

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

(EMERGENCY)  
(After Deadline)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1756

H.P. 1321

House of Representatives, June 10, 1983

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.

Under suspension of the rules, read twice and passed to be engrossed without reference to committee, sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Representative Carroll of Gray

Cosponsors: Senator Bustin of Kennebec, Senator Gill of Cumberland and Representative Nelson of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-THREE

AN ACT Relating to Involuntary Admission.

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under current law, the procedure for involuntary admission of a mentally retarded person requires that he present a likelihood of serious harm due to mental retardation; and

Whereas, psychological examiners have not been able to make a causal link between a person's mental retardation and his likelihood of serious harm, even though they find that the person is mentally retarded and presents a likelihood of serious harm; and

Whereas, the criminal justice system is often inadequate to handle the dangerous mentally retarded

1 person because he is often incompetent to stand  
2 trial; and

3 Whereas, in several recent cases, mentally  
4 retarded persons presenting a likelihood of serious  
5 harm have been released into Maine's communities  
6 because neither the mental retardation laws nor the  
7 criminal laws provide alternatives to protect the  
8 safety of Maine's citizens; and

9 Whereas, in the judgment of the Legislature,  
10 these facts create an emergency within the meaning of  
11 the Constitution of Maine and require the following  
12 legislation as immediately necessary for the preser-  
13 vation of the public peace, health and safety; now,  
14 therefore,

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

17 34 MRSA §2665, as enacted by PL 1981, c. 645, §7,  
18 is amended to read:

19 §2665. Involuntary admission

20 Any client recommended for regular admission to a  
21 facility pursuant to section 2655 may be admitted as  
22 an involuntary patient client. The procedure for  
23 involuntary admission to a mental retardation facil-  
24 ity for care, training and treatment shall follow  
25 those procedures set forth in section 2334 for the  
26 involuntary commitment of mentally ill individuals,  
27 except that, where a finding of mental illness is re-  
28 quired, a finding of mental retardation, as defined  
29 by section 2602, shall be substituted. The judicial  
30 procedure for involuntary admission is as follows.

31 1. Application to District Court. If the head  
32 of the facility determines that the admission of the  
33 client as an informally admitted resident is not  
34 suitable, or if the client declines admission as an  
35 informally admitted resident, the head of the facil-  
36 ity may apply to the District Court having territo-  
37 rial jurisdiction where the facility is located for  
38 the issuance of an order for involuntary admission.  
39 The head of the facility shall file any such applica-

1 tion in the District Court within 5 days from admis-  
2 sion of the client under this section, excluding in  
3 the computation of that time the date of admission  
4 and any Saturday, Sunday or legal holiday. An appli-  
5 cation to the District Court filed pursuant to this  
6 section shall be accompanied by a copy of:

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

11 (1) His belief that a person is a mentally  
12 retarded individual and poses a likelihood  
13 of serious harm, defined as follows:

14 (a) A substantial risk of physical  
15 harm to the person himself as mani-  
16 fested by evidence of recent threats  
17 of, or attempts of, suicide or serious  
18 bodily harm to himself, and after con-  
19 sideration of less restrictive treat-  
20 ment settings and modalities, a deter-  
21 mination that community resources for  
22 his care and treatment are unavailable;

23 (b) A substantial risk of physical  
24 harm to other persons as manifested by  
25 recent evidence of violent behavior or  
26 recent evidence that others are placed  
27 in reasonable fear of serious physical  
28 or emotional harm to them and, after  
29 consideration of less restrictive  
30 treatment settings and modalities, a  
31 determination that community resources  
32 for his care and treatment are unavail-  
33 able; or

34 (c) A reasonable certainty that severe  
35 physical or mental impairment or injury  
36 will result to the mentally retarded  
37 person as manifested by recent evidence  
38 of his actions or behavior which demon-  
39 strates his inability to avoid or pro-  
40 tect himself from that impairment or  
41 injury and, after consideration of less  
42 restrictive treatment settings and

1                    modalities, a determination that suit-  
2                    able community resources for his care  
3                    are unavailable; and

4                    (2) The grounds for this belief;

5                    B. The written application shall be accompanied  
6                    by a dated certificate, signed by a licensed  
7                    physician or a licensed clinical psychologist,  
8                    stating that:

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

11                   (2) He is of the opinion that the person is  
12                   a mentally retarded individual and poses a  
13                   likelihood of serious harm as defined in  
14                   this section. The date of the examination  
15                   shall not be more than 3 days prior to the  
16                   date of admission to the facility; and

17                   C. The written application shall be accompanied  
18                   by a certificate of the facility's examining  
19                   physician or psychologist stating that:

20                   (1) He has examined the person; and

21                   (2) It is his opinion that the person is a  
22                   mentally retarded individual and poses a  
23                   likelihood of serious harm as defined in  
24                   this section.

25                   The examiner may not be the certifying examiner  
26                   under paragraph B. If the examination is not  
27                   held within 24 hours after the time of admission,  
28                   or if the facility's physician or clinical psy-  
29                   chologist fails or refuses after the examination  
30                   to certify that in his opinion the person is a  
31                   mentally retarded individual and poses a likeli-  
32                   hood of serious harm as defined in paragraph A,  
33                   subparagraph 1, the person shall be immediately  
34                   discharged.

35                   2. Notice of receipt of application. Upon  
36                   receipt by the District Court of the application and  
37                   the accompanying documents specified in subsection 1,  
38                   the court shall cause written notice of the applica-  
39                   tion:

1        A. To be given personally or by mail to the  
2        client within a reasonable time prior to hearing,  
3        but not less than 3 days prior to hearing; and

4        B. To be mailed to the client's guardian, if  
5        known, and to his spouse, parent or one of his  
6        adult children or, if none of these persons exist  
7        or if their whereabouts are unknown, to one of  
8        his next of kin or an advocate. A docket entry  
9        is evidence that the notice has been given.

10       3. Examination. The District Court shall order  
11       examinations as follows.

12       A. Upon receipt by the District Court of the  
13       application and the accompanying documents speci-  
14       fied in subsection 1, the court shall forthwith  
15       cause the client to be examined by 2 examiners,  
16       each of whom shall be either a licensed physician  
17       or a licensed clinical psychologist and one of  
18       whom, if reasonably available, shall be chosen by  
19       the client or by his counsel. Neither examiner  
20       appointed by the court shall be the certifying  
21       examiner under subsection 1, paragraph B or C.

22       B. The examination shall be held at the facility  
23       or any other suitable place not likely to have a  
24       harmful effect on the well-being of the client.

25       C. If the report of the examiner is to the  
26       effect that the client is not mentally retarded  
27       or does not pose a likelihood of serious harm as  
28       defined in this section, the client shall be  
29       ordered discharged forthwith. Otherwise, the  
30       hearing shall be held on the date or the contin-  
31       ued date which the court has set for hearing.

32       4. Hearing. The District Court shall hold a  
33       hearing as follows.

34       A. The District Court shall hold a hearing on  
35       the application not later than 15 days from the  
36       date of the application. On a motion of any  
37       party, the hearing may be continued for cause for  
38       a period not to exceed 10 additional days. If  
39       the hearing is not held within the time specified  
40       or a continuance thereof, the application shall

1 be dismissed and the client shall be ordered dis-  
2 charged forthwith. In computing the time periods  
3 set forth in this paragraph, the District Court  
4 Civil Rules shall apply.

5 B. The hearing shall be conducted in as informal  
6 a manner as is consistent with orderly procedure  
7 and in a physical setting not likely to have a  
8 harmful effect on the well-being of the client.

9 C. The court shall receive all relevant and  
10 material evidence which may be offered in accord-  
11 dance with accepted rules of evidence and accept-  
12 ed judicial dispositions. The client, the appli-  
13 cant and all other persons to whom notice is re-  
14 quired to be sent shall be afforded an oppor-  
15 tunity to appear, testify and cross-examine wit-  
16 nesses at the hearing. The court may receive the  
17 testimony of any other person and may subpoena  
18 any witnesses.

19 D. An opportunity to be represented by counsel  
20 shall be afforded to every client. If neither  
21 client nor others provide counsel, the court  
22 shall appoint counsel for the client.

23 E. In addition to proving that the client is a  
24 mentally retarded person, the applicant shall  
25 show:

26 (1) By evidence of the client's action and  
27 behavior, that the client poses a likelihood  
28 of serious harm as defined in subsection 1,  
29 paragraph A, subparagraph (1); and

30 (2) That, after a full consideration of  
31 less restrictive treatment settings and  
32 modalities, involuntary admission to the  
33 facility is the best means available for the  
34 treatment or security of the client.

35 F. The applicant in each case shall submit to  
36 the court at the time of hearing, the testimony  
37 indicating the individual treatment plan to be  
38 followed by the facility staff in the event of  
39 commitment under this section. Any expense for  
40 this purpose shall be borne by the applicant.

1        G. Stenographic or electronic record of the pro-  
2        ceedings and all judicial involuntary admission  
3        hearings shall be required. These records,  
4        together with all notes, exhibits and other evi-  
5        dence shall be confidential and shall be retained  
6        as part of the District Court records for a  
7        period of 2 years from the date of the hearing.

8        H. The hearing shall be confidential. No report  
9        of the proceedings may be released to the public  
10       or press, except by permission of the client or  
11       his counsel and with the approval of the presid-  
12       ing judge. The court may order a public hearing  
13       on the request of the client or his counsel.

14       5. Findings by the court. After completion of  
15       the hearing, the District Court shall make findings  
16       as follows.

17       A. If, upon completion of the hearing and con-  
18       sideration of the records, the District Court:

19                (1) Finds clear and convincing evidence  
20                that the client is mentally retarded and  
21                that his recent actions and behavior demon-  
22                strate that he poses a likelihood of serious  
23                harm as defined in subsection 1, paragraph  
24                A, subparagraph (1);

25                (2) Finds that admission to the facility is  
26                the best means available for treatment of  
27                the client; and

28                (3) Is satisfied with the individual treat-  
29                ment plan offered by the facility.

30        The District Court shall state in the record the  
31        findings made pursuant to subparagraphs (1), (2)  
32        and (3). If the District Court makes the find-  
33        ings described in subparagraphs (1) and (2), but  
34        is not satisfied with the individual treatment  
35        plan offered, it may continue the case for not  
36        longer than 10 days pending reconsideration and  
37        resubmission of an individual treatment plan by  
38        the facility.



1       6. Commitment. Upon making the findings de-  
2 scribed in subsection 5, the court may order commit-  
3 ment of the client as provided in this subsection.

4       A. The court may order a commitment to a mental  
5 retardation facility for a period not to exceed 4  
6 months in the first instance and not to exceed  
7 one year after the first and all subsequent  
8 rehearings.

9       B. The court may issue an order of commitment  
10 immediately after the completion of the hearing  
11 or it may take the matter under advisement and  
12 issue an order within 24 hours of the hearing.

13       C. If the court does not issue an order of com-  
14 mitment within 24 hours of the completion of the  
15 hearing, it shall dismiss the application and the  
16 client shall be ordered discharged forthwith.

17       7. Continued involuntary admission. If the head  
18 of the facility determines that continued involuntary  
19 admission is necessary for a client who has been  
20 ordered by the District Court to be committed, he  
21 shall, not later than 30 days prior to the expiration  
22 of a period of commitment ordered by the court, make  
23 application in accordance with this section to the  
24 District Court which has territorial jurisdiction  
25 where the facility is located for a hearing to be  
26 held pursuant to this section.

27       8. Transportation to the facility. Unless  
28 otherwise directed by the court, it shall be the  
29 responsibility of the sheriff of the county in which  
30 the District Court has jurisdiction and in which the  
31 hearing takes place to provide transportation to any  
32 facility to which the court has committed the client.  
33 With the exception of the expenses incurred by the  
34 applicant pursuant to subsection 4, paragraph F, the  
35 District Court shall be responsible for any expenses  
36 incurred under this section, including fees of  
37 appointing counsel, witness and notice fees and  
38 expenses of transportation for the client.

39       9. Appeals. Persons ordered by the District  
40 Court to be committed to a facility may appeal from  
41 that order to the Superior Court. The appeal shall

1 be on questions of law only. Any findings of fact of  
2 the District Court shall not be set aside unless  
3 clearly erroneous. The order of the District Court  
4 shall remain in effect pending the appeal. The Dis-  
5 trict Court Civil Rules and Maine Rules of Civil  
6 Procedure shall apply to the conduct of these  
7 appeals, except as otherwise specified in this sub-  
8 section.

9 **Emergency clause.** In view of the emergency cited in  
10 the preamble, this Act shall take effect when  
11 approved.

## 12 STATEMENT OF FACT

13 Title 34, section 2665, which provides for a  
14 procedure for involuntary admission to mental retar-  
15 dation facilities, references mental health statute  
16 Title 34, section 2334 substituting the term "men-  
17 tally retarded" wherever the term "mentally ill"  
18 appeared. In practice, this reference has not served  
19 the original intent of the authorizing legislation.  
20 In particular a major stumbling block has been the  
21 causal link between a client's behavior and mental  
22 retardation. In fact, no such linkage can or will be  
23 made by a certified psychologist. Therefore, the  
24 major change proposed by the amendment eliminates the  
25 causal link. Thus, the finding of mental retardation  
26 and likelihood of serious harm exist as 2 separate  
27 but necessary criteria in order to certify a person  
28 for involuntary admission to a mental retardation  
29 facility.

30 A recent case in point involved a person who was  
31 charged with sexually molesting a 6-year old child.  
32 This person could not be committed to the institution  
33 under the department's current involuntary commitment  
34 statutes because the psychologists involved in evalu-  
35 ating this person could not certify that this person  
36 presented a likelihood of serious harm due to mental  
37 retardation, although all of the psychologists found  
38 this person to be mentally retarded and considered  
39 him to be dangerous. Judicial certification was pur-  
40 sued; however, the judge was not able to judicially  
41 certify this person. Consequently, this person was  
42 ordered by the judge to be returned to the community.

1 On June 3, 1983, within 7 weeks of being placed in  
2 the community, this person was arrested for assault-  
3 ing 2 people and was taken by the police to the  
4 mental retardation facility. This department has no  
5 way, under current statute, to commit this person  
6 although he is dangerous and mentally retarded. So,  
7 once again, he will be unable to stay at the institu-  
8 tion and will have to be returned to the community.

9 4338060883