

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (After Deadline)

3 SECOND REGULAR SESSION
4

5 ONE HUNDRED AND ELEVENTH LEGISLATURE
6

7 Legislative Document

No. 2393

8
9 H.P. 1800 House of Representatives, March 29, 1984
10 Approved for introduction by a majority of the Legislative Council
pursuant to Joint Rule 27.

11 On Motion of Representative Murray of Bangor, referred to the
12 Committee on Health and Institutional Services. Sent up for concurrence and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Murray of Bangor.

13 Cosponsors: Representative Nelson of Portland, Representative Carroll of
Gray and Representative Diamond of Bangor.

14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FOUR
18

19 AN ACT to Amend the Judicial
20 Commitment Statute.
21

22 **Emergency preamble.** Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, in 1983, the Legislature enacted a law
26 to provide for judicial commitment for those mentally
27 retarded persons who posed a liklihood of serious
28 harm to themselves or others; and

29 Whereas, such legislation provided for the appli-
30 cant to show that commitment to a mental retardation
31 facility was the best available means for the treat-
32 ment or security of the client; and

33 Whereas, no corresponding provision was made for
34 the District Court to rule on the issue of security

1 of the individual and may only consider the treatment
2 of the client as a factor in the commitment decision;
3 and

4 Whereas, there are a small number of mentally re-
5 tardated persons who pose a danger to others; and

6 Whereas, in some cases, appropriate treatment
7 methods do not exist; and

8 Whereas, the needs and best interests of the men-
9 tally retarded person and the community must be con-
10 sidered within the judicial commitment process; and

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

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

19 34-B MRSA §5476, sub-§7, ¶A, as enacted by PL
20 1983, c. 580, §23, is amended to read:

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

24 (1) Clear and convincing evidence that the
25 client is mentally retarded and that his re-
26 cent actions and behavior demonstrate that
27 he poses a likelihood of serious harm;

28 (2) That judicial commitment to the facili-
29 ty is the best available means for the
30 treatment or security of the client; and

31 (3) That it is satisfied with the individu-
32 al treatment plan offered by the facility.

33 **Emergency clause.** In view of the emergency cited
34 in the preamble, this Act shall take effect when ap-
35 proved.

1

STATEMENT OF FACT

2 The proposed addition of security as a finding
3 the court may make in determining if judicial commit-
4 ment to a mental retardation facility is appropriate
5 will clear up an inconsistency in the commitment
6 statute. As it now stands, while the applicant is
7 required to show that "judicial commitment to a men-
8 tal retardation facility is the best available means
9 for the treatment or security of the client," the
10 court is unable to consider security as a criteria
11 for commitment.

12 Security is a factor with dangerous individuals
13 where there is no known successful treatment, such as
14 sexual deviancy. As the law now reads, if the facil-
15 ity cannot provide treatment for the presenting prob-
16 lem - i.e., child molesting, the court cannot commit.
17 Allowing the court to consider security will allow
18 judicial commitment even though there is no sure cure
19 for the dangerousness.

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