

MAINE STATE LEGISLATURE

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(After Deadline)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 1776

H.P. 1336 House of Representatives, June 20, 1983

Reference to the Committee on Health and Institutional Services is suggested. Ordered printed and sent down for concurrence.

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

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.

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

STATE OF MAINE

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

**AN ACT to Amend the Statutes Regarding
Mental Health and Mental Retardation.**

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

Sec. 1. 5 MRSA §1903, as amended by PL 1975, c. 766, §4, is further amended to read:

§1903. Procedure

The employment of students enrolled in cooperative education programs in approved colleges, universities or institutes in the State of Maine is hereby authorized. Appropriate department, agency or institution heads may employ such students through the use of funds resulting from unfilled positions in their personal services budgets.

1 Only cooperative education programs that require
2 full-time employment for a period of not less than 10
3 weeks shall be included.

4 Each student must be approved by the institution
5 he attends and the agency, department or institution
6 head.

7 Appropriate department, agency or institution
8 heads may request the employment of cooperative edu-
9 cation students on a form provided by the Department
10 of Personnel. Approval by the State Personnel Commis-
11 sioner and the State Budget Officer will constitute
12 approval for a student to be employed. Only
13 cooperative education programs that require full-time
14 employment for a period of not less than 10 weeks
15 shall be included. Cooperative education students
16 will be classified as project employees and will be
17 governed by all policies and entitled to all rights
18 and privileges afforded such employees, except that
19 they shall be paid at the prevailing minimum wage.

20 The restrictions regarding full-time employment
21 and payment at minimum wage shall not apply to the
22 cooperative education support program between the
23 Department of Mental Health and Mental Retardation
24 and the University of Maine for the training of psy-
25 chologists.

26 Sec. 2. 15 MRSA §101, first ¶, as amended by PL
27 1981, c. 493, §2, is further amended to read:

28 The District Court or the Superior Court having
29 jurisdiction in any criminal case for cause shown may
30 order the defendant examined to determine his mental
31 condition with reference to the issues of criminal
32 responsibility and competence to stand trial. The
33 examination may be conducted at the Augusta Mental
34 Health Institute, Bangor Mental Health Institute,
35 Pineland Center or at a mental health clinic of, or
36 recommended by, the Department of Mental Health and
37 Mental Retardation, and when conducted at any such
38 facility shall be the responsibility of a psychia-
39 trist or of a licensed clinical psychologist, who may
40 join with him in such examination other psychiatrists
41 or licensed clinical ~~psycheologist~~ psychologists, as
42 in his opinion are required. The examination may be

1 conducted by a psychiatrist or licensed clinical psy-
2 chologist independent from any such facility,
3 employed for such purpose by the court. The court in
4 selecting the examination site shall consider prox-
5 imity to the court, availability of an examiner or
6 examiners, and the necessity for security precau-
7 tions. No person ~~shall~~ may be presented for examina-
8 tion under this paragraph without arrangements there-
9 for, with the head of the institution or clinic or
10 with the individual examiner being first made by the
11 court, clerk of courts or sheriff. The opinion of the
12 examiner or examiners relative to the mental condi-
13 tion of the respondent shall be reported forthwith to
14 the court following examination.

15 Sec. 3. 15 MRSA §101, 2nd ¶, as amended by PL
16 1981, c. 493, §2, is amended to read:

17 If it is made to appear to the court by the
18 report of any such examiner that the defendant suffers
19 or suffered from a mental disease or mental
20 defect affecting his criminal responsibility or his
21 competence to stand trial or that further observation
22 is indicated, the court ~~may~~ shall order the defendant
23 to be further examined by a psychiatrist and a li-
24 icensed clinical psychologist designated by the Com-
25 missioner of Mental Health and Mental Retardation
26 with such assistance as the designated examiners may
27 deem necessary who shall determine the mental condi-
28 tion of the defendant. The court may order that
29 observations, interviews and investigative reports
30 regarding the behavior of the defendant made by law
31 enforcement officials be made available to the design-
32 ated psychiatrist ~~or~~ and licensed clinical psychol-
33 ogist for the limited purpose of this examination. If
34 the examination by such designees can be completed
35 without admission, a report of the results of such
36 completed examination shall be forwarded to the court
37 forthwith. If the designated examiners of the Commis-
38 sioner of Mental Health and Mental Retardation deter-
39 mine that admission to an appropriate institution for
40 the mentally ill or mentally retarded is necessary
41 for complete examination, the examiners shall so
42 notify the court which may order the defendant com-
43 mitted to the custody of the Commissioner of Mental
44 Health and Mental Retardation to be placed in an
45 appropriate institution for the mentally ill or the

1 mentally retarded, to be there detained and observed
2 by the superintendent, or his delegate, and profes-
3 sional staff for a period of time not to exceed 60
4 days, for the purpose of ascertaining the mental con-
5 dition of the defendant. When further detention for
6 observation is deemed no longer necessary, the com-
7 missioner shall report such fact to the court. The
8 court shall then order the person returned to the
9 appropriate court for disposition; ~~however~~, if the
10 court ordering commitment for observation has pro-
11 vided for remand to the county jail following comple-
12 tion of the observation in the commitment order, the
13 sheriff or any one or more of his deputies shall
14 execute the remand order upon advice from the commis-
15 sioner of completion of the observation. A report of
16 the results of the observation shall be forwarded
17 promptly to the court by the commissioner.

18 Sec. 4. 34-B MRSA §1207, sub-§1, ¶B, as enacted
19 by PL 1983, c. 459, §7, is amended to read:

20 B. Information may be disclosed if necessary to
21 carry out any of the statutory functions of the
22 department, the hospitalization provisions of
23 chapter 3, subchapter IV or the purposes of Title
24 22, section 3554, dealing with the investigatory
25 function of the Protection and Advocacy Agency of
26 the Developmentally Disabled in Maine, or the
27 purposes of Title 18-A, section 5-601, subsection
28 (b), where the Department of Human Services is
29 nominated to act as public guardian;

30 Sec. 5. 34-B MRSA §1409, sub-§1, ¶C is enacted
31 to read:

32 C. "State institution," for purposes of this
33 section and this section only, includes the
34 Freeport Towne Square.

35 Sec. 6. 34-B MRSA §3004 is enacted to read:

36 §3004. Office of Community Support Systems

37 1. Definition. As used in this section, unless
38 the context otherwise indicates, the term "community
39 support system" means the entire complex of mental
40 health, rehabilitative, residential and other support

1 services in the community to ensure community inte-
2 gration and the maintenance of a decent quality of
3 life for persons with chronic mental illness.

4 2. Establishment. There is created within the
5 Bureau of Mental Health an Office of Community Sup-
6 port Systems to:

7 A. Promote and support the development and
8 implementation of comprehensive community support
9 systems to ensure community integration and the
10 maintenance of a decent quality of life for per-
11 sons with chronic mental illness in each of the
12 mental health service areas in the State; and

13 B. Strengthen the capacity of families, natural
14 networks, self-help groups and other community
15 resources in order to improve the support for
16 persons with chronic mental illness.

17 3. Duties. The Office of Community Support Sys-
18 tems shall:

19 A. Provide technical assistance for program
20 development, promote effective coordination with
21 health and other human services and develop new
22 resources in order to improve the availability
23 and accessibility of comprehensive community sup-
24 port services to persons with chronic mental ill-
25 ness;

26 B. Assess service needs, monitor service deliv-
27 ery related to these needs and evaluate the out-
28 come of programs designed to meet these needs in
29 order to enhance the quality and effectiveness of
30 community support services; and

31 C. Prepare a report which describes the system
32 of community support services in each of the
33 mental health service regions and statewide.

34 (1) The report shall include both existing
35 service resources and deficiencies in the
36 system of services.

37 (2) The report shall include an assessment
38 of the roles and responsibilities of mental

1 health agencies, human services agencies,
2 health agencies and involved state depart-
3 ments and shall suggest ways in which these
4 agencies and departments can better cooper-
5 ate to improve the service system for
6 people with chronic mental illness.

7 (3) The report shall be prepared biennially
8 and shall be submitted to the joint standing
9 committee of the Legislature having juris-
10 isdiction over health and institutional ser-
11 vices by January 15th of every even-numbered
12 year.

13 (4) The committee shall review the report
14 and make recommendations with respect to
15 administrative and funding improvements in
16 the system of community support services to
17 persons with chronic mental illness.

18 Sec. 7. 34-B MRSA §3601, as enacted by PL 1983,
19 c. 459, §7, is repealed and the following enacted in
20 its place:

21 §3601. Definitions

22 As used in this subchapter, unless the context
23 otherwise indicates, the following terms have the
24 following meanings.

25 1. Agency. "Agency" means a person, firm, asso-
26 ciation or corporation, but does not include the
27 individual or corporate professional practice of one
28 or more psychologists or psychiatrists.

29 2. Mental health services. "Mental health ser-
30 vices" means out-patient counseling, other psycho-
31 logical, psychiatric, diagnostic or therapeutic ser-
32 vices and other allied services.

33 Sec. 8. 34-B MRSA §3604, sub-§3, as enacted by
34 PL 1983, c. 459, §7, is repealed and the following
35 enacted in its place:

36 3. Grants. The commissioner may make grants of
37 funds to any state or local governmental unit, or
38 branch of a governmental unit, or to a person, unin-

1 corporated association or nonstock corporation, which
2 applies for the funds, to be used in the conduct of
3 its mental health services.

4 A. The programs administered by the person or
5 entity shall provide for adequate standards of
6 professional services in accordance with state
7 statutes.

8 B. The commissioner may require the person or
9 entity applying for funds to produce evidence
10 that appropriate local, governmental and other
11 funding sources have been sought to assist in the
12 financing of its mental health services.

13 C. After negotiation with the person or entity
14 applying for funds, the commissioner may execute
15 a contract or agreement for the provision of
16 mental health services which reflects the commit-
17 ment by the person or entity of local, government-
18 tal and other funds to assist in the financing of
19 its mental health services.

20 D. Beyond the commissioner's assuring through
21 program monitoring and auditing activities that
22 an equitable distribution of the funds committed
23 by contract or agreement to assist in the financ-
24 ing of mental health services are actually pro-
25 vided, it shall be the prerogative of the person
26 or entity providing services to apportion other
27 nonstate funds in an appropriate manner in accor-
28 dance with its priorities, service contracts and
29 applicable provisions of law.

30 Sec. 9. 34-B MRSA §3606, as enacted by PL 1983,
31 c. 459, §7, is repealed and the following enacted in
32 its place:

33 §3606. Licenses

34 Licenses to operate, conduct or maintain a facil-
35 ity for the provision of mental health services are
36 governed as follows.

37 1. Full license. Full licenses are governed as
38 follows.

1 A. The commissioner shall issue a full license
2 to an applicant agency or facility, which:

3 (1) Has complied with all applicable laws
4 and rules; and

5 (2) Has complied with all conditions
6 imposed by the commissioner at the time of
7 issuance of a conditional license, refusal
8 to issue or renew a full license or revoca-
9 tion of a full license.

10 B. A full license shall be issued for a speci-
11 fied period of time, appropriate to the type of
12 agency or facility, but not to exceed 2 years.

13 C. When a full licensee fails to comply with
14 applicable laws and rules, the commissioner may:

15 (1) File a complaint with the Administra-
16 tive Court to have the license revoked, in
17 accordance with the Maine Administrative
18 Procedure Act, Title 5, chapter 375; or

19 (2) Modify the full license to a condi-
20 tional license in accordance with subsection
21 2.

22 2. Conditional license. Conditional licenses
23 are governed as follows.

24 A. The commissioner may issue a conditional li-
25 cence to an agency or facility reapplying for a
26 full license, if:

27 (1) The applicant fails to comply with
28 applicable laws and rules; and

29 (2) In the judgment of the commissioner,
30 the best interests of the public would be
31 served by issuance of a conditional license.

32 B. The commissioner may modify an existing full
33 license to a conditional license, after affording
34 the full licensee an opportunity for hearing in
35 conformity with the Maine Administrative Proce-
36 dure Act, Title 5, chapter 375, if:

1 (1) The applicant fails to comply with
2 applicable laws and rules; and

3 (2) In the judgment of the commissioner,
4 the best interests of the public would be so
5 served.

6 C. A conditional license shall be issued for a
7 specified period of time, not to exceed one year,
8 or the remaining period of the previous full li-
9 cence, whichever the commissioner determines
10 appropriate based on the nature of the violation
11 of laws or rules.

12 D. A conditional license shall specify the con-
13 ditions imposed by the commissioner and shall
14 specify when those conditions shall be complied
15 with during the term of the conditional license.

16 E. During the period of the conditional license,
17 the licensee shall comply with all conditions
18 imposed by the commissioner.

19 F. If the conditional licensee fails to comply
20 with conditions imposed by the commissioner, the
21 commissioner may initiate proceedings to revoke,
22 suspend or refuse to renew the conditional li-
23 cence in accordance with the Maine Administrative
24 Procedure Act, Title 5, chapter 375.

25 3. Provisional license. Provisional licenses
26 are governed as follows.

27 A. The commissioner may issue a provisional li-
28 cence to an agency or facility, which:

29 (1) Has not been previously licensed for
30 the type of service for which application is
31 made;

32 (2) Is temporarily unable to comply with
33 all applicable laws and rules; and

34 (3) Is in compliance with specific laws and
35 rules determined by the commissioner as
36 essential for the protection of the resi-
37 dents or clients of the agency or facility.

1 B. In order to obtain a provisional license, an
2 applicant shall demonstrate the ability to comply
3 with all applicable laws and rules by the end of
4 the term of the provisional license.

5 C. A provisional license shall be issued for a
6 specified period of time, which is at least 3
7 months but is no longer than 12 months, as deter-
8 mined appropriate by the commissioner.

9 4. Fees. The fee for all types of licenses is
10 \$25, except for those facilities defined in Title 22,
11 section 8101, subsection 4 and licensed in accordance
12 with Title 22, section 8104.

13 5. Monitoring for compliance. Regardless of the
14 term of the license, the commissioner shall monitor
15 the licensee, at least once a year, for continued
16 compliance with applicable laws and rules.

17 6. Appeals. Any person aggrieved by a final ac-
18 tion of the commissioner under this section may
19 obtain judicial review in accordance with the Maine
20 Administrative Procedure Act, Title 5, chapter 375.

21 7. Prohibited acts. Prohibited acts under this
22 section are governed as follows.

23 A. An agency is guilty of unlicensed operation
24 of a mental health service facility, if it oper-
25 ates, conducts or maintains such a facility, not
26 otherwise licensed as a hospital or medical care
27 facility, without a license from the commis-
28 sioner.

29 B. Notwithstanding Title 17-A, section 4-A,
30 unlicensed operation of a mental health service
31 facility is punishable by a fine of not more than
32 \$500 or by imprisonment for not more than 60
33 days.

34 Sec. 10. 34-B MRSA §3832, as enacted by PL 1983,
35 c. 459, §7, is amended to read:

36 §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 without undue delay following
4 examination by a licensed physician or a licensed
5 clinical psychologist, except that admission of the
6 person under section 3863 is not precluded, if at any
7 time such an admission is considered necessary in the
8 interest of the person and of the community.

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

13 A. His status as an informally admitted patient;
14 and

15 B. His freedom to leave the hospital at any time
16 under this section.

17 Sec. 11. 34-B MRSA §5461, sub-§7-A is enacted to
18 read:

19 7-A. Likelihood of serious harm. "Likelihood of
20 serious harm" means:

21 A. A substantial risk of physical harm to the
22 person himself as manifested by evidence of
23 recent threats of, or attempts of, suicide or
24 serious bodily harm to himself, and after consid-
25 eration of less restrictive treatment settings
26 and modalities, a determination that community
27 resources for his care and treatment are unavail-
28 able;

29 B. A substantial risk of physical harm to other
30 persons as manifested by recent evidence of vio-
31 lent behavior or recent evidence that others are
32 placed in reasonable fear of serious physical or
33 emotional harm to them and, after consideration
34 of less restrictive treatment settings and
35 modalities, a determination that community
36 resources for his care and treatment are unavail-
37 able; or

38 C. A reasonable certainty that severe physical
39 or mental impairment or injury will result to the

1 mentally retarded person as manifested by recent
2 evidence of his actions or behavior which demon-
3 strates his inability to avoid or protect himself
4 from that impairment or injury and, after consid-
5 eration of less restrictive treatment settings
6 and modalities, a determination that suitable
7 community resources for his care are unavailable.

8 Sec. 12. 34-B MRSA §5461, sub-§10, as enacted by
9 PL 1983, c. 459, §7, is repealed and the following
10 enacted in its place:

11 10. Professional. "Professional" means:

12 A. A person possessing appropriate licensure,
13 certification or registration to practice his
14 discipline in the community; or

15 B. Where licensure, certification or registra-
16 tion is not required, a person possessing a
17 master's degree in the appropriate discipline or
18 a person possessing a bachelor's degree in the
19 appropriate discipline and 3 years' experience in
20 treating mentally retarded persons or 3 years'
21 experience in a related human services field.

22 Sec. 13. 34-B MRSA §5461, sub-§10-A is enacted
23 to read:

24 10-A. Service plan. "Service plan" means an
25 annual written plan for the delivery and coordination
26 of specific services to a client when the following
27 conditions exist:

28 A. The client or guardian has waived the
29 prescriptive program plan process;

30 B. The prescriptive program plan process
31 unnecessarily restricts the client's own ability
32 to make decisions;

33 C. Another type of formal written program plan
34 exists; or

35 D. The client has either a single service need
36 or routine service coordination needs.

1 Sec. 14. 34-B MRSA §5461, sub-§12, as enacted by
2 PL 1983, c. 459, §7, is repealed.

3 Sec. 15. 34-B MRSA §5462, sub-§1, ¶B, as enacted
4 by PL 1983, c. 459, §7, is amended to read:

5 B. The development of a prescriptive program of
6 services for the person; plan for the delivery
7 and coordination of services to the person
8 through a:

9 (1) Prescriptive program plan;

10 (2) Service plan; or

11 (3) Both.

12 Sec. 16. 34-B MRSA §5466, as enacted by PL 1983,
13 c. 459, §7, is amended to read:

14 §5466. Advocate

15 1. Entitlement. Each client who receives ser-
16 vices under sections 5467 to 5474 is entitled to
17 representation by have access to an advocate.

18 2. List. The commissioner shall develop a list
19 of advocates; ~~including attorneys;~~ for each region of
20 the Bureau of Mental Retardation.

21 Sec. 17. 34-B MRSA §5467, as enacted by PL 1983,
22 c. 459, §7, is amended to read:

23 §5467. Application and preliminary procedures

24 1. Application. An application for mental
25 retardation services, on a form provided by the com-
26 missioner, shall be initiated at or referred to a
27 regional office of the Bureau of Mental Retardation
28 or the Infant Development Center.

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

32 A. Observe the client in his current environ-
33 ment;

- 1 B. Obtain a brief family survey;
- 2 C. Make a preliminary assessment of the client's
3 abilities and needs and of the relevant services
4 presently available to the client; and
- 5 D. Ensure the client's representation by access
6 to an advocate throughout the process of mental
7 retardation services under sections 5467 to 5474;
8 unless the client refuses that representation.

9 Sec. 18. 34-B MRSA §5468, sub-§2, as enacted by
10 PL 1983, c. 459, §7, is repealed and the following
11 enacted in its place:

12 2. Comprehensive evaluation. The comprehensive
13 evaluation shall be conducted by a person who is a
14 licensed physician, licensed clinical psychologist or
15 licensed psychological examiner and who has had
16 training and experience in the diagnosis and treat-
17 ment of mentally retarded persons.

18 Sec. 19. 34-B MRSA §5468, sub-§3 is enacted to
19 read:

20 3. Evaluation of child. If the client is a
21 child, aged 0 to 5 years, the conclusion of the
22 evaluation, unless otherwise indicated, shall state
23 that the child is developmentally delayed or at risk
24 of delay.

25 Nothing in this chapter may be construed as prevent-
26 ing licensed physicians, licensed clinical psychol-
27 ogists or licensed psychological examiners from diag-
28 nosing children below the age of 6 years as being
29 mentally retarded, when in their professional judg-
30 ment that is the appropriate diagnosis. Individuals
31 below the age of 6 years with a diagnosis of develop-
32 mental delay shall be eligible for services from the
33 Bureau of Mental Retardation.

34 Sec. 20. 34-B MRSA §5469, as enacted by PL 1983,
35 c. 459, §7, is repealed and the following enacted in
36 its place:

37 §5469. Report

1 Within 30 days of the day of the application made
2 under section 5467, the department shall obtain a
3 report of the comprehensive evaluation, which shall
4 state specifically in the report whether or not the
5 client is mentally retarded.

6 1. Client not mentally retarded. If the compre-
7 hensive evaluation concludes that the client is not
8 mentally retarded, the department shall deny the
9 application for services, care and treatment, but
10 shall make appropriate referrals in cases where clear
11 needs of the client exist.

12 2. Client mentally retarded. If the comprehen-
13 sive evaluation concludes that the client is mentally
14 retarded and is in need of services:

15 A. The department, through the regional office,
16 shall develop a prescriptive program plan or ser-
17 vice plan, or both; and

18 B. If a prescriptive program plan is to be
19 developed, the department, through the
20 interdisciplinary team, shall develop and begin
21 to implement a prescriptive program plan for the
22 client within 60 days of the application made
23 under section 5467.

24 3. Preschool child. If the report of the com-
25 prehensive evaluation concludes that a child, aged 0
26 to 5 years, is developmentally delayed and is in need
27 of infant development services or other early inter-
28 vention services:

29 A. The department, through the regional office
30 or the Infant Development Center, shall develop a
31 prescriptive program plan or service plan, or
32 both; and

33 B. If a prescriptive program plan is to be
34 developed, the department, through the
35 interdisciplinary team, shall develop and begin
36 to implement a prescriptive program plan for the
37 client within 60 days of the application made
38 under section 5467.

1 Sec. 21. 34-B MRSA §5470, sub-§2, as enacted by
2 PL 1983, c. 459, §7, is repealed and the following
3 enacted in its place:

4 2. Contents of plan. Each prescriptive program
5 plan shall:

6 A. Define the projection of client growth and
7 needs without regard to service availability;

8 B. Define habilitation goals and objectives for
9 the client with regard to service availability;

10 C. Define necessary services to meet the
11 client's habilitation goals and objectives;

12 D. Recommend the optimal course of action; and

13 E. Include plans for the active and continued
14 exploration of suitable program alternatives
15 based on client need.

16 Sec. 22. 34-B MRSA §5475, sub-§2, ¶C, as enacted
17 by PL 1983, c. 459, §7, is amended to read:

18 C. Unless waived by a parent or guardian client
19 and his counsel, cause the client who is the sub-
20 ject of the proceeding to be examined by a pro-
21 fessional.

22 (1) The client or his counsel may choose
23 the professional, if the professional he
24 chooses is reasonably available.

25 (2) The professional may not be the same
26 one who performed any part of the evaluation
27 required under section 5468 or who partici-
28 pated in the development of the prescriptive
29 program plan.

30 (3) Upon completion of the examination, the
31 professional shall report to the court his
32 opinion whether the client is mentally
33 retarded and therefore requires treatment,
34 stating his reasons for his opinion;

1 Sec. 23. 34-B MRSA §5476, as enacted by PL 1983,
2 c. 459, §7, is repealed and the following enacted in
3 its place:

4 §5476. Judicial commitment

5 Any client recommended for admission to a mental
6 retardation facility pursuant to section 5470 may be
7 admitted by judicial commitment according to the fol-
8 lowing procedures.

9 1. Application to the District Court. If the
10 chief administrative officer of the facility deter-
11 mines that the admission of the client pursuant to
12 section 5473, subsection 2, is not suitable, or if
13 the client declines admission pursuant to section
14 5473, subsection 2, the chief administrative officer
15 may apply to the District Court having territorial
16 jurisdiction over the facility for the issuance of an
17 order of judicial commitment.

18 2. Time of application. The chief administra-
19 tive officer shall file the application within 5 days
20 from the day of admission of the client under this
21 section, excluding Saturdays, Sundays and legal holi-
22 days.

23 3. Accompanying documents. The application
24 shall be accompanied by:

25 A. A written application, made subject to the
26 prohibitions and penalties of section 3805 and
27 made by any health officer, law enforcement offi-
28 cer or other person, stating:

29 (1) His belief that the client is mentally
30 retarded and poses a likelihood of serious
31 harm; and

32 (2) The grounds for this belief;

33 B. A dated certificate, signed by a private li-
34 icensed physician or a private licensed clinical
35 psychologist, stating that:

36 (1) He has examined the client on the date
37 of the certificate, which date may not be

1 more than 3 days before the date of admis-
2 sion to the facility; and

3 (2) He is of the opinion that the client is
4 mentally retarded and poses a likelihood of
5 serious harm; and

6 C. A certificate of the facility's examining
7 physician or psychologist, stating that he has
8 examined the client and it is his opinion that
9 the client is mentally retarded and poses a
10 likelihood of serious harm:

11 (1) The examiner may not be the certifying
12 examiner under paragraph B; and

13 (2) If the examination is not held within
14 24 hours after the time of admission or if
15 the facility's examining physician or psy-
16 chologist fails or refuses to make the re-
17 quired certification, the client shall be
18 immediately discharged.

19 4. Notice of receipt of application. The giving
20 of notice of receipt of application under this
21 section is governed as follows.

22 A. Upon receipt by the District Court of the
23 application and accompanying documents specified
24 in this section, the court shall cause written
25 notice of the application:

26 (1) To be given personally or by mail to
27 the client within a reasonable time before
28 the hearing, but not less than 3 days before
29 the hearing; and

30 (2) To be mailed to the client's guardian,
31 if known, and to his spouse, his parent or
32 one of his adult children, or if none of
33 these persons exist or if none of them can
34 be located, to one of his next of kin or an
35 advocate.

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

1 5. Examination. Examinations under this section
2 are governed as follows.

3 A. Upon receipt by the District Court of the
4 application and the accompanying documents speci-
5 fied in this section, the court shall forthwith
6 cause the client to be examined by 2 examiners.

7 (1) Each examiner shall be either a li-
8 icensed physician or a licensed clinical psy-
9 chologist.

10 (2) One of the examiners shall be a physi-
11 cian or psychologist chosen by the client or
12 by his counsel, if the chosen physician or
13 psychologist is reasonably available.

14 (3) Neither examiner appointed by the court
15 may be the certifying examiner under subsec-
16 tion 3, paragraph B or C.

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

20 C. If the unanimous reports of the examiners are
21 to the effect that the client is not mentally
22 retarded or does not pose a likelihood of serious
23 harm, the application shall be dismissed and the
24 client shall be ordered discharged forthwith.

25 D. If the report of either or both of the exam-
26 iners is to the effect that the client is men-
27 tally retarded and poses a likelihood of serious
28 harm, the hearing shall be held on the date, or
29 on the continued date, which the court has set
30 for the hearing.

31 6. Hearing. Hearings under this section are
32 governed as follows.

33 A. The District Court shall hold a hearing on
34 the application not later than 15 days from the
35 date of the application.

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

1 (2) If the hearing is not held within the
2 time specified, or within the specified con-
3 tinuance period, the court shall dismiss the
4 application and order the client discharged
5 forthwith.

6 (3) In computing the time periods set forth
7 in this paragraph, the District Court Rules
8 of Civil Procedure shall apply.

9 B. The hearing shall be conducted in as informal
10 a manner as may be consistent with orderly proce-
11 dure and in a physical setting not likely to have
12 a harmful effect on the well-being of the person.

13 C. The court shall receive all relevant and
14 material evidence which may be offered in accor-
15 dance with accepted rules of evidence and accept-
16 ed judicial dispositions.

17 (1) The client, the applicant and all other
18 persons to whom notice is required to be
19 sent shall be afforded an opportunity to
20 appear at the hearing to testify.

21 (2) The client and the applicant shall be
22 afforded the opportunity to cross-examine
23 witnesses.

24 (3) The court may, in its discretion,
25 receive the testimony of any other person
26 and may subpoena any witness.

27 D. The client shall be afforded an opportunity
28 to be represented by counsel and, if neither the
29 client nor others provide counsel, the court
30 shall appoint counsel for the client.

31 E. In addition to proving that the client is
32 mentally retarded, the applicant shall show:

33 (1) By evidence of the client's actions and
34 behavior, that the client poses a likelihood
35 of serious harm; and

36 (2) That after full consideration of less
37 restrictive treatment settings and

1 modalities, judicial commitment to a mental
2 retardation facility is the best available
3 means for the treatment or security of the
4 client.

5 F. In each case, the applicant shall submit to
6 the court, at the time of the hearing, testimony
7 indicating the individual treatment plan to be
8 followed by the facility's staff, if the client
9 is committed under this section, and shall bear
10 any expense for this purpose.

11 G. A stenographic or electronic record shall be
12 made of the proceedings in all judicial commit-
13 ment hearings.

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

16 (2) The record, all notes, exhibits and
17 other evidence shall be retained as part of
18 the District Court records for a period of 2
19 years from the date of the hearing.

20 H. The hearing shall be confidential. No report
21 of the proceedings may be released to the public
22 or press, except by permission of the client, or
23 his counsel and with approval of the presiding
24 District Court Judge, except that the court may
25 order a public hearing on the request of the
26 client or his counsel.

27 7. Court findings. Procedures dealing with the
28 District Court's findings under this section are as
29 follows.

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

33 (1) Clear and convincing evidence that the
34 client is mentally retarded and that his
35 recent actions and behavior demonstrate that
36 he poses a likelihood of serious harm;

37 (2) That judicial commitment to the facil-
38 ity is the best available means for treat-
39 ment of the client; and

1 (3) That it is satisfied with the indi-
2 vidual treatment plan offered by the facil-
3 ity.

4 B. If the District Court makes the findings de-
5 scribed in paragraph A, subparagraphs 1 and 2,
6 but is not satisfied with the individual treat-
7 ment plan offered, it may continue the case for
8 not longer than 10 days, pending reconsideration
9 and resubmission of an individual treatment plan
10 by the facility.

11 8. Commitment. Upon making the findings de-
12 scribed in subsection 7, the court may order commit-
13 ment of the client to the facility for a period not
14 to exceed 4 months in the first instance and not to
15 exceed one year after the first and all subsequent
16 hearings.

17 A. The court may issue an order of commitment
18 immediately after the completion of the hearing
19 or it may take the matter under advisement and
20 issue an order within 24 hours of the hearing.

21 B. If the court does not issue an order of com-
22 mitment within 24 hours of the completion of the
23 hearing, it shall dismiss the application and
24 shall order the person discharged forthwith.

25 9. Continued judicial commitment. If the chief
26 administrative officer of the facility determines
27 that continued judicial commitment is necessary for a
28 person who has been ordered by the District Court to
29 be committed, he shall, not later than 30 days prior
30 to the expiration of a period of commitment ordered
31 by the court, make application in accordance with
32 this section to the District Court which has territo-
33 rial jurisdiction over the facility for a hearing to
34 be held under this section.

35 10 Transportation. Unless otherwise directed by
36 the court, the sheriff of the county in which the
37 District Court has jurisdiction and in which the
38 hearing takes place shall provide transportation to
39 any facility to which the court has committed the
40 person.

1 11. Expenses. With the exception of expenses
2 incurred by the applicant pursuant to subsection 6,
3 paragraph F, the District Court shall be responsible
4 for any expenses incurred under this section, includ-
5 ing fees of appointed counsel, witness and notice
6 fees and expenses of transportation for the person.

7 12. Appeals. A person ordered by the District
8 Court to be committed to the facility may appeal from
9 that order to the Superior Court.

10 A. The appeal shall be on questions of law only.

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

13 C. The order of the District Court shall remain
14 in effect pending the appeal.

15 D. The District Court Rules of Civil Procedure
16 and the Maine Rules of Civil Procedure apply to
17 the conduct of the appeals, except as otherwise
18 specified in this subsection.

19 13. Rules. If necessary, the commissioner shall
20 promulgate rules for the effective implementation of
21 this section.

22 Sec. 24. 34-B MRSA §5477, sub-§1, as enacted by
23 PL 1983, c. 459, §7, is amended to read:

24 1. Protective custody. If a law enforcement
25 officer has reasonable grounds to believe, based upon
26 his personal observation, that a person may be men-
27 tally retarded, that ~~due to his condition~~ he presents
28 a threat of imminent and substantial physical harm to
29 himself or to other persons and that an emergency
30 exists requiring immediate residential placement:

31 A. The officer may take the person into protec-
32 tive custody; and

33 B. If the officer does take the person into pro-
34 protective custody, the officer shall deliver the
35 person forthwith, within 18 hours, for examina-
36 tion by an available licensed physician or li-
37 icensed psychologist as provided in subsection 4.

1 Sec. 25. 34-B MRSA §5477, sub-§4, ¶F, as enacted
2 by PL 1983, c. 459, §7, is amended to read:

3 F. Under this subsection, a facility may admit
4 the client for no longer than 5 days, but if a
5 petition for judicial certification or judicial
6 commitment is filed, the facility may admit the
7 client for an additional period not to exceed 25
8 days from the date of application.

9 Sec. 26. 34-B MRSA §5478, as enacted by PL 1983,
10 c. 459, §7, is repealed and the following enacted in
11 its place:

12 §5478. Continuation of treatment in a facility

13 1. Authority to continue treatment. A client
14 who has been admitted to a facility by judicial cer-
15 tification, or who has been retained in a facility
16 pursuant to this section, may continue extended care
17 and treatment in that facility for an additional
18 period, not to exceed 2 years, only after judicial
19 certification under section 5475 or after waiver of
20 that process as provided in this section, except that
21 waiver of the judicial certification process is not
22 permitted for any mentally retarded person under
23 public guardianship.

24 2. Appointment of counsel. The District Court
25 shall appoint counsel for any indigent client not
26 already represented.

27 3. Waiver of judicial certification. A petition
28 to waive judicial certification under section 5475
29 may be filed in District Court by the client's coun-
30 sel, who may waive judicial certification under the
31 following conditions:

32 A. A prescriptive program plan, as provided in
33 section 5470, has been agreed to by the superin-
34 tendent of the facility and the guardian;

35 B. The guardian has been informed of and under-
36 stands the nature, purpose and proposed duration
37 of the admission and the provisions of section
38 5480 regarding the client's right to leave and
39 the limitations on that right;

1 Section 6 establishes the Office of Community
2 Support Systems.

3 Sections 7 and 12 modify definitions previously
4 established.

5 Section 8 establishes within the Bureau of Mental
6 Health language similar to that used in the Bureau of
7 Mental Retardation, which clarifies the authority of
8 the department to encourage local participation in
9 the development of community mental health services.

10 Section 9 allows the department to establish a
11 more comprehensive licensure process, including coord-
12 ination with the Joint Licensing Task Force and
13 provisions for correcting violations.

14 Section 10 adds the requirement that voluntary
15 patients at a mental health hospital be examined
16 before leaving. Present law gives the hospital
17 responsibility for assuring that such patients are
18 ready to leave while inconsistently allowing depart-
19 ure before examination.

20 Section 11 rewrites a definition to remove the
21 causal link previously required between a finding of
22 mental retardation and the person's behavior as a
23 basis for judicial commitment to mental retardation
24 facilities. It is modeled on a similar provision in
25 the mental health statutes, but uses language appro-
26 priate to mental retardation. Section 23 establishes
27 the procedures for judicial commitment.

28 Section 14 repeals the definition of voluntary
29 admission, which is otherwise addressed through the
30 recodification. Section 27 clarifies that a parent
31 or guardian having legal custody of a child or ward
32 may obtain discharge of the child or ward, at any
33 time, after any type of admission except admission by
34 judicial commitment.

35 Sections 13, 15 to 22 and 24 to 26 address the
36 issues of services provided to clients by the Bureau
37 of Mental Retardation.

38 A major change is allowing the comprehensive
39 evaluation, which determines a client's eligibility

1 for services, to be performed by a licensed psychol-
2 ogist or physician, rather than requiring the use of
3 the expensive and lengthy interdisciplinary team pro-
4 cess. An additional new provision allows for a find-
5 ing of developmental delay when the client is a
6 child, age 0 to 5 years, thus harmonizing the provi-
7 sions with the current statute, which allows the
8 bureau to serve this population.

9 The 2nd major change allows the bureau the flexi-
10 bility to develop either a service plan, under cer-
11 tain specified conditions, or a prescriptive program
12 plan. The service plan is more appropriate for
13 clients with single service needs, or who are able to
14 participate in decisions about their treatment, than
15 the currently-mandated prescriptive program plan.

16 Both of these changes will allow the bureau to
17 improve the intake and service provisions, while
18 assuring the most appropriate and least restrictive
19 services to its clients.

20 The 3rd change amends certain sections regarding
21 judicial certification and recertification, to make
22 the statutes consistent with judicial practice.

23 The final change ensures that the services of an
24 advocate will be available, rather than the current
25 requirement that an advocate be involved in every
26 case.

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