

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1526

H.P. 1084

House of Representatives, May 16, 1995

**An Act to Allow Involuntary Commitments at Hospitals under Contract
with the Department of Mental Health and Mental Retardation.**

Reference to the Committee on Judiciary suggested and ordered printed.

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

JOSEPH W. MAYO, Clerk

Presented by Representative DORE of Auburn. (GOVERNOR'S BILL)
Cosponsored by Representatives: DONNELLY of Presque Isle, FITZPATRICK of Durham,
Senators: McCORMICK of Kennebec, PENDEXTER of Cumberland.

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

2
4 **Sec. 1. 34-B MRSA §3801, sub-§1-A** is enacted to read:

6 **1-A. Designated nonstate mental health institution.**

8 "Designated nonstate mental health institution" means a nonstate mental health institution that is under contract with the department for receipt by the hospital of involuntary patients.

10 **Sec. 2. 34-B MRSA §3863, sub-§5**, as enacted by PL 1983, c. 459, §7, is amended to read:

12 **5. Continuation of hospitalization.** If the chief administrative officer of the hospital recommends further hospitalization of the person, he the chief administrative officer shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient, as described in section 3831.

20 A. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is suitable, he the chief administrative officer shall admit the person on this basis, if the person so desires.

26 B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may file seek involuntary commitment of the patient by filing an application for the issuance of an order for hospitalization under section 3864, except that if the hospital is a designated nonstate mental health institution and if the patient was admitted under the contract between the hospital and the department for receipt by the hospital of involuntary patients, then the chief administrative officer may seek involuntary commitment only by requesting the commission to file an application for the issuance of an order for hospitalization under section 3864.

42 (1) The application shall must be made to the District Court having territorial jurisdiction over the hospital to which the person was admitted on an emergency basis.

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

2 C. If neither readmission nor application to the District
3 Court is effected under this subsection, the chief
4 administrative officer of the hospital to which the person
5 was admitted on an emergency basis shall discharge the
6 person ~~forthwith~~ immediately.

8 **Sec. 3. 34-B MRSA §3864, sub-§2**, as enacted by PL 1983, c.
9 459, §7, is amended to read:

10 **2. Detention pending judicial determination.**
11 Notwithstanding any other provisions of this subchapter, no a
12 person, with respect to whom proceedings---for---judicial
13 hospitalization--have--been--commenced an application for the
14 issuance of an order for hospitalization has been filed, may not
15 be released or discharged during the pendency of the proceedings,
16 unless:

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

22 B. The District Court orders release or discharge upon the
23 report of the ~~chief administrative officer of the hospital~~
24 applicant that the person may be discharged with safety; ~~or~~

26 C. A court orders release or discharge upon a writ of
27 habeas corpus under section 3804; or

28 D. Upon request of the commissioner, the District Court
29 orders the transfer of a patient in need of more specialized
30 treatment to another hospital. In the event of a transfer,
31 the court shall transfer its file to the District Court
32 having territorial jurisdiction over the receiving hospital.

34 **Sec. 4. 34-B MRSA §3864, sub-§5, ¶B**, as enacted by PL 1983, c.
35 459, §7, is amended to read:

38 B. The hearing shall must be conducted in as informal a
39 manner as may be consistent with orderly procedure and in a
40 physical setting not likely to have harmful effect on the
41 mental health of the person. If the setting is outside the
42 hospital to which the patient is currently admitted, the
43 hospital shall bear the responsibility and expense of
44 transporting the patient to and from the hearing. If the
45 patient is to be admitted to a hospital following the
46 hearing, then the responsible hospital shall transport the
47 patient to the admitting hospital. If the patient is to be
48 released following the hearing, then the responsible
49 hospital shall return the patient to the hospital or, at the
50 patient's request, return the patient to the patient's place
of residence.

2 **Sec. 5. 34-B MRSA §3864, sub-§6, ¶A**, as enacted by PL 1983, c.
459, §7, is amended to read:

4
6 A. The District Court shall so state in the record, if it
finds upon completion of the hearing and consideration of
the record:

8
10 (1) Clear and convincing evidence that the person is
mentally ill and that ~~his~~ the person's recent actions
and behavior demonstrate that ~~his~~ the person's illness
12 poses a likelihood of serious harm;

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

16 (3) That it is satisfied with the individual treatment
18 plan offered by the hospital to which the applicant
seeks the patient's involuntary commitment.

20 **Sec. 6. 34-B MRSA §3864, sub-§§7 and 8**, as enacted by PL 1983,
22 c. 459, §7, are amended to read:

24 **7. Commitment.** Upon making the findings described in
subsection 6, the court may order commitment to a ~~mental~~ hospital
26 for a period not to exceed 4 months in the first instance and not
to exceed one year after the first and all subsequent hearings.

28 A. The court may issue an order of commitment immediately
30 after the completion of the hearing, or it may take the
matter under advisement and issue an order within 24 hours
32 of the hearing.

34 B. If the court does not issue an order of commitment
within 24 hours of the completion of the hearing, it shall
36 dismiss the application and order the patient discharged
~~forthwith~~ immediately.

38 **8. Continued involuntary hospitalization.** If the chief
40 administrative officer of the hospital determines to which a
person has been committed involuntarily by the District Court
42 recommends that continued involuntary hospitalization is
necessary for a ~~that person who has been ordered by the District~~
44 ~~Court to be committed,~~ he the chief administrative officer shall,
notify the commissioner. The commissioner may then, not later
46 than 30 days prior to the expiration of a period of commitment
ordered by the court, make application in accordance with this
48 section to the District Court which that has territorial
jurisdiction over the hospital designated for treatment in the
50 application by the commissioner for a hearing to be held under
this section.

2 **Sec. 7. 34-B MRSA §3871, sub-§4**, as enacted by PL 1983, c.
459, §7, is repealed.

4 **Sec. 8. 34-B MRSA §3871, sub-§5**, as enacted by PL 1983, c.
6 459, §7, is amended to read:

8 **5. Notice.** Notice of discharge is governed as follows.

10 A. When a patient is discharged under this section, the
12 chief administrative officer of the ~~state--mental--health~~
~~institute~~ hospital shall immediately make a good faith
14 attempt to notify the following people, by telephone,
personal communication or letter, that the discharge has
16 taken or will take place:

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

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

22 (3) The spouse or adult next of kin of an adult
24 competent patient, if any is known, unless the patient
requests in writing that the notice not be given or
26 unless the patient was transferred from or will be
returned to a state correctional facility.

28 B. The ~~state-mental-health-institute~~ hospital is not liable
30 when good faith attempts to notify parents, spouse or
guardian have failed.

32 **STATEMENT OF FACT**

34 This bill amends the current civil commitment law to
36 facilitate the admission of involuntary patients to hospitals
that are under contract with the Department of Mental Health and
38 Mental Retardation. The bill also makes some technical changes.