

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 1204

S.P. 387

In Senate, April 9, 1987

Reference to the Committee on Human Services suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator GILL of Cumberland.

Cosponsored by Senator GAUVREAU of Androscoggin,
Representative PARADIS of Augusta, Representative TAYLOR of
Camden.

STATE OF MAINE

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

1 AN ACT to Amend the Civil Commitment
2 Procedures to Protect the Health and
3 Safety of Certain Mentally Ill
4 Individuals.
5

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

8 Sec. 1. 34-B MRSA §3801, sub-§4, ¶¶B and C, as
9 enacted by PL 1983, c. 459, §7, are amended to read:

10 B. A substantial risk of physical harm to other
11 persons as manifested by recent evidence of homi-
12 cidal or other violent behavior or recent evi-
13 dence that others are placed in reasonable fear
14 of violent behavior and serious physical harm to
15 them and, after consideration of less restrictive
16 treatment settings and modalities, a determina-

tion that community resources for his care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable; or

Sec. 2. 34-B MRSA §3801, sub-§4, ¶D is enacted to read:

D. A reasonable certainty that the person is gravely disabled by mental illness and, after consideration or less restrictive treatment settings and modalities, a determination that appropriate community resources for his care and treatment are unavailable or have been offered and refused.

Sec. 3. 34-B MRSA §3801, sub-§4-A is enacted to read:

4-A. Lacking capacity to give informed consent to treatment. "Lacking capacity to give informed consent to treatment" means:

A. Lacking sufficient understanding to comprehend information regarding treatment; or

B. Unable to make responsible decisions concerning treatment.

Sec. 4. 34-B MRSA §3864, sub-§6, ¶A, as enacted by PL 1983, c. 459, §7, is amended to read:

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that his recent

1 actions and behavior demonstrate that his
2 illness poses a likelihood of serious harm;
3 (2) That inpatient hospitalization is the
4 best available means for treatment of the
5 patient; and
6 (3) That it is satisfied with the individu-
7 al treatment plan offered by the hospital;
8 and
9 (4) Finds that the patient lacks capacity
10 to give informed consent to treatment.

11 Sec. 5. 3864, sub-§7, 1A, as enacted by PL 1983,
12 c. 459, §7, is amended to read:

13 A. The court may issue an order of commitment
14 immediately after the completion of the hearing,
15 or it may take the matter under advisement and
16 issue an order within 24 hours of the hearing.
17 The court shall appoint a family member of the
18 patient for the purpose of giving or refusing to
19 give, informed consent to treatment. If the
20 court finds that there is no family member who is
21 able and willing to serve this function, the De-
22 partment of Human Services shall be appointed.
23 Consent for treatment shall be given in accord-
24 ance with the best interest of the patient. The
25 authority of the family members or of the depart-
26 ment to give consent shall terminate at the same
27 time that the involuntary commitment terminates.
28 A patient who has been involuntarily committed
29 may not refuse treatment to which informed con-
30 sent has been given in accordance with this sub-
31 section.

32 STATEMENT OF FACT

33 This bill links commitment, involuntary hospital-
34 ization, to treatment of mental illness, as opposed
35 to detention.

36 It would be possible to involuntarily hospitalize
37 a person who is afflicted with a severe mental ill-

ness for the purpose of treating that illness, without having to wait until dangerous behavior had occurred or was about to occur. Also, this bill requires that a District Court judge make a finding of "lacking capacity to give informed consent to treatment," in addition to the already established criteria, before a person may be ordered committed. Persons who had the mental capacity to make their own treatment decisions could not be committed; such persons could either remain as voluntary patients or be released.

The responsibility for making treatment decisions, during the period of involuntary hospitalization only, would be assigned by the District Court to a concerned family member. The family member would accept or decline proposed treatment on behalf of their loved one who is temporarily unable to make such decisions for himself, in accordance with the best interests of the patient. If the court does not find a family member or one who is willing to serve the function of giving, or refusing to give, informal consent to treatment, then the Department of Human Services is appointed to fill this function.

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