

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

SECOND REGULAR SESSION-1996

Legislative Document

No. 1863

H.P. 1358

House of Representatives, March 19, 1996

**An Act to Improve the Provisions of Mental Health Services to Patients
Residing in the Community.**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27.
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 LEMKE of Westbrook.
Cosponsored by Representative TUTTLE of Sanford and
Representatives: ADAMS of Portland, AHEARNE of Madawaska, BAILEY of Township 27,
BIRNEY of Paris, BOUFFARD of Lewiston, BUCK of Yarmouth, CAMERON of Rumford,
CAMPBELL of Holden, CHIZMAR of Lisbon, CLARK of Millinocket, CLOUTIER of South
Portland, DEXTER of Kingfield, FISHER of Brewer, GERRY of Auburn, GIERINGER of
Portland, GOULD of Greenville, GREEN of Monmouth, GUERRETTE of Pittston,
GWADOSKY of Fairfield, HATCH of Skowhegan, HICHBORN of Lorange, JACQUES of
Waterville, KEANE of Old Town, KERR of Old Orchard Beach, KILKELLY of Wiscasset,
LEMAIRE of Lewiston, LEMONT of Kittery, LIBBY of Buxton, LUMBRA of Bangor,
MADORE of Augusta, McALEVEY of Waterboro, MITCHELL of Vassalboro, MORRISON
of Bangor, MURPHY of Berwick, O'GARA of Westbrook, O'NEAL of Limestone,
PERKINS of Penobscot, POULIN of Oakland, POULIOT of Lewiston, REED of Falmouth,
ROSEBUSH of East Millinocket, SAXL of Bangor, SIMONEAU of Thomaston, SIROIS of
Caribou, STROUT of Corinth, TRUE of Fryeburg, UNDERWOOD of Oxford, VIGUE of
Winslow, WATERHOUSE of Bridgton, WINSOR of Norway, Senators: CAREY of
Kennebec, CARPENTER of York, ESTY of Cumberland, FERGUSON of Oxford,
LAWRENCE of York, LORD of York, PARADIS of Aroostook, RUHLIN of Penobscot,
STEVENS of Androscoggin.

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

2 Sec. 1. 34-B MRS.A §§1437 and 1438 are enacted to read:

4 **§1437. Conditions leading to discharge**

6 **1. Requirements.** Notwithstanding any other provision of law
8 and except as provided in subsection 2, the department may not
10 recommend discharge of a resident or patient from the Augusta
12 Mental Health Institute, the Bangor Mental Health Institute or
14 Pineland Center unless the department has:

16 A. Prepared a plan that specifically lists all the services
18 the resident or patient needs to succeed in a community
20 setting, including the level of ongoing supervision that is
22 recommended. The plan must be signed by a designated person
24 from each agency that will provide services to the patient;

26 B. Made definite arrangements for the provision of all the
28 services listed in the plan; and

30 C. Ensured that funds are available to provide all the
32 services listed in the plan.

34 **2. Individual rights not impinged.** This section does not
36 prevent a patient or resident on voluntary status from leaving a
38 state institution.

40 **§1438. Procedures to ensure compliance with conditions of**
42 **outpatient mental health treatment**

44 The following procedures apply to outpatient mental health
46 treatment for patients that are committed to and request to be
48 discharged from the Augusta Mental Health Institute or the Bangor
50 Mental Health Institute.

1. Hearings. A petition for a hearing for outpatient
mental health treatment must be filed within 5 business days
after admission to the Augusta Mental Health Institute or the
Bangor Mental Health Institute. The hearing must be held within
10 business days of the filing of the petition.

2. Evidence. In order to recommend a patient for
involuntary outpatient treatment, the State must prove by clear
and convincing evidence that:

 A. The patient suffers from a serious mental illness or
disorder and, as a result of that serious mental illness or
disorder, that patient:

2 (1) Poses a reasonable likelihood of serious danger to
3 that patient;

4 (2) Poses a reasonable likelihood of serious danger to
5 others or places others in a reasonable fear of serious
6 danger;

8 (3) Is unable to care for that patient or is a danger
9 to that patient or others or is in danger of gravely
10 declining in functioning so as to constitute a danger
11 to that patient or others without involuntary
12 treatment; and

14 (4) Lacks capacity for informed consent or has lacked
15 capacity in the preceding 30 days. For the purpose of
16 this subparagraph, "lacks capacity" means the inability
17 to understand, appreciate, communicate or reason about
18 that patient's psychological or medical condition, or
19 both conditions, and alternative treatment for that
20 condition;

22 B. The patient would be capable of surviving in the
23 community with specific available community services;

24 C. The prescribed treatment plan is appropriate to the
25 needs of that patient and is the least restrictive
26 alternative treatment; and

28 E. The patient has been involuntarily committed to a
29 psychiatric hospital on 2 or more occasions in the previous
30 5 years.

32 3. Representation. The patient must be represented by
33 counsel.

36 4. Examination. The patient must be examined by 2
37 independent examiners who are licensed psychologists or
38 board-certified psychiatrists. The examiners shall examine the
39 patient and render an opinion on whether involuntary treatment is
40 the least restrictive alternative.

42 5. Involuntary treatment. If the court finds that the
43 criteria established under subsections 2 and 4 have been met, the
44 court:

46 A. May order a period of involuntary inpatient treatment
47 not to exceed 4 months. In addition, the court may order
48 involuntary outpatient treatment after discharge, not to
49 exceed 180 days.

50

2 B. Must approve a treatment plan jointly endorsed and
4 signed by the Augusta Mental Health Institute or the Bangor
6 Mental Health Institute and the directors or designated
 agents of the identified community service agencies that
 provide services to the patient.

8 If the patient does not comply with the court-ordered
10 involuntary outpatient treatment plan, the patient may be
12 returned to the Augusta Mental Health Institute or the
 Bangor Mental Health Institute and remain under treatment
 until the period of involuntary outpatient commitment
 expires.

14 6. Noncompliance with treatment plan. If the patient does
16 not comply with the conditions of the involuntary outpatient
18 treatment plan, the patient may be returned to the Augusta Mental
20 Health Institute or the Bangor Mental Health Institute, until
22 that treatment plan expires, at the request of either the
24 community service providers that have endorsed and signed the
26 treatment plan or the receiving institution. If more than 15
 days remain of that treatment plan, an application may be made
 for a 2nd hearing. The provisions and standards of a rehearing
 are identical to those of an initial hearing except that a period
 not to exceed 365 days of combined inpatient and outpatient
 commitment may be ordered if the standards of evidence under
 subsection 2 are met.

28 7. Discharge. A patient may not be discharged to
30 involuntary outpatient commitment unless the treatment plan is
32 approved and signed by all the community providers or agencies
34 that will deliver the agreed-upon outreach, case management,
 housing, crisis intervention, financial management, medication,
 physical, medical and all other services and by the
 superintendent or the superintendent's designee of the Augusta
 Mental Health Institute or the Bangor Mental Health Institute.

36 8. Repeal. This section is repealed July 1, 2002.

38 Sec. 2. Study of involuntary outpatient treatment results.
40 Reasonable financing from the Department of Mental Health and
42 Mental Retardation must be made available to ensure the
44 evaluation of the results of the involuntary outpatient treatment
46 program. The contract to study the involuntary outpatient
48 treatment program must be awarded to a college or university
50 chartered by the State or to a private nonprofit research
52 institute incorporated and operating in the State. The entity
 selected to perform the study must submit a report twice a year
 to a select committee composed of the Commissioner of Mental
 Health and Mental Retardation, the Commissioner of Human Services
 and 6 members of the Legislature jointly appointed by the
 President of the Senate and the Speaker of the House, 2 of whom
 serve on the joint standing committee of the Legislature having

2 jurisdiction over human resource matters, 2 of whom serve on the
joint standing committee of the Legislature having jurisdiction
4 over judiciary matters and 2 of whom serve on the joint standing
committee of the Legislature having jurisdiction over
6 appropriations and financial affairs.

8 STATEMENT OF FACT

10 The purpose of this bill is to ensure the proper treatment
12 of patients in the community with serious mental illness or
disorder.

14 The bill requires that, prior to recommending discharge of a
16 patient from a state institution, the Department of Mental Health
and Mental Retardation prepare an individual plan that specifies
18 that patient's needs, arrange for delivery of needed services and
ensure that funds are available for the services. The plan must
20 be signed by all agencies that will provide the services to the
patient.
22