

# MAINE STATE LEGISLATURE

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# 116th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1993

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Legislative Document

No. 733

S.P. 240

In Senate, March 2, 1993

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**An Act to Amend the Laws Governing Protective Custody.**

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Reference to the Joint Select Committee on Corrections 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 CLEVELAND of Androscoggin.

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

2  
4 Sec. 1. 34-B MRSA §3862, sub-§2, as enacted by PL 1983, c. 459, §7, is amended to read:

6 2. **Certificate not executed.** If a certificate relating to  
8 the person's likelihood of serious harm is not executed by the  
10 examiner under section 3863, the examiner shall notify the law  
enforcement officer who applied for the person's admission or, in  
the event that the officer is unavailable, shall notify the law  
enforcement officer's department and an officer shall:

12 A. Release the person from protective custody and, with ~~his~~  
14 that person's permission, return ~~him~~ that person forthwith  
16 to ~~his~~ that person's place of residence, if within the  
territorial jurisdiction of the officer;

18 B. Release the person from protective custody and, with ~~his~~  
20 that person's permission, return ~~him~~ that person forthwith  
22 to the place where he that person was taken into protective  
custody; or

24 C. If the person is also under arrest for a violation of  
26 law, retain ~~him~~ that person in custody until he that person  
is released in accordance with the law.

28 Sec. 2. 34-B MRSA §3863, sub-§2-A is enacted to read:

30 2-A. Limitation on law enforcement officer's  
32 responsibilities. Notwithstanding subsection 2, a law  
34 enforcement officer's responsibilities for the person taken into  
36 protective custody are completed once the officer has submitted  
38 the application under subsection 1.

40 A. The mental hospital has custody and responsibility for  
42 providing the certificate required by subsection 2 and  
44 securing judicial review pursuant to subsection 3.

46 B. If no certification is issued pursuant to subsection 2,  
48 the mental hospital personnel shall recall the officer  
50 pursuant to section 3862, subsection 2.

Sec. 3. 34-B MRSA §3863, sub-§3, ¶B, as enacted by PL 1983, c.  
459, §7, is amended to read:

B. No person may be held against ~~his~~ that person's will in  
the hospital under this section, whether informally admitted  
under section 3831 or sought to be involuntarily admitted  
under this section, unless the application and certificate  
have been endorsed by a judge or justice, except that a  
person for whom an examiner has executed the certificate

2 under subsection 2 may be detained in a hospital for a  
reasonable period of time, not to exceed 18 hours, pending  
endorsement by a judge or justice, if:

4  
6 (1) For a person informally admitted under section  
3831 or a person delivered to the hospital by a law  
8 enforcement officer in protective custody under section  
10 3862, the chief administrative officer of the hospital  
undertakes to secure the endorsement forthwith upon  
execution of the certificate by the examiner; and

12 (2) For a person sought to be involuntarily admitted  
14 under this section, the person or persons transporting  
him the person sought to be involuntarily admitted to  
16 the hospital exclusive of law enforcement officers  
undertake to secure the endorsement forthwith upon  
18 execution of the certificate by the examiner.

### 20 STATEMENT OF FACT

22 Currently, if a law enforcement officer takes a person into  
24 protective custody, the officer is required to remain with the  
person at the mental health facility awaiting examination, often  
26 for long periods of time. This bill transfers responsibility for  
a person in protective custody to the hospital once the law  
enforcement officer has completed an application for emergency  
28 admission, without awaiting a certifying examination, freeing the  
officer to return to duty. If the person in custody is not  
30 certified for admission, the officer may be recalled to transport  
the person for legal custody, if the person is under arrest, or  
32 for release.