

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1716

H.P. 1175

House of Representatives, April 25, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

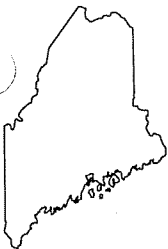
Presented by Representative MITCHELL of Vassalboro.

Cosponsored by Senator GAUVREAU of Androscoggin and Representative COTE of Auburn.

STATE OF MAINE

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

An Act to Allow Guardians to Hospitalize Wards.



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

2
3 Sec. 1. 18-A MRSA §5-312, sub-§(a), ¶(1), as amended by PL 1985,
4 c. 440, §§6 and 13, is further amended to read:

6 (1) To the extent that it is consistent with the terms of
7 any order by a court of competent jurisdiction relating to
8 detention or commitment of the ward, he the guardian is
9 entitled to custody of the person of his the ward and may
10 establish the ward's place of abode within or without this
11 State, and may place the ward in any hospital or other
12 institution for care ~~in--the--same--manner~~ as otherwise
13 provided by law.

14 Sec. 2. 34-B MRSA §3863-A is enacted to read:

16 §3863-A. Involuntary admission of adults under guardianship

18 1. Conditions for involuntary commitment. An adult ward
19 may be admitted to a mental hospital and may continue to be
20 hospitalized on an involuntary basis without judicial review and
21 commitment under sections 3863 and 3864 if:

24 A. The guardian consents to the admission of the adult
25 ward; and

26 B. A health officer, law enforcement officer or another
27 person makes a written application to admit the adult ward
28 to a mental hospital, subject to the prohibitions and
29 penalties of section 3805 or an application has been made by
30 the guardian stating:

32 (1) The guardian's belief that the adult ward is
33 mentally ill and because of the illness poses a
34 likelihood of serious harm; and

35 (2) The grounds for this belief.

38 2. Certifying examination. The written application must be
39 accompanied by a dated certificate, signed by a licensed
40 physician or a licensed clinical psychologist stating that:

41 A. The physician or psychologist examined the person on the
42 date of the certificate, which date may not be more than 3
43 days before the date of admission to the hospital; and

44 B. It is the opinion of the physician or psychologist that
45 the adult ward is mentally ill and because of the illness
46 poses a likelihood of serious harm.

2 3. Approval by hospital. The chief administrative officer
of the hospital must determine that the admission of the adult
ward as informally admitted is suitable.

4 4. Postadmission examination. The adult ward must be
6 examined by a staff physician or licensed clinical psychologist
within 24 hours of the time of admission.

8
10 If the postadmission examination is not held within 24 hours
12 after the time of admission or if a staff physician or licensed
14 clinical psychologist fails or refuses after the examination to
16 certify that the person is mentally ill and due to the mental
illness poses a likelihood of serious harm, the person must be
immediately discharged unless the person meets the criteria for
informal voluntary admission.

18 5. Periodic reexamination. The adult ward must be
reexamined by 2 examiners every 4 months from the date of the
involuntary admission.

20 A. The examiners must be licensed physicians or licensed
22 clinical psychologists at least one of whom is not employed
24 by the hospital.

26 B. The adult ward, if capable of doing so, or the adult
28 ward's counsel, if any, may select one of the examiners as
long as the chosen physician or psychologist is reasonably
available.

30 C. The examination must be held at the hospital or at any
32 other suitable place not likely to have a harmful effect on
the mental health of the adult ward.

34 D. If the examiners conclude that the adult ward is not
36 mentally ill or does not pose a likelihood of serious harm,
the ward must be ordered discharged unless the ward meets
the criteria for informal voluntary admission.

38 E. If the examiners conclude that the adult ward is
40 mentally ill or poses a likelihood of serious harm, the
42 adult ward may be hospitalized as an involuntary patient for
an additional 4 months.

44 Sec. 3. 34-B MRSA §3870, sub-§3, as enacted by PL 1983, c.
46 459, §7, is amended to read:

48 3. Discharge. Discharge from convalescent status is
governed as follows.

50 A. If the chief administrative officer of the state mental
52 health institute determines that, in view of the condition
of the patient, convalescent status is no longer necessary,

2 he the chief administrative officer shall discharge the
patient and make a report of the discharge to the
4 commissioner.

6 B. The chief administrative officer shall terminate the
convalescent status of a voluntary patient within 10 days
8 after the day he the chief administrative officer receives
from the guardian or the patient a request for discharge
10 from convalescent status.

12 **Sec. 4. 34-B MRSA §3870, sub-§4**, as amended by PL 1987, c.
736, §54, is further amended to read:

14 **4. Rehospitalization.** Rehospitalization of patients under
this section is governed as follows.

16 A. If, prior to discharge, there is reason to believe that
18 it is in the best interest of an ~~involuntarily-committed~~
involuntary patient, admitted under section 3863-A or 3864,
20 on convalescent status to be rehospitalized, the
22 commissioner or the chief administrative officer of the
state mental health institute may issue an order for the
immediate rehospitalization of the patient.

24 B. If the order is not voluntarily complied with, and if
26 the order is endorsed by a District Court Judge or justice
of the peace in the county in which the patient has his
28 legal residence or is present, or, in the case of an adult
ward, is endorsed by the guardian, any health officer or
30 police officer may take the patient into custody and
transport ~~him~~ the patient to:

32 (1) The state mental health institute, if the order is
34 issued by the chief administrative officer of the state
mental health institute; or

36 (2) A hospital designated by the commissioner, if the
38 order is issued by the commissioner.

40 **Sec. 5. 34-B MRSA §3870, sub-§5**, as enacted by PL 1983, c.
459, §7, is amended to read:

42 **5. Notice of change of status.** Notice of the change of
44 convalescent status of patients is governed as follows.

46 A. If the convalescent status of a patient in a state
48 mental health institute is to be changed, either because of
a decision of the chief administrative officer of the state
50 mental health institute or because of a request made by the
guardian of an adult ward, or by a voluntary patient, the
52 chief administrative officer of the state mental health
institute shall immediately make a good faith attempt to

2 notify, by telephone, personal communication or letter, of
the contemplated change:

4 (1) The parent or guardian of a minor patient;

6 (2) The guardian of an adult incompetent patient, if
any is known; or

8 (3) The spouse or adult next of kin of an adult
10 competent patient, unless the patient requests in
writing that the notice not be given.

12
14 B. If the change in convalescent status is due to the
request of the guardian for an adult ward or a voluntary
16 patient, the chief administrative officer of the state
mental health institute shall give the required notice
18 within 10 days after the day he the chief administrative
officer receives the request.

20 C. The state mental health institute is not liable when
22 good faith attempts to notify parents, spouse or guardian
have failed.

24 **Sec. 6. 34-B MRSA §3871, sub-§§1 and 3**, as enacted by PL 1983,
c. 459, §7, are amended to read:

26
28 **1. Examinations.** The Except as required by sections 3863-A
and 3864, the chief administrative officer of a state mental
30 health institute shall, as often as practicable, but no less
often than every 12 months, examine or cause to be examined every
32 patient to determine his the patient's mental status and need for
continuing hospitalization.

34 **3. Discharge against medical advice.** The chief
36 administrative officer of a state mental health institute may
discharge, or cause to be discharged, any patient even though the
38 patient is mentally ill and appropriately hospitalized in the
state mental health institute, if:

40 A. The guardian of an adult patient, or if none, the
42 patient and either the guardian, spouse or adult next of kin
of the patient request his the discharge; and

44 B. In the opinion of the chief administrative officer of
46 the hospital, the patient does not pose a likelihood of
serious harm due to his the mental illness.

2

STATEMENT OF FACT

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This bill establishes a procedure for guardians to hospitalize their wards involuntarily without commitment proceedings in District Court.

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