aftercare in another state would be in  
35 the best interest of the patient and would not jeop-  
36 ardize the public safety, they shall request the  
37 appropriate authorities in the receiving state to  
38 investigate the desirability of affording the patient  
39 such aftercare in said receiving state, and such  
40 investigation shall be made with all reasonable  
41 speed. The request for investigation shall be accom-  
42 panied by complete information concerning the  
43 patient's intended place of residence and the iden-



1 tity of the person in whose charge it is proposed to  
2 place the patient, the complete medical history of  
3 the patient, and such other documents as may be  
4 pertinent.

5 2. Aftercare in receiving state. If the medical  
6 or other appropriate clinical authorities having  
7 responsibility for the care and treatment of the  
8 patient in the sending state and the appropriate  
9 authorities in the receiving state find that the best  
10 interest of the patient would be served thereby, and  
11 if the public safety would not be jeopardized  
12 thereby, the patient may receive aftercare or super-  
13 vision in the receiving state.

14 3. Standards. In supervising, treating or  
15 caring for a patient on aftercare pursuant to the  
16 terms of this Article, a receiving state shall employ  
17 the same standards of visitation, examination, care  
18 and treatment that it employs for similar local  
19 patients.

20 §9005. Escape--Article V

21 Whenever a dangerous or potentially dangerous  
22 patient escapes from an institution in any party  
23 state, that state shall promptly notify all appropri-  
24 ate authorities within and without the jurisdiction  
25 of the escape in a manner reasonably calculated to  
26 facilitate the speedy apprehension of the escapee.  
27 Immediately upon the apprehension and identification  
28 of any such dangerous or potentially dangerous  
29 patient, he shall be detained in the state where  
30 found, pending disposition in accordance with law.

31 §9006. Transportation of patient--Article VI

32 The duly accredited officers of any state party  
33 to this compact, upon the establishment of their  
34 authority and the identity of the patient, shall be  
35 permitted to transport any patient being moved pur-  
36 suant to this compact through any and all states  
37 party to this compact, without interference.

38 §9007. Costs; reciprocal agreements--Article VII

1           1. Patient at only one institution. No person  
2 shall be deemed a patient of more than one institu-  
3 tion at any given time. Completion of transfer of  
4 any patient to an institution in a receiving state  
5 shall have the effect of making the person a patient  
6 of the institution in the receiving state.

7           2. Costs. The sending state shall pay all costs  
8 of and incidental to the transportation of any  
9 patient pursuant to this compact, but any 2 or more  
10 party states may, by making a specific agreement for  
11 that purpose, arrange for a different allocation of  
12 costs as among themselves.

13           3. Internal relationships not affected. No  
14 provision of this compact shall be construed to alter  
15 or affect any internal relationships among the  
16 departments, agencies and officers of and in the gov-  
17 ernment of a party state, or between a party state  
18 and its subdivisions, as to the payment of costs or  
19 responsibilities therefor.

20           4. Asserting rights for costs. Nothing in this  
21 compact shall be construed to prevent any party state  
22 or subdivision thereof from asserting any right  
23 against any person, agency or other entity in regard  
24 to costs for which such party state or subdivision  
25 thereof may be responsible pursuant to any provision  
26 of this compact.

27           5. Reciprocal agreements not invali-  
28 dated. Nothing in this compact shall be construed to  
29 invalidate any reciprocal agreement between a party  
30 state and a nonparty state relating to institutiona-  
31 lization, care or treatment of the mentally ill or  
32 mentally deficient, or any statutory authority pur-  
33 suant to which such agreements may be made.

34 §9008. Guardians--Article VIII

35           1. Supplemental or substitute guardian. Nothing  
36 in this compact shall be construed to abridge, dimin-  
37 ish or in any way impair the rights, duties and  
38 responsibilities of any patient's guardian on his own  
39 behalf or in respect of any patient for whom he may  
40 serve, except that, where the transfer of any patient  
41 to another jurisdiction makes advisable the appoint-

1 ment of a supplemental or substitute guardian, any  
2 court of competent jurisdiction in the receiving  
3 state may make such supplemental or substitute  
4 appointment and the court which appointed the pre-  
5 vious guardian shall, upon being duly advised of the  
6 new appointment, and upon the satisfactory completion  
7 of such accounting and other acts as such court may  
8 by law require, relieve the previous guardian of  
9 power and responsibility to whatever extent shall be  
10 appropriate in the circumstances. In the case of any  
11 patient having settlement in the sending state, the  
12 court of competent jurisdiction in the sending state  
13 shall have the sole discretion to relieve a guardian  
14 appointed by it or continue his power and responsi-  
15 bility, whichever it shall deem advisable. The court  
16 in the receiving state may, in its discretion, con-  
17 firm or reappoint the person or persons previously  
18 serving as guardian in the sending state in lieu of  
19 making a supplemental or substitute appointment.

20 2. Guardian defined. The term "guardian" as  
21 used in subsection 1 shall include any guardian,  
22 trustee, legal committee, conservator or other person  
23 or agency however denominated who is charged by law  
24 with power to act for or have responsibility for the  
25 person or property of a patient.

26 §9009. Incarceration in penal or correctional  
27 institution--Article IX

28 1. Application. No provision of this compact  
29 except Article V shall apply to any person institu-  
30 tionalized while under sentence in a penal or correc-  
31 tional institution or while subject to trial on a  
32 criminal charge, or whose institutionalization is due  
33 to the commission of an offense for which, in the ab-  
34 sence of mental illness or mental deficiency, said  
35 person would be subject to incarceration in a penal  
36 or correctional institution.

37 2. Policy not to jail. To every extent pos-  
38 sible, it shall be the policy of states party to this  
39 compact that no patient shall be placed or detained  
40 in any prison, jail or lockup, but such patient  
41 shall, with all expedition, be taken to a suitable  
42 institutional facility for mental illness or mental  
43 deficiency.

1        §9010. Compact administrators--Article X

2            1. Duties. Each party state shall appoint a  
3        "compact administrator" who, on behalf of his state,  
4        shall act as general coordinator of activities under  
5        the compact in his state and who shall receive copies  
6        of all reports, correspondence and other documents  
7        relating to any patient processed under the compact  
8        by his state either in the capacity of sending or  
9        receiving state. The compact administrator or his  
10       duly designated representative shall be the official  
11       with whom other party states shall deal in any matter  
12       relating to the compact or any patient processed  
13       thereunder.

14           2. Rules and regulations. The compact adminis-  
15       trators of the respective party states shall have  
16       power to promulgate reasonable rules and regulations  
17       to carry out more effectively the terms and provi-  
18       sions of this compact.

19       §9011. Supplementary agreements--Article XI

20           The duly constituted administrative authorities  
21       of any 2 or more party states may enter into supple-  
22       mentary agreements for the provision of any service  
23       or facility or for the maintenance of any institution  
24       on a joint or cooperative basis whenever the states  
25       concerned shall find that such agreements will  
26       improve services, facilities or institutional care  
27       and treatment in the fields of mental illness or  
28       mental deficiency. No such supplementary agreement  
29       shall be construed so as to relieve any party state  
30       of any obligation which it otherwise would have under  
31       other provisions of this compact.

32       §9012. Effective date of compact--Article XII

33           This compact shall enter into full force and  
34       effect as to any state when enacted by it into law  
35       and such state shall thereafter be a party thereto  
36       with any and all states legally joining therein.

37       §9013. Withdrawal from compact--Article XIII

38           1. Procedure; effective date; effect. A state  
39       party to this compact may withdraw therefrom by

1 enacting a statute repealing the same. Such with-  
2 drawal shall take effect one year after notice  
3 thereof has been communicated officially and in writ-  
4 ing to the governors and compact administrators of  
5 all other party states. The withdrawal of any state  
6 shall not change the status of any patient who has  
7 been sent to said state or sent out of said state  
8 pursuant to the compact.

9 2. Costs and supplementary agreements. With-  
10 drawal from any agreement permitted by Article VII,  
11 subsection 2, as to costs or from any supplementary  
12 agreement made pursuant to Article XI shall be in ac-  
13 cordance with the terms of such agreement.

14 §9014. Constitutionality--Article XIV

15 This compact shall be liberally construed so as  
16 to effectuate the purposes thereof. The provisions  
17 of this compact shall be severable and if any phrase,  
18 clause, sentence or provision of this compact is  
19 declared to be contrary to the constitution of any  
20 party state or of the United States or the applica-  
21 bility thereof to any government, agency, person or  
22 circumstance is held invalid, the validity of the  
23 remainder of this compact and the applicability  
24 thereof to any government, agency, person or circum-  
25 stance shall not be affected thereby. If this com-  
26 compact shall be held contrary to the constitution of  
27 any state party thereto, the compact shall remain in  
28 full force and effect as to the remaining states and  
29 in full force and effect as to the state affected as  
30 to all severable matters.

31 STATEMENT OF FACT

32 The purpose of this bill is to recodify the stat-  
33 utes relating to corrections and mental health and  
34 mental retardation.

35 0175020983