

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1361

6  
7 S.P. 500

In Senate, April 19, 1985

8 Referred to the Committee on Judiciary. Sent down for concurrence  
9 and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by President Pray of Penobscot.

11 Cosponsored by Senator Carpenter of Aroostook, Representative Nelson  
of Portland and Representative Carroll of Gray.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Amend Judicial Certification  
18 Procedures.  
19

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

22 Sec. 1. 34-B MRSA §5475, sub-§4, ¶¶B and C, as  
23 enacted by PL 1983, c. 459, §7, are amended to read:

24 B. The needed services are available at the fa-  
25 cility named in the application; ~~and~~

26 C. There is no less restrictive alternative to  
27 the care provided by the facility, consistent  
28 with the best interest of the client; or

29 Sec. 2. 34-B MRSA §5475, sub-§4, ¶D is enacted  
30 to read:

31 D. There is not available a less restrictive al-  
32 ternative to the care provided by the facility,  
33 consistent with the best interest of the client.

1       Sec. 3. 34-B MRSA §5475, sub-§6, as enacted by  
2 PL 1983, c. 459, §7, is repealed and the following  
3 enacted in its place:

4       6. Period of certification. If the court finds  
5 that the petitioner has proved eligibility in accord-  
6 ance with subsection 4, paragraph C, the court shall  
7 order the certification to remain in effect for a pe-  
8 riod of not more than 2 years from the day the certi-  
9 fication order was issued.

10 If the court finds that the petitioner has proved el-  
11 igibility in accordance with subsection 4, paragraph  
12 D, the court shall order the certification to remain  
13 in effect only until an opening exists in a facility  
14 providing a less restrictive alternative, consistent  
15 with the best interest of the client, at which time  
16 the client shall be placed in that alternative set-  
17 ting or for not more than 6 months from the day the  
18 certification order was issued, whichever first oc-  
19 curs. If the client is not placed in such an alter-  
20 native setting by the time this certification ex-  
21 pires, no subsequent petition may be filed unless it  
22 contains a written report of the Commissioner of Men-  
23 tal Health and Mental Retardation detailing the ac-  
24 tions taken by the department to develop an alterna-  
25 tive setting for that client.

1

## STATEMENT OF FACT

2       On January 3, 1985, the Maine Supreme Judicial  
3 Court ruled, in the cases of 10 mentally retarded  
4 adult client-residents of the Pineland Center, that,  
5 even though there was evidence in 8 of the cases that  
6 the clients' needs could be met in a community based  
7 group home, since no openings existed at the time of  
8 the hearing, the court could certify them for contin-  
9 ued admission to the Pineland Center for up to 2  
10 years.

11       Sections 1 and 2 of the bill correct the omission  
12 which caused the recent case to go to the Supreme Ju-  
13 dicial Court by making it clear that the nonavaila-  
14 bility of the less restrictive alternative is a fac-  
15 tor which may be considered by the court.

16       Section 3 addresses the duration of the court's  
17 order when the reason for certifying admission to the  
18 Pineland Center is the nonavailability of the less  
19 restrictive alternative. The section provides that  
20 the court's order is effective until an opening oc-  
21 curs in a less restrictive setting, at which time the  
22 client is to be placed in that setting. In the event  
23 no opening in a less restrictive setting occurs with-  
24 in 6 months, the client's case will be reevaluated by  
25 the court and the Commissioner of Mental Health and  
26 Mental Retardation will be required to state in the  
27 subsequent petition the steps taken by the department  
28 to develop a less restrictive alternative setting for  
29 that mentally retarded person.

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