

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 175

S.P. 90

Received by the Secretary, January 24, 1991

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator BUSTIN of Kennebec.

Cosponsored by Representative CLARK of Brunswick, Representative HEESCHEN of Wilton and President PRAY of Penobscot.

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STATE OF MAINE

---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

An Act Related to the Office of Substance Abuse.

---



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

2  
4       **Sec. 1. 5 MRSA §20002**, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

6       **§20002. Purpose**

8       The purposes of this Act are:

10       **1. Integrated and comprehensive approach.** To adopt an  
12       integrated approach to the problem of substance alcohol and other  
14       drug abuse and to focus all the varied resources of the State on  
16       developing a comprehensive and effective range of substance  
18       alcohol and other drug abuse prevention and treatment activities  
20       and services; and

22       **2. Single administrative unit.** To establish a single  
24       administrative unit within State Government, accountable directly  
26       to the Governor, with responsibility for planning, developing,  
28       implementing and, coordinating and evaluating all of the State's  
30       substance alcohol and other drug abuse prevention and treatment  
32       activities and services.

34       **Sec. 2. 5 MRSA §20003, sub-§1**, as enacted by PL 1989, c. 934,  
36       Pt. A, §3, is amended to read:

38       **1. Alcoholic.** "Alcoholic" means a person who habitually  
40       ~~lacks self-control as to the use of alcoholic beverages, or~~ uses  
42       alcoholic beverages to the extent that the person's health is  
44       substantially impaired or endangered or the person's social or  
46       economic function is substantially disrupted.

48       **Sec. 3. 5 MRSA §20003, sub-§§1-A, 3-A and 3-B** are enacted to  
50       read:

52       **1-A. Approved detoxification facility.** "Approved  
54       detoxification facility" means an approved treatment facility  
56       that meets the standards adopted pursuant to section 20042 and  
58       has been certified by the office to serve chemically dependent  
60       persons subject to an emergency treatment order.

62       **3-A. Chemically dependent person.** "Chemically dependent  
64       person" means a person who uses alcohol or other drugs to the  
66       extent that the person's health is substantially impaired or  
68       endangered or the person's social or economic function is  
70       substantially disrupted.

72       **3-B. Chemically dependent person who poses a likelihood of**  
74       **serious and imminent self-harm.** "Chemically dependent person who  
76       poses a likelihood of serious and imminent self-harm" means a  
78       person who by reason of the habitual and excessive use of alcohol  
80       or other drugs:

2           A. Is incapable of self-management or management of  
3           personal affairs; and

4           B. Poses a substantial risk of serious and imminent  
5           physical self-harm as demonstrated by:

6                   (1) Evidence of recent life-threatening physical  
7                   problems; or

8                   (2) Evidence of repeated failure to obtain necessary  
9                   food, clothing, shelter or medical care.

10           **Sec. 4. 5 MRSA §20003, sub-§4, as enacted by PL 1989, c. 934,**  
11           **Pt. A, §3, is amended to read:**

12                   **4. Community service provider.** "Community service  
13                   provider" means a provider of alcohol or drug abuse treatment  
14                   including, but not limited to, need evaluation.

15           **Sec. 5. 5 MRSA §20003, sub-§§13 to 16, as enacted by PL 1989,**  
16           **c. 934, Pt. A, §3, are repealed.**

17           **Sec. 6. 5 MRSA §20005, sub-§§1 and 2, as enacted by PL 1989, c.**  
18           **934, Pt. A, §3, are amended to read:**

19                   **1. State Government.** Establish the overall plans,  
20                   policies, objectives and priorities for all state substance  
21                   alcohol and other drug abuse prevention and treatment functions,  
22                   except the prevention of drug traffic and the State Employee  
23                   Assistance Program established pursuant to Title 22, chapter  
24                   254-A;

25                   **2. Comprehensive plan.** Develop and provide for the  
26                   implementation of a comprehensive state plan for alcohol and drug  
27                   abuse. Any plan developed by the office must be subject to  
28                   public hearing prior to implementation;

29           **Sec. 7. 5 MRSA §20005, sub-§§6, 7, 10, 12 and 13, as enacted by PL**  
30           **1989, c. 934, Pt. A, §3, are amended to read:**

31                   **6. Contracts and licensing.** Through the director:

32                   A. Administer all contracts with community service  
33                   providers for the delivery of alcohol and drug abuse  
34                   services; and

35                   B. Establish operating and treatment standards, and inspect  
36                   and issue certificates of approval for approved public  
37                   treatment facilities and approved treatment facilities, drug  
38                   abuse treatment facilities or programs, including

2 residential treatment centers and approved detoxification  
3 facilities, pursuant to section 20024.

4 The director may delegate contract and licensing duties under  
5 this subsection to the Department of Human Services, the  
6 Department of Corrections or the Department of Mental Health and  
7 Mental Retardation, as long as that delegation ensures that  
8 contracting for substance alcohol and other drug abuse services  
9 provided in community settings are consolidated within the  
10 Department of Human Services, that contracting for substance  
11 alcohol and other drug abuse services delivered within  
12 correctional facilities are consolidated within the Department of  
13 Corrections and that contracting for substance alcohol and other  
14 drug abuse services delivered within mental health and mental  
15 retardation facilities are consolidated within the Department of  
16 Mental Health and Mental Retardation.

17 The director may not request competitive bids for existing  
18 services until the director adopts rules in accordance with the  
19 Maine Administrative Procedure Act to ensure the stability of the  
20 provider system by setting forth the causes for which existing  
21 services may be placed out for competitive bid; the protection of  
22 the consumer of alcohol and other drug abuse services in such a  
23 way that any change in provider will be accomplished in a manner  
24 which fully protects the consumer; and the verification of the  
25 nonservice revenue portion of proposed budgets submitted by  
26 current and prospective providers;

27  
28  
29 **7. Uniform requirements.** Develop, use and require the use  
30 of uniform contracting, information gathering and reporting  
31 formats by any state-funded substance alcohol and other drug  
32 abuse program. To the extent feasible, information must maintain  
33 compatibility with federal information sharing standards;  
34

35 **10. Agreements.** Enter into agreements necessary or  
36 incidental to the purposes of this Act. Included is the power to  
37 make agreements with qualified community, regional and  
38 state-level private and nonprofit and public agencies,  
39 organizations and individuals in this and other states to develop  
40 or provide drug abuse prevention and treatment facilities,  
41 programs and services. These agreements may include provisions  
42 to pay for the prevention services or treatment rendered or  
43 furnished to an alcoholic, intoxicated person, drug abuser, drug  
44 addict, drug-dependent person, chemically dependent person, or  
45 person in need of assistance for the use of a dependency-related  
46 drug. These contracts may be executed only with agencies that  
47 meet the standards for treatment adopted by the office under  
48 section 20042 and are licensed pursuant to section 20005, and  
49 that offer sliding fee scales. The office may engage expert  
50 advisors and assistants who may serve without compensation or to  
the extent funds may be available by appropriation, grant, gift,

2 or allocation from a state department, the office may pay for  
3 these expert advisors or assistants;

4 **12. Rules.** Adopt rules, in accordance with the Maine  
5 Administrative Procedure Act, necessary to carry out the purposes  
6 of this chapter and approve any rules adopted by state agencies  
7 for the purpose of implementing alcohol or drug abuse prevention  
8 or treatment programs.

10 All state agencies must comply with rules adopted by the office  
11 regarding uniform substance alcohol and other drug abuse  
12 contracting requirements, formats, schedules, data collection and  
13 reporting requirements; and

14 **13. General authority.** Perform other acts or exercise any  
15 other powers necessary or convenient to carry out the purposes of  
16 this chapter;

18 **Sec. 8. 5 MRSA §20005, sub-§§14 and 15** are enacted to read:

20 **14. Motor vehicle operator programs.** Administer and  
21 oversee the operation of the State's programs related to the  
22 abuse of alcohol by motor vehicle operators pursuant to Title 22,  
23 chapter 1602, subchapter I; and

26 **15. Training programs.** Provide or assist in the provision  
27 of training programs for all persons in the field of treating  
28 alcoholics, intoxicated persons and drug abusers.

30 **Sec. 9. 5 MRSA §20006, first and 2nd ¶¶,** as enacted by PL 1989,  
31 c. 934, Pt. A, §3, are amended to read:

32 The Governor shall appoint, subject to confirmation by the  
33 joint standing committee of the Legislature having jurisdiction  
34 over health and institutional services, a full-time director of  
35 the Office of Substance Abuse who shall serve at the pleasure of  
36 the Governor and have a salary fixed by the Governor.

38 The director must be qualified by training and experience in  
39 the field of substance alcohol and other drug abuse prevention  
40 and treatment. The director shall exercise the powers of the  
41 office and is responsible for the execution of its duties. The  
42 director may:

44 **Sec. 10. 5 MRSA §20006, sub-§3,** as enacted by PL 1989, c. 934,  
45 Pt. A, §3, is amended to read:

48 **3. Investigate.** Conduct investigations and studies of any  
49 alcohol or drug abuse program or community service provider,  
50 approved public treatment facility and approved treatment  
51 facility or approved detoxification facility as necessary; and

2           **Sec. 11. 5 MRSA §20008, sub-§3**, as enacted by PL 1989, c. 934,  
Pt. A, §3, is amended to read:

4           **3. Treatment.** The office shall provide for adequate and  
appropriate treatment for alcoholics, chemically dependent  
6 persons, drug abusers, drug addicts, drug-dependent persons,  
incompetent persons and intoxicated persons admitted under  
8 sections 20043 to 20046 20046-C. Treatment may not be provided  
at a correctional institution, except for inmates.

10           **Sec. 12. 5 MRSA §20008, last ¶**, as enacted by PL 1989, c. 934,  
12 Pt. A, §3, is repealed.

14           **Sec. 13. 5 MRSA §20008, sub-§4** is enacted to read:

16           **4. Contract with facilities.** The office shall contract  
with approved treatment facilities whenever possible. The  
18 administrator of any treatment or detoxification facility may  
receive for observation, diagnosis, care and treatment in the  
20 facility any person whose admission is applied for under any of  
the procedures in this subchapter.

22           **A.** The approved treatment or approved detoxification  
24 facility, any person contracting with the facility, and any  
of its employees when admitting, treating, or discharging a  
26 patient under the provisions of section 20045-A, 20046-A or  
20048 under a contract with the office, for purposes of  
28 civil liability, is deemed to be a governmental entity or an  
employee of a governmental entity under the Maine Tort  
30 Claims Act, Title 14, chapter 741.

32           **B.** A patient with a primary diagnosis as a chemically  
34 dependent person, in an approved treatment or approved  
detoxification facility that contracts with the office under  
36 this subsection is entitled to the rights and remedies as  
conferred by the United States Constitution and the  
38 Constitution of Maine, laws, regulations and rules of this  
State and of the United States.

40           **C.** Before contracting with and approving the admission of  
42 involuntary patients to an approved treatment or approved  
detoxification facility, the office shall require the  
44 facility to:

46           (1) Comply with all applicable rules and regulations;  
and

48           (2) Demonstrate the ability of the facility to  
50 coordinate and integrate care with other  
community-based services.

2 D. Beginning July 31, 1992, the capital, licensing,  
3 remodeling, training and recruitment costs associated with  
4 the startup of beds designated for involuntary patients  
5 under this chapter must be reimbursed, within existing  
6 resources, by the office.

7 **Sec. 14. 5 MRSA §20021**, as enacted by PL 1989, c. 934, Pt. A,  
8 §3, is amended to read:

9 **§20021. Public awareness**

10 The office shall create and maintain a program to increase  
11 public awareness of the impacts and prevalence of alcohol and  
12 drug abuse. The public awareness program must include  
13 promotional and technical assistance to local governments,  
14 schools and public and private nonprofit organizations interested  
15 in alcohol and drug abuse prevention.

16 **Sec. 15. 5 MRSA §20022, first 2 ¶¶**, as enacted by PL 1989, c.  
17 934, Pt. A, §3, are amended to read:

18 As part of its comprehensive prevention and treatment  
19 program, the office shall support ~~operate~~ and coordinate the  
20 ~~activities of~~ an information clearinghouse ~~within the Department~~  
21 ~~of Human Services~~ and a resource center ~~within the Department of~~  
22 ~~Educational and Cultural Services~~. ~~Together, the~~ The information  
23 clearinghouse and resource center ~~constitute~~ constitutes a  
24 comprehensive reference center of information related to the  
25 nature, abuse, prevention and treatment of alcohol and ~~drugs~~ drug  
26 abuse. ~~The office shall ensure that the information~~  
27 ~~clearinghouse and resource center do not perform duplicative~~  
28 ~~services or functions~~. Information must be available for use by  
29 the general public, political subdivisions, public and private  
30 nonprofit agencies and the State.

31 Functions of the information clearinghouse and resource  
32 center may include, but are not limited to:

33 **Sec. 16. 5 MRSA §20022, sub-§§1 and 4**, as enacted by PL 1989,  
34 c. 934, Pt. A, §3, are amended to read:

35 **1. Research.** Conducting research on the causes and nature  
36 of drugs, drug abuse or people who are dependent on drugs,  
37 especially alcoholics, chemically dependent persons and  
38 intoxicated persons;

39 **4. Treatment facility inventory.** Maintaining an inventory  
40 of the types and quantity of drug abuse prevention facilities,  
41 programs and services available or provided under public or  
42 private auspices to drug addicts, drug abusers and drug-dependent  
43 persons, especially alcoholics, chemically dependent persons and  
44 intoxicated persons. This function includes the unduplicated



count, locations and characteristics of persons receiving treatment, as well as the frequency of admission and readmission and the frequency and duration of treatment of those persons. The inventory must include the amount, type and source of resources for drug abuse prevention.

Sec. 17. 5 MRSA §20023, first ¶, as affected by PL 1989, c. 700, Pt. B, §§46 and 48 and as enacted by PL 1989, c. 934, Pt. A, §3, is further amended to read:

To the fullest extent possible, the Commissioner of Education shall coordinate all elementary and secondary school alcohol and drug abuse education programs administered by the Department of Education and funded under the federal Drug-Free Schools and Communities Act of 1986 with programs administered by the office. The Commissioner of Education shall participate in planning, budgeting and evaluation of substance alcohol and other drug abuse programs, in cooperation with the Substance Abuse Advisory Group, and ensure that alcohol and drug abuse education programs administered by the Department of Education that involve any community participation are coordinated with available treatment services.

Sec. 18. 5 MRSA §20023, 2nd ¶, as affected by PL 1989, c. 700, Pt. B, §48 and as enacted by PL 1989, c. 934, Pt. A, §3, is further amended to read:

The Commissioner of Education, in cooperation with the Substance Abuse Advisory Group, shall prepare a plan to ensure the coordination and consolidation of substance alcohol and other drug abuse education programs and must present the plan to the director by January 1, 1992. The plan must be consistent with requirements of the federal Drug-Free Schools and Communities Act of 1986 and this chapter.

Sec. 19. 5 MRSA §20024, first ¶, as enacted by PL 1989, c. 934, Pt. A, §3, is amended to read:

The office may shall periodically enter, inspect and examine a treatment facility or program and examine its books, programs, standards, policies and accounts. The office shall fix and collect the fees for the inspection and certification and shall maintain a list of approved public and private treatment facilities.

Sec. 20. 5 MRSA §20024, as enacted by PL 1989, c. 934, Pt. A, §3, is amended by adding at the end a new paragraph to read:

Procedures to decertify any facility or to refuse certification are governed by the Maine Administrative Procedure Act.

2           **Sec. 21. 5 MRSA §20041**, as enacted by PL 1989, c. 934, Pt. A,  
§3, is amended to read:

4           **§20041. Evaluation**

6           **1. Data collection; sources.** The office shall collect data  
and use information from other sources to evaluate or provide for  
8 the evaluation of the impact, quality and value of alcohol and  
drug abuse prevention activities, treatment facilities and other  
10 substanees alcohol and other drug abuse programs.

12           **2. Content of evaluation.** Any evaluation of treatment  
facilities must include, but is not limited to, administrative  
14 adequacy and capacity, policies and treatment planning and  
delivery. Alcohol and drug abuse prevention and treatment  
16 services authorized by this Act and by the following federal laws  
and amendments that relate to drug abuse prevention must be  
18 evaluated:

20           A. The Drug Abuse Office and Treatment Act of 1972, 21  
United States Code, Section 1101 et seq. (1982);

22           B. The Community Mental Health Centers Act, 42 United  
24 States Code, Section 2688 et seq. (1982);

26           C. The Public Health Service Act, 42 United States Code,  
Section 1 et seq. (1982);

28           D. The Vocational Rehabilitation Act, 29 United States  
30 Code, Section 701 et seq. (1982);

32           E. The Social Security Act, 42 United States Code, Section  
301 et seq. (1982); and

34           F. The federal Comprehensive Alcohol Abuse and Alcoholism  
36 Prevention, Treatment and Rehabilitation Act of 1970; Public  
Law 91-616 (1982) and similar Acts.

38           **Sec. 22. 5 MRSA §§20042 to 20044**, as enacted by PL 1989, c.  
40 934, Pt. A, §3, are amended to read:

42           **§20042. Standards**

44           ~~Except as provided in section 20008, the~~ The office shall  
contract for treatment services only with approved treatment  
46 facilities.

48           **1. Standards concerning restraints.** By rules adopted in  
accordance with the Maine Administrative Procedure Act, the  
50 department shall establish standards for the reasonable restraint  
and treatment of chemically dependent persons subject to a  
52 physician's emergency treatment order. No facility may restrain

2 such a person against that person's will unless the following  
3 criteria are met:

4 A. The facility has been presented with an attested copy of  
5 an emergency treatment order; and

6 B. The facility has been certified by the office.

8  
9 **§20043. Acceptance for treatment of alcoholics, chemically**  
10 **dependent persons, drug abusers, drug addicts,**  
11 **drug-dependent persons and incompetent persons**

12  
13 The office shall adopt rules for acceptance of persons into  
14 a treatment program, considering available treatment resources  
15 and facilities, for the purpose of early and effective treatment  
16 of alcoholics, chemically dependent persons, drug abusers, drug  
17 addicts, drug-dependent persons and intoxicated incompetent  
18 persons.

19 In establishing rules, the office must be guided by the  
20 following standards.

21  
22 1. **Voluntary basis.** Patients must be treated on a  
23 voluntary basis, unless an emergency treatment order has been  
24 obtained.

25  
26 2. **Initial assignment.** A patient must be initially  
27 assigned or transferred to outpatient or intermediate treatment,  
28 unless the patient is found to require inpatient treatment.

29  
30 3. **Denial of treatment.** A person may not be denied  
31 treatment solely because that person has withdrawn from treatment  
32 against medical advice on a prior occasion or has relapsed after  
33 earlier treatment.

34  
35 4. **Individualized treatment plan.** An individualized  
36 treatment plan must be prepared and maintained on a current basis  
37 for each patient.

38  
39 5. **Coordinated treatment.** Provision must be made for a  
40 continuum of coordinated treatment services, so that a person who  
41 leaves a facility or a form of treatment has available and may  
42 utilize other appropriate treatment.

43  
44 6. **Denial of treatment services.** A person, firm or  
45 corporation licensed by the Department of Human Services as an  
46 alcohol or drug treatment facility under Title 22, section 7245  
47 to provide shelter or detoxification services, and that receives  
48 any funds administered by the office, may not deny treatment to  
49 any person because of that person's inability or failure to pay  
50 any assessed fees.

52

2           7. Community-based. Treatment must be provided in the  
3           least restrictive setting possible and in the person's home  
4           community wherever possible.

5           8. Diagnosis. Diagnosis of a person's mental capabilities,  
6           psychological or personality composition, or other nonalcohol or  
7           drug-related conditions or mental states may not be conducted  
8           until detoxification is complete and the person is judged to be  
9           medically no longer under the influence of a chemical or  
10           substance of abuse.

11           **§20044. Voluntary treatment of alcoholics, chemically**  
12           **dependent persons, drug abusers, drug addicts or**  
13           **drug-dependent persons**

14           1. Voluntary treatment. An alcoholic, chemically dependent  
15           person, drug abuser, drug addict or drug-dependent person may  
16           apply for voluntary treatment directly to an approved public  
17           treatment facility. ~~If the proposed patient is a minor or an~~  
18           ~~incompetent person, that person, a parent, a legal guardian or~~  
19           ~~other legal representative may make the application.~~

20           2. Determination. A person who comes voluntarily or is  
21           brought to an approved public treatment facility for inpatient  
22           care and treatment must be examined immediately by a licensed  
23           physician. That person may then be admitted as a patient or  
24           referred to another health facility based upon the physician's  
25           recommendation. Subject to rules adopted by the office, the  
26           administrator in charge of an approved public treatment facility  
27           may determine who shall may be admitted for treatment. If a  
28           person is refused admission to an approved public treatment  
29           facility, the administrator, subject to rules adopted by the  
30           office, shall refer the person to another approved public  
31           treatment facility for treatment if possible and appropriate.

32           3. Outpatient or intermediate treatment. If a patient  
33           receiving inpatient care leaves an approved public treatment  
34           facility, that patient must be encouraged to consent to  
35           appropriate outpatient or intermediate treatment. ~~If it appears~~  
36           ~~to the administrator in charge of the treatment facility that the~~  
37           ~~patient is an alcoholic who requires help, the office shall~~  
38           ~~arrange for assistance in obtaining supportive services and~~  
39           ~~residential facilities.~~

40           4. Discharge. If a patient leaves an approved public  
41           treatment facility, ~~with or~~ against the advice of the  
42           administrator in charge of the facility, ~~the office shall make~~  
43           ~~reasonable provisions for that patient's transportation to~~  
44           ~~another facility or to the patient's home and it appears to the~~  
45           ~~administrator in charge of the treatment facility that the~~  
46           ~~patient is a chemically dependent person who poses a likelihood~~  
47           ~~of serious and imminent self-harm, the office shall arrange for~~

2 ~~the preparation of an emergency treatment order at the time of~~  
3 ~~discharge. If that person does not have a home, the patient must~~  
4 ~~be assisted in obtaining shelter. If the patient is a minor or~~  
5 ~~an incompetent person, the request for discharge from an~~  
6 ~~inpatient facility must be made by a parent, legal guardian or~~  
7 ~~other legal representative or by the minor or incompetent, if the~~  
8 ~~minor or incompetent was the original applicant.~~

9  
10 Sec. 23. 5 MRSA §20045, as enacted by PL 1989, c. 934, Pt. A,  
11 §3, is repealed.

12 Sec. 24. 5 MRSA §20045-A is enacted to read:

13 §20045-A. Involuntary treatment and services for chemically  
14 dependent persons who pose a likelihood of serious  
15 and imminent self-harm

16  
17 1. Law enforcement officer's power. If a law enforcement  
18 officer has reasonable grounds to believe, based upon personal  
19 observation, that a person may be a chemically dependent person  
20 who poses a likelihood of serious and imminent self-harm, the law  
21 enforcement officer:

22  
23 A. May take the person into protective custody; and

24  
25 B. If the officer does take the person into protective  
26 custody, shall deliver the person immediately to an approved  
27 public treatment facility or an emergency medical service  
28 facility customarily used for emergency service for  
29 examination by a licensed physician as provided in section  
30 20046-A.

31  
32 In taking the person into protective custody, the detaining  
33 officer may take reasonable steps for self-protection. The  
34 taking of a chemically dependent person who poses a likelihood of  
35 serious and imminent self-harm into protective custody under this  
36 section is not an arrest. An entry or other record may not be  
37 made to indicate that the person has been arrested or charged  
38 with a crime.

39  
40 2. Emergency treatment order not executed. If an emergency  
41 treatment order relating to the person's likelihood of serious  
42 harm is not executed by the examiner under section 20046-A, the  
43 officer shall:

44  
45 A. Release the person from protective custody and, with the  
46 person's permission, immediately return the person to the  
47 person's residence, if it is within the territorial  
48 jurisdiction of the officer;

2 B. Release the person from protective custody and, with the  
3 person's permission, immediately return the person to the  
4 place where the person was taken into protective custody; or

5 C. If the person is also under arrest for a violation of  
6 the law, retain the person in custody until the person is  
7 released in accordance with the law.

8  
9 3. Emergency treatment order executed. If an emergency  
10 treatment order is executed by the examiner under section  
11 20046-A, the officer shall immediately undertake to secure the  
12 endorsement of a judicial officer under section 20046-A and may  
13 detain the person for a reasonable period of time, not to exceed  
14 18 hours pending that endorsement.

15 4. Transportation costs. The costs of transportation under  
16 this section are paid in the manner provided under section  
17 20046-A.

18  
19 5. Official duty. The police who act in compliance with  
20 this section are acting in the course of their official duties  
21 and are not criminally or civilly liable for actions taken under  
22 this section.

23  
24 6. Further diagnosis and voluntary treatment. If the  
25 administrator in charge of the approved public treatment facility  
26 determines that further diagnosis and treatment are for the  
27 patient's benefit, the patient must be encouraged to agree to  
28 further diagnosis and appropriate voluntary treatment.

29  
30 Sec. 25. 5 MRSA §20046, as enacted by PL 1989, c. 934, Pt. A,  
31 §3, is repealed.

32  
33 Sec. 26. 5 MRSA §§20046-A to 20046-C are enacted to read:

34  
35 §20046-A. Emergency treatment order procedure; detoxification  
36 facility

37  
38 A person may be admitted to inpatient treatment at an  
39 approved public or private detoxification facility according to  
40 the following procedures.

41  
42 1. Application. Any person may make a written application  
43 to admit another person to an approved public or private  
44 detoxification facility, subject to the prohibitions and  
45 penalties of section 20046-B, stating:

46  
47 A. A belief that the person is a chemically dependent  
48 person who poses a likelihood of serious and imminent  
49 self-harm; and

50  
51 B. The grounds for this belief.  
52

2           2. Certifying examination. The written application must be  
4           accompanied by a dated certificate, signed by a licensed  
              physician stating the physician:

6           A. Has examined the person on the date of the certificate,  
8           the date of which may not be more than 3 days before the  
              date of the post-admission examination under subsection 7;  
              and

10           B. Is of the opinion that the person is a chemically  
12           dependent person who poses a likelihood of serious and  
              imminent self-harm.

14           3. Judicial review. A Justice of the Superior Court, judge  
16           of the District Court, judge of probate or a complaint justice  
              shall review the application and accompanying certificate.

18           A. If the justice or judge finds the application and  
20           accompanying certificate to be regular and in accordance  
              with the law, the justice or judge shall endorse them.

22           B. No person may be held against the person's will in any  
24           approved detoxification facility under this section, whether  
26           voluntarily admitted under section 20044 or an application  
              for involuntary admission is made under this section, unless  
28           the application and certificate have been endorsed by a  
              justice or judge, except that a person for whom an examiner  
30           has executed the certificate under subsection 2 may be  
              detained in an approved detoxification facility for a  
32           reasonable period of time, not to exceed 18 hours, pending  
              endorsement by a justice or judge, if:

34                   (1) For a person voluntarily admitted under section  
36                   20044, the administrator of the approved detoxification  
                      facility undertakes to secure the endorsement  
38                   immediately upon execution of the certificate by the  
                      examiner; and

40                   (2) An application for involuntary admission is made  
42                   for a person under this section, the person or persons  
                      transporting that person to the hospital undertake to  
44                   secure the endorsement immediately upon execution of  
                      the certificate by the examiner.

46           4. Custody and transportation. Custody and transportation  
48           under this section are governed as follows.

50           A. Upon endorsement of the application and certificate by  
              the justice or judge, any health officer, law enforcement  
52           officer or other person designated by the justice or judge  
              may take the person into custody and transport the person to

2           the approved detoxification facility designated in the  
3           application.

4           B. If the person is unable to pay, the county where the  
5           person is a legal resident is responsible for any expenses  
6           of transportation under this section, including return from  
7           the approved detoxification facility if admission is  
8           declined. If a person is not a resident of the State or if  
9           the county of residence cannot be determined, the expenses  
10           of transportation are the responsibility of the office.

12           5. Continuation of emergency treatment. If the  
13           administrator of the approved detoxification facility recommends  
14           further treatment, the administrator shall determine the  
15           suitability of admission, care and treatment of the patient as a  
16           voluntarily admitted patient, as described in section 20044.

18           A. If the administrator or the admitting physician of the  
19           approved detoxification facility determines that admission  
20           of the person as a voluntarily admitted patient is suitable,  
21           the administrator or physician may admit the person on this  
22           basis, if the person so desires.

24           B. If the administrator or the admitting physician of the  
25           approved detoxification facility determines that admission  
26           of the person as a voluntarily admitted patient is not  
27           suitable, or if the person declines admission as a  
28           voluntarily admitted patient, the administrator of the  
29           approved detoxification facility may file an application for  
30           the issuance of an order of involuntary emergency treatment  
31           under section 20046-C.

32                   (1) The application must be made to the District Court  
33                   having territorial jurisdiction over the approved  
34                   detoxification facility.

35                   (2) The application must be filed within 5 days from  
36                   the admission of the patient under this section,  
37                   excluding the day of admission and any Saturday, Sunday  
38                   or legal holiday.

39           C. If neither readmission nor application to the District  
40           Court is effected under this subsection, the administrator  
41           of the approved detoxification facility shall discharge the  
42           person immediately.

43           6. Notice. Upon admission of a person under this section,  
44           and after obtaining the person's permission, the administrator of  
45           the approved detoxification facility shall mail notice of the  
46           fact of admission to: the person's guardian, if applicable,  
47           spouse, parent, adult child, or a next of kin or friend if none  
48           of the listed persons exists.  
49  
50  
51  
52



2           7. Post-admission examination. Every patient admitted to  
4 an approved detoxification facility must be examined immediately  
after admission.

6           A. The administrator of the approved detoxification  
8 facility shall arrange for examination by a staff physician  
of every patient admitted under this section.

10          B. The examiner may not be the certifying examiner under  
12 this section or under section 20046-C.

14          C. If the post-admission examination is not held within 24  
16 hours after the time of admission, or if a staff physician  
18 fails or refuses after the examination to certify that, in  
20 the physician's opinion, the person is a chemically  
dependent person who poses a likelihood of serious and  
imminent self-harm, the person must be immediately  
discharged.

22        §20046-B. Habeas corpus; prohibited acts; penalty

24           1. Habeas corpus. Any person detained pursuant to this  
26 chapter is entitled to the writ of habeas corpus, upon proper  
28 petition, by that person or by a friend, to any justice generally  
empowered to issue the writ of habeas corpus in the county in  
which the person is detained.

30           2. Unwarranted emergency treatment. A person is guilty of  
32 causing an unwarranted emergency treatment if that person  
willfully causes the unwarranted involuntary emergency treatment  
of a chemically dependent person.

34           3. Denial of rights. A person is guilty of causing a  
36 denial of rights if that person willfully causes the denial to  
any person of any rights accorded by this chapter.

38           4. Penalty. Causing unwarranted emergency treatment or  
40 causing a denial of rights is a Class C crime.

42        §20046-C. Judicial procedure and involuntary emergency treatment

44           1. Application. An application to the District Court to  
46 admit a person to an approved treatment facility or approved  
detoxification facility under section 20046-A, subsection 5,  
paragraph B, must be accompanied by:

48           A. The emergency application under section 20046-A,  
50 subsection 1;

52           B. The accompanying certificate of the physician under  
section 20046-A, subsection 2; and

2 C. The certificate of the physician under section 20046-A,  
3 subsection 7, that the physician:

4 (1) Has examined the patient; and

6 (2) Is of the opinion that the patient is a chemically  
8 dependent person who poses a likelihood of serious and  
10 imminent self-harm.

12 2. Detention pending judicial determination.

13 Notwithstanding any other provision of this subchapter, no  
14 person, with respect to whom proceedings for treatment pursuant  
15 to section 20046-A have been commenced, may be released or  
16 discharged during the pendency of the proceedings, unless:

17 A. The District Court orders release or discharge upon the  
18 application of the patient or the patient's guardian,  
19 parent, spouse or next of kin;

20 B. The District Court orders release or discharge upon the  
21 report of the administrator of the detoxification facility  
22 that the person may be discharged with safety; or

23 C. A court orders release or discharge upon a writ of  
24 habeas corpus under section 20046-B.

25 3. Notice of receipt of application. Notice of receipt of  
26 application under this section is governed as follows.

27 A. Upon receipt by the District Court of the application  
28 and accompanying documents specified in subsection 1, the  
29 court shall cause written notice of the application:

30 (1) To be given personally or by mail to the person  
31 within a reasonable time before the hearing, but not  
32 less than 3 days before the hearing; and

33 (2) To be mailed to the person's guardian, if known,  
34 and to the person's spouse, parent or an adult child,  
35 or if none of these persons exist or if none of them  
36 can be located, to the next of kin or a friend.

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

39 4. Examination. Examinations under this section are  
40 governed as follows.

41 A. Upon receipt by the District Court of the application  
42 and the accompanying documents specified in subsection 1,

2 the court shall immediately cause the person to be examined  
3 by 2 examiners.

4 (1) Each examiner must be a licensed physician.

6 (2) One of the examiners must be a physician chosen by  
7 the person or by the person's counsel, if the chosen  
8 physician is reasonably available.

10 (3) Neither examiner appointed by the court may be the  
11 certifying examiner under section 20046-A, subsection 2  
12 or 7.

14 B. The examination must be held at the approved treatment  
15 facility or approved detoxification facility or at any other  
16 suitable place not likely to have a harmful effect on the  
17 health of the person.

18 C. If the report of the examiners is to the effect that the  
19 person is not chemically dependent or does not pose a  
20 likelihood of serious or imminent self-harm, the application  
21 must be ordered discharged immediately.

24 D. If the report of the examiners is to the effect that the  
25 person is a chemically dependent person who poses a  
26 likelihood of serious and imminent self-harm, the hearing  
27 must be held on the date, or on the continued date, that the  
28 court has set for the hearing.

30 5. Hearing. Hearings under this section are governed as  
31 follows.

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

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

40 (2) If the hearing is not held within the time  
41 specified, or within the specified continuance period,  
42 the court shall dismiss the application and order the  
43 person discharged immediately.

44 (3) In computing the time periods set forth in this  
45 paragraph, the Maine Rules of Civil Procedure apply.

48 B. The hearing must be conducted in as informal a manner as  
49 may be consistent with orderly procedure and in a physical  
50 setting not likely to have harmful effect on the health of  
51 the person.

2 C. The court shall receive all relevant and material  
4 evidence that may be offered in accordance with accepted  
rules of evidence and accepted judicial dispositions.

6 (1) The person, the applicant and all other persons to  
8 whom notice is required to be sent must be afforded an  
opportunity to appear at the hearing to testify and to  
present and cross-examine witnesses.

10 (2) The court may, in its discretion, receive the  
12 testimony of any other person and may subpoena any  
14 witness.

16 D. The person must be afforded an opportunity to be  
represented by counsel, and, if neither the person nor  
18 others provide counsel, the court shall appoint counsel for  
the person.

20 E. In addition to proving that the patient is a chemically  
22 dependent person who poses a likelihood of serious and  
imminent self-harm, the applicant must show:

24 (1) By evidence of the patient's actions and behavior,  
26 that the patient poses a likelihood of serious  
self-harm; and

28 (2) That, after full consideration of less restrictive  
30 treatment settings and modalities, inpatient treatment  
is the best available means for the treatment of the  
32 person.

34 F. In each case, the applicant shall submit to the court,  
at the time of the hearing, testimony indicating the  
36 individual treatment plan to be followed by the approved  
treatment facility staff, if the person is admitted under  
38 this section, and shall bear any expense for witnesses for  
this purpose.

40 G. A stenographic or electronic record must be made of the  
42 proceedings in all judicial involuntary treatment hearings.

44 (1) The record and all notes, exhibits and other  
evidence are confidential.

46 (2) The record and all notes, exhibits and other  
48 evidence must be retained as part of the District Court  
records for a period of 2 years from the date of the  
50 hearing.

52 H. Unless the court orders a public hearing on the request  
of the person or counsel, the hearing is confidential and no

2 report of the proceedings may be released to the public or  
3 press, except by permission of the person or counsel and  
4 with approval of the presiding District Court judge.

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

8 A. If the District Court makes the following findings upon  
9 completion of the hearing and consideration of the record,  
10 it shall include in the record a statement including:

12 (1) That by clear and convincing evidence the person  
13 is chemically dependent and that recent actions and  
14 behavior demonstrate that the person is a chemically  
15 dependent person who poses a likelihood of serious and  
16 imminent self-harm;

18 (2) That inpatient treatment is the best available  
19 means for treatment of the patient; and

20 (3) That it is satisfied with the individual treatment  
21 plan offered by the approved treatment facility or  
22 approved detoxification facility.

24 B. If the District Court makes the findings described in  
25 paragraph A, subparagraphs 1 and 2, but is not satisfied  
26 with the individual treatment plan as offered, it may  
27 continue the case for not longer than 10 days, pending  
28 reconsideration and resubmission of an individual treatment  
29 plan.

32 7. Involuntary treatment. Upon making the findings  
33 described in subsection 6, the court may order involuntary  
34 inpatient treatment at any approved public or private treatment  
35 facility or any approved public or private detoxification  
36 facility for a period not to exceed 60 days in the first  
37 instance, and not to exceed 120 days after the first and all  
38 subsequent hearings.

40 A. The court may issue an order of involuntary treatment  
41 after the completion of the hearing, or it may take the  
42 matter under advisement and issue an order within 24 hours  
43 of the hearing.

44 B. If the court does not issue an order of involuntary  
45 treatment within 24 hours of completion of the hearing, it  
46 shall dismiss the application and order the patient  
47 discharged immediately.

50 8. Continued involuntary treatment. If the administrator  
51 or the admitting physician of the approved treatment facility or  
52 approved detoxification facility determines that continued

2 involuntary treatment is necessary for a person who has been  
3 ordered by the District Court to receive such treatment, that  
4 person shall, not later than 30 days prior to the expiration of a  
5 period of commitment ordered by the court, apply to the District  
6 Court that has territorial jurisdiction over the treatment  
7 facility for a hearing to be held under this section.

8 9. Transportation. Unless otherwise directed by the court,  
9 the sheriff of the county in which the District Court has  
10 jurisdiction and in which the hearing takes place shall provide  
11 transportation to any facility to which the court has committed  
12 the person.

13 10. Expenses. With the exception of expenses incurred by  
14 the applicant pursuant to subsection 5, paragraph F, the District  
15 Court is responsible for any expenses incurred under this  
16 section, including fees of appointed counsel, witness and notice  
17 fees and expenses of transportation for the person.

18 11. Appeals. A person ordered by the District Court to be  
19 committed to a treatment facility may appeal from that order to  
20 the Superior Court.

21 A. The appeal is on questions of law only.

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

24 C. The order of the District Court remains in effect  
25 pending the appeal.

26 D. The Maine Rules of Civil Procedure apply to the conduct  
27 of the appeals, except as otherwise specified in this  
28 subsection.

29 Sec. 27. 5 MRSA §20049, as enacted by PL 1989, c. 934, Pt. A,  
30 §3, is repealed.

31 Sec. 28. 5 MRSA §20050, sub-§1, as enacted by PL 1989, c. 934,  
32 Pt. A, §3, is amended to read:

33 1. Payment. If treatment is provided by an approved public  
34 treatment facility and the patient has not paid the charge for  
35 that treatment, the treatment facility is entitled to any payment  
36 received by the patient or to which the patient may be entitled  
37 because of the services rendered, and from any public or private  
38 source available to the treatment facility because of the  
39 treatment provided to the patient.

40 Sec. 29. 5 MRSA §20061, sub-§3, ¶¶B and C, as enacted by PL  
41 1989, c. 934, Pt. A, §3, are amended to read:

2 B. At least 4 members must be officials of public or  
4 private nonprofit community-level agencies who are actively  
6 engaged in drug abuse prevention or treatment in those  
public or private nonprofit community agencies ~~or members of~~  
~~the regional alcohol and drug abuse councils located~~  
8 ~~throughout the State.~~

10 C. Five members must be the ~~executive directors~~ presidents,  
or their designees, of the 5 regional alcohol and drug abuse  
12 councils located throughout the State.

14 **Sec. 30. 5 MRSA §20063, sub-§3,** as enacted by PL 1989, c. 934,  
Pt. A, §3, is amended to read:

16 **3. Serve as advisory council.** The council shall serve as  
18 the advisory council on behalf of the State to the state agencies  
as required by the federal regulations governing administration  
20 of the Drug Abuse Office and Treatment Act of 1972, 21 United  
States Code, Section 1101 et seq. (1982), as amended; and the  
22 federal Comprehensive Alcohol Abuse and Alcoholism Prevention,  
Treatment and Rehabilitation Act of 1970, Public Law 91-616  
24 (1982), as amended; and other Acts of the United States as  
appropriate. The council shall advise on state and federal  
26 plans, policies, programs and other activities relating to drug  
abuse and drug dependence in the State. The council shall submit  
its recommendations and comments on the state plan, and any plan  
28 revisions, and reports to federal or state agencies and to the  
Legislature. Statements at variance with or in addition to those  
30 of the office must be attached to the plan or reports upon  
submission by the office to agencies of the Federal Government,  
32 to the Legislature and to state agencies.

34 **Sec. 31. 5 MRSA §20063, sub-§7** is enacted to read:

36 **7. Report.** By February 1, 1992, and each year thereafter  
the council shall present a report to the Governor, the  
38 Legislature, the Judicial Council, and the director assessing the  
State's substance abuse services, describing the activities of  
40 the council and its recommendations.

42 **Sec. 32. 22 MRSA c. 1602, sub-c. II-A,** as amended, is repealed.

44 **Sec. 33. Transition.** Employees of the Office of Alcohol and  
46 Drug Abuse Prevention who are transferred to the Office of  
Substance Abuse are subject to the provisions of this section.

48 1. The employees retain their accrued fringe benefits,  
including vacation and sick leave, health and life insurance and  
50 retirement benefits.

