

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1507

H.P. 1072

House of Representatives, May 9, 1995

**An Act to Prevent the Use of Correctional Facilities for the Detention of
the Mentally Ill.**

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative FITZPATRICK of Durham.
Cosponsored by Representatives: BRENNAN of Portland, DORE of Auburn, JONES of Bar
Harbor.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §2211-A**, as amended by PL 1987, c. 402, Pt.
A, §112, is repealed and the following enacted in its place:

6 **§2211-A. Persons confined; hospitalization for mental illness**

8 **1. Prohibition.** A person may not be detained or confined
as a result of serious mental illness in any jail, prison or
10 other detention or correctional facility unless that person is
under arrest for commission of a crime.

12 **2. Application for hospitalization required.** A warden,
14 sheriff or other person responsible for any state, county or
local detention or correctional facility who believes that a
16 person confined in that facility is mentally ill and requires
hospitalization shall apply, in writing, for the admission of
18 that person to either state hospital for the mentally ill, giving
the reasons for requesting the admission. The application and
20 certification must be in accordance with the requirements of
Title 34-B, section 3863.

22 **3. Terms of admission.** A person with respect to whom an
24 application and certification are made may be admitted to either
state hospital for the mentally ill. Except as otherwise
26 specifically provided in this section, Title 34-B, chapter 3,
subchapter IV, articles I and III, except section 3868, are
28 applicable to a person admitted under this section as if the
admission were applied for under Title 34-B, section 3863.

30 **4. No effect on sentence; jurisdiction retained.**
32 Admission of a person to a hospital under this section has no
effect on a sentence then being served, on an existing commitment
34 on civil process or on detention pending any stage of a criminal
proceeding in which that person is the defendant, and the court
36 having jurisdiction retains it. The sentence continues to run and
any commitment or detention remains in force, unless terminated
38 in accordance with law.

40 **5. Disposition of application and certification.** A copy of
the document by which a person is held in confinement, attested
42 by the warden, sheriff or jail keeper, must accompany the
application for admission. Following that person's admission to a
44 state hospital for the mentally ill under this section, a copy of
the application and certification similarly attested must be
46 filed with the court having jurisdiction over any case, civil or
criminal, in which that person is the defendant. The clerk of the
48 court, when a criminal proceeding is pending against the person
admitted, shall forward a copy of the application and

2 certification to the attorney for the defendant and the attorney
3 for the State.

4 6. Discharge from hospital. If the sentence being served
5 at the time of admission has not expired or commitment on civil
6 process or detention has not been terminated in accordance with
7 law at the time the person is ready for discharge from
8 hospitalization, that person must be returned by the warden or
9 the sheriff of the county from which the person was admitted, or
10 a deputy, to the facility from which the person was admitted.

12 7. Transportation expenses. All expenses incident to
13 transportation of a person between the hospital and the
14 correctional facility under this section must be paid from the
15 treasury of the county where the incarceration originated.

16 8. Competency hearing. Admission to a hospital under this
17 section may not be used to effect the examination or observation
18 of a person for the purpose of a criminal proceeding pending in
19 either the District Court or the Superior Court. Before the trial
20 of a defendant admitted for hospitalization under this section,
21 the Superior Court may, at any time upon motion of the
22 defendant's attorney or the attorney for the State or upon the
23 court's own motion, hold a hearing with respect to the competence
24 of that person to stand trial as provided in section 101-B and
25 appropriate disposition may be made. The court's order following
26 a hearing may terminate an admission effected under this section.

28 9. Alternative; voluntary commitment. A person confined in
29 a county jail, when hospitalization is recommended by a licensed
30 physician or licensed psychologist, must be allowed to apply for
31 informal admission to a state hospital for the mentally ill under
32 Title 34-B, sections 3831 and 3832, in which case all other
33 provisions of this section as to notice of status as an inmate of
34 a county jail, notice to the court and counsel, transportation
35 and expenses and the continuation and termination of sentence,
36 commitment or detention, apply. Except as otherwise provided in
37 this section, the provisions of law applicable to persons
38 admitted to a state hospital for the mentally ill under Title
39 34-B, sections 3831 and 3832 apply to a person confined and
40 admitted to a state hospital for the mentally ill under those
41 sections.

44 **Sec. 2. 34-A MRSA §1210, sub-§9** is enacted to read:

46 9. Mental health committees. Each community correctional
47 center in the State shall create a standing mental health
48 committee to regularly plan and communicate about the needs of
49 persons with serious mental illness who come into contact with
50 the correctional system. These committees must include a

2 representative of the local jail, a representative of the local
3 community mental health center or alternative service provider, a
4 representative from a local public psychiatric inpatient unit or
5 facility, a representative of local families and other advocates
6 and representatives of the local mental health service delivery
7 system as appropriate to that community.

8 **Sec. 3. 34-B MRSA §1219** is enacted to read:

10 **§1219. State strategy for preventing imprisonment of persons**
11 **with serious mental illness**

12
13 **1. Development of state strategy.** The Department of Mental
14 Health and Mental Retardation shall develop a comprehensive state
15 strategy for preventing the incarceration of seriously mentally
16 ill individuals and for diverting those individuals away from the
17 criminal justice system. This strategy must be developed with
18 the active participation of other agencies and providers
19 responsible for serving persons with serious mental illness,
20 including: the Department of Human Services; the Department of
21 Corrections; the Department of Human Services, Bureau of
22 Vocational Rehabilitation and Bureau of Medical Services; and
23 representatives of community mental health centers, area
24 shelters, other community providers and consumers of services and
25 their families.

26
27 **2. Components of strategy.** The state strategy developed
28 under subsection 1 must include, but is not limited to:

29
30 **A. Identification of existing programs or creation of jail**
31 diversion programs to serve seriously mentally ill
32 individuals who have been charged with misdemeanors or minor
33 crimes that are a manifestation of their illness, including
34 identification of financing mechanisms for these services;

35
36 **B. Systems for evaluating individuals charged with**
37 misdemeanors or minor crimes for serious mental illness
38 within 24 hours of contact with the criminal justice system
39 and placing those individuals identified as seriously
40 mentally ill in appropriate community-based jail diversion
41 programs on a timely basis;

42
43 **C. Specific mechanisms for enabling police and correctional**
44 officers to communicate and consult on a timely basis with
45 appropriate mental health personnel about specific cases;

46
47 **D. Plans for conducting training, in conjunction with the**
48 Department of Corrections, of law enforcement and
49 correctional personnel about serious mental illness and

2 effective methods for evaluating, treating and managing
3 individuals with these disorders.

4 E. Plans for training mental health professionals who
5 participate in state-funded, educational training programs
6 to work with seriously mentally ill individuals in
7 correctional facilities, which training must include on-site
8 field experience in correctional facilities or jail
9 diversion programs; and

10 F. Plans for providing comprehensive treatment, services
11 and support to all individuals with serious mental illness
12 following their release from correctional facilities.

13 **Sec. 4. 34-B MRSA §3604, sub-§4** is enacted to read:

14 **4. Cooperative planning required; grant recipients and**
15 **correctional authorities.** As a condition for receipt of state
16 mental health funding, community mental health centers and other
17 public providers of comprehensive services to persons with
18 serious mental illness shall document the existence of a
19 cooperative plan with local correctional facilities, police
20 departments and correctional authorities. This plan must include
21 at least the following:

22 A. Procedures for timely referrals of seriously mentally
23 ill individuals to community-based jail diversion programs;

24 B. Commitment of resources for the provision of treatment
25 and support to seriously mentally ill individuals in
26 correctional facilities;

27 C. Procedures for referrals of individuals with serious
28 mental illness to local providers of comprehensive mental
29 health services following release from jails, including
30 mechanisms for developing comprehensive treatment plans
31 before the release of individuals with serious mental
32 illness from correctional facilities; and

33 D. Commitment of financial resources to provide for the
34 comprehensive treatment and service needs of individuals
35 with serious mental illness who come into contact with
36 correctional systems.

37 Community mental health centers and other public providers of
38 comprehensive services to persons with serious mental illness
39 that fail to participate in the development of plans or to commit
40 resources to serving this population are not eligible for state
41 funding for the provision of mental health services.

2

STATEMENT OF FACT

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6 This bill enacts a number of provisions to promote
appropriate treatment for seriously mentally ill individuals who
8 come in contact with the criminal justice system, specifically
with the correctional system.

10 1. It prohibits the detention of mentally ill individuals
in correctional facilities unless they have been formally charged
12 with a crime.

14 2. It requires hospitalization for treatment for seriously
mentally ill individuals who are incarcerated and establishes
16 procedures for hospitalization and release.

18 3. It requires all community correctional facilities to
establish committees to address the needs of mentally ill
20 individuals in their facilities.

22 4. It requires the Department of Mental Health and Mental
Retardation, in cooperation with other agencies, to develop a
24 strategy for diverting seriously mentally ill individuals from
the correctional system.

26

28 5. It requires community providers of mental health
services, as a condition of receiving state grants, to develop
cooperative plans with local correctional facilities and law
30 enforcement authorities to serve the needs of the mentally ill
individuals they serve.