

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 947

S.P. 314

In Senate, March 18, 1993

An Act to Expand the Rights of People with Mental Illness or Mental Retardation.

(EMERGENCY)

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BALDACCI of Penobscot.
Cosponsored by Senator: FOSTER of Hancock.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Department of Mental Health and Mental Retardation is pursuing a policy of deinstitutionalization; and

Whereas, in order to decrease the census of state facilities, more people are being discharged and fewer people are being admitted; and

Whereas, community resources are not adequately developed to serve all of the people being discharged from state facilities; and

Whereas, some people are being discharged against their wishes; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 34-B MRSA §1430-A is enacted to read:

§1430-A. Consent to discharge

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Informed consent" means signed consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

B. "Resident" means a resident or patient at a State facility.

C. "State facility" means the Augusta Mental Health Institute, the Bangor Mental Health Institute or Pineland Center.

2. Consent required. Notwithstanding sections 3863, 3868, 3870, 3871, 3872, 5479 and 5480, a resident may not be discharged

2 from a state facility unless the resident provides informed
4 consent to the discharge. If the resident is not able to provide
6 informed consent, the resident may not be discharged unless
8 informed consent is provided by the resident's guardian, or, if
10 the resident has no guardian, by the first of the following
12 persons whose whereabouts is known:

8 A. The resident's spouse;

10 B. The resident's adult child;

12 C. The resident's parent; or

14 D. A relative or friend of the resident.

16 **Sec. 2. Admission policy.** The Commissioner of Mental Health
18 and Mental Retardation shall review applications for admissions
20 made to the Augusta Mental Health Institute, the Bangor Mental
22 Health Institute and Pineland Center during calendar year 1992
24 and determine whether admission policies at those facilities need
26 revision to ensure that applicants who need services from those
28 facilities are admitted. The commissioner shall complete the
review required under this section and revise policies
accordingly by July 1, 1993. The commissioner shall submit a
report regarding action taken under this section to the Joint
Standing Committee on Human Resources by July 15, 1993. A copy
of the report must be submitted to the Executive Director of the
Legislative Council.

30 **Sec. 3. Moratorium on deinstitutionalization.** It is the intent
32 of the Legislature that the Department of Mental Health and
34 Mental Retardation cease its policy of reducing the number of
36 persons residing at the Augusta Mental Health Institute, the
38 Bangor Mental Health Institute and Pineland Center until the
Commissioner of Mental Health and Mental Retardation determines
that adequate resources have been developed in community settings
to meet fully the needs of the people who would be discharged.
When the commissioner makes that finding, the commissioner shall
inform the Joint Standing Committee on Human Resources in writing.

40 **Emergency clause.** In view of the emergency cited in the
42 preamble, this Act takes effect when approved.

44 **STATEMENT OF FACT**

46 This bill requires the Department of Mental Health and
48 Mental Retardation to obtain informed consent from residents
before discharging them from the Augusta Mental Health Institute,
the Bangor Mental Health Institute or Pineland Center. If a

2 resident is not able to give informed consent, it must be
obtained from the guardian, a family member or a friend.

4 The bill also requires the Commissioner of Mental Health and
6 Mental Retardation to examine admission policies at the state
institutions and amend them, if necessary, to ensure that people
8 who need institutional services are not refused admission. The
bill also declares the Legislature's intent to cease the policy
10 of deinstitutionalization until the Commissioner of Mental Health
and Mental Retardation determines that adequate community
12 resources have been developed.