

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST SPECIAL SESSION-1997

Legislative Document

No. 1806

H.P. 1276

House of Representatives, April 16, 1997

An Act to Amend Maine's Involuntary Commitment Laws.

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 BRENNAN of Portland. (GOVERNOR'S BILL)
Cosponsored by Senator HARRIMAN of Cumberland and
Representatives: ETNIER of Harpswell, MADORE of Augusta, THOMPSON of Naples,
WINGLASS of Auburn, Senators: DAGGETT of Kennebec, LaFOUNTAIN of York, MILLS
of Somerset, MITCHELL of Penobscot.

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

2
4 **Sec. 1. 17-A MRSA §1204, sub-§4** is enacted to read:

6 4. Before imposing any condition of psychiatric outpatient
8 or inpatient treatment or mental health counseling, the court may
10 request a report be submitted by an agent of the Department of
12 Mental Health, Mental Retardation and Substance Abuse Services
14 who has been designated pursuant to Title 34-B, section 1220 for
16 the purpose of assessing the appropriateness of psychiatric
18 treatment or mental health counseling for the individual and the
20 availability of this treatment or counseling. Whether or not a
report is requested, the court shall notify the designated agent
of the Department of Mental Health, Mental Retardation and
Substance Abuse Services when any conditions of probation are
imposed that include psychiatric outpatient or inpatient
treatment or mental health counseling. This notification must
include the name and last known address of the individual placed
on probation, the name and address of the attorney of record and
the conditions of probation.

22 **Sec. 2. 34-B MRSA §1207, sub-§6** is enacted to read:

24 6. Duty to provide information. Any person conducting an
26 evaluation of a mental health client in a professional capacity,
28 who has a clear and substantial reason to believe that the mental
30 health client poses an imminent danger of inflicting serious
32 physical harm on the evaluator or others, shall provide
34 information regarding such danger or harm to any other person to
36 whom that client's care or custody is being transferred. For
purposes of this subsection, the term "evaluation" includes
professionally recognized methods and procedures for the purpose
of assessing and treating mental illness and includes, but is not
limited to, interviews, observation, testing and assessment
techniques conducted by a person licensed as a physician,
psychologist, nurse, clinical social worker or clinical
professional counselor.

38 **Sec. 3. 34-B MRSA §1220** is enacted to read:

40 §1220. Mental health services to persons on probation

42 The department shall designate at least one individual
44 within each of the 7 areas described in section 3607, subsection
46 3 to act as liaison to the District Courts and Superior Courts of
48 the State and to the Department of Corrections in its
administration of probation and parole services and the Intensive
Supervision Program established pursuant to Title 17-A, section
1261.

50

1. Duties of liaison. A liaison has the following duties:

A. To provide reports in a timely fashion on behalf of the department in response to any requests made by a court pursuant to Title 17-A, section 1204, subsection 4 and to undertake or cause to be undertaken such inquiries or evaluations as are necessary to complete the reports;

B. To obtain evaluations as may be required by this section from a person who is one of the following:

(1) A licensed psychiatrist;

(2) A licensed psychologist;

(3) A nurse certified by a national association of nurses as a psychiatric and mental health nurse or as a clinical specialist in adult psychiatric and mental health nursing;

(4) A social worker licensed as a licensed clinical social worker or a licensed master social worker; or

(5) A licensed clinical professional counselor; and

C. To receive any notice of imposition of a condition of probation given pursuant to Title 17-A, section 1204, subsection 4 and to assess or to obtain an assessment of the appropriateness and availability of the mental health services necessary for an individual to meet the conditions of probation imposed.

2. Mental health services inappropriate or unavailable.

If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon profession judgment, that the mental health services necessary for an individual to meet the conditions of probation are inappropriate given the individual's clinical condition or that the mental health services are unavailable, then the liaison shall notify the court, the probation officer, the individual on probation and the individual's attorney, if known, that the mental health services are inappropriate.

3. Mental health services appropriate and available.

If, after completion of a report as required by subsection 1, paragraph A, the evaluator or the liaison is of the opinion, based upon professional judgment, that the mental health services necessary for an individual to meet the conditions of probation are appropriate given the individual's clinical condition and the evaluator or the liaison knows that the services are available,

2 then the liaison shall assist the individual in obtaining the
3 appropriate mental health services.

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

6 **1-B. Least restrictive form of transportation.** "Least
7 restrictive form of transportation" means the vehicle used for
8 transportation and any restraining devices that may be used
9 during transportation that impose the least amount of restriction
10 and stigmatizing impact upon the individual being transported.

12 **Sec. 5. 34-B MRSA §3861**, as amended by PL 1995, c. 560, Pt.
13 K, §82 and affected by §83, is further amended to read:

14 **§3861. Reception of involuntary patients**

16 **1. Nonstate mental health institution.** The chief
17 administrative officer of a nonstate mental health institution
18 may receive for observation, diagnosis, care and treatment in the
19 institution any person whose admission is applied for under any
20 of the procedures in this subchapter. An admission may be made
21 under the provisions of section 3863 only if the certifying
22 examination conducted pursuant to section 3863, subsection 2 was
23 completed no more than 2 days before the date of admission.

26 A. The institution, any person contracting with the
27 institution and any of its employees when admitting,
28 treating or discharging a patient under the provisions of
29 sections 3863 and 3864 under a contract with the department,
30 for purposes of civil liability, must be deemed to be a
31 governmental entity or an employee of a governmental entity
32 under the Maine Tort Claims Act, Title 14, chapter 741.

34 B. Patients with a diagnosis of mental illness or
35 psychiatric disorder in nonstate mental health institutions
36 that contract with the department under this subsection are
37 entitled to the same rights and remedies as patients in
38 ~~state-mental-health-institutes~~ hospitals as conferred by the
39 constitution, laws, regulations and rules of this State and
40 of the United States.

42 C. Before contracting with and approving the admission of
43 involuntary patients to a nonstate mental health
44 institution, the department shall require the institution to:

46 (1) Comply with all applicable regulations;

48 (2) Demonstrate the ability of the institution to
49 comply with judicial decrees as those decrees relate to
50 services already being provided by the institution; and

2 (3) Coordinate and integrate care with other
community-based services.

4
6 D. Beginning July 31, 1990, the capital, licensing,
remodeling, training and recruitment costs associated with
8 the start-up of beds designated for involuntary patients
under this section must be reimbursed, within existing
10 resources, of the Department of Mental Health, Mental
Retardation and Substance Abuse Services.

12 2. **Hospital.** The chief administrative officer of a state
~~mental-health-institute~~ hospital:

14
16 A. May receive for observation, diagnosis, care and
treatment in the hospital any person whose admission is
18 applied for under section 3831 or 3863 if the certifying
examination conducted pursuant to section 3863, subsection 2
20 was completed no more than 2 days before the date of
admission; and

22 B. May receive for observation, diagnosis, care and
24 treatment in the hospital any person whose admission is
applied for under section 3864 or is ordered by a court.

26 Any person contracting with a ~~state--mental--health--institute~~
hospital when admitting, treating or discharging a patient,
28 within the ~~state--institute~~ hospital, under the provisions of
sections 3863 and 3864 under a contract with the department for
30 purposes of civil liability is deemed to be an employee of a
governmental entity under the Maine Tort Claims Act, Title 14,
32 chapter 741.

34 **Sec. 6. 34-B MRSA §3862, sub-§1**, as amended by PL 1995, c. 62,
§1, is further amended to read:

36
38 1. **Law enforcement officer's power.** If a law enforcement
officer has reasonable grounds to believe, based upon probable
40 cause, that a person may be mentally ill and that due to that
condition the person presents a threat of imminent and
42 substantial physical harm to that person or to other persons, the
law enforcement officer:

44 A. May take the person into protective custody; and

46 B. If the law enforcement officer does take the person into
48 protective custody, shall deliver the person immediately for
examination by an available licensed physician or licensed
clinical psychologist, as provided in section 3863.

50

2 When, in formulating probable cause, the law enforcement officer
3 relies upon information provided by a 3rd-party informant, the
4 officer shall confirm that the informant has reason to believe,
5 based upon the informant's recent personal observations of or
6 conversations with a person, that the person may be mentally ill
7 and that due to that condition the person presents a threat of
8 imminent and substantial physical harm to that person or to other
9 persons.

10 **Sec. 7. 34-B MRSA §3862, sub-§4,** as enacted by PL 1983, c.
11 459, §7, is amended to read:

12 **4. Transportation costs.** The costs of transportation under
13 this section shall must be paid in the manner provided under
14 section 3863. Any person transporting an individual to a
15 hospital under the circumstances described in this section shall
16 use the least restrictive form of transportation available that
17 meets the security needs of the situation.

20 **Sec. 8. 34-B MRSA §3863, sub-§2, ¶A,** as enacted by PL 1983, c.
21 459, §7, is amended to read:

22 **A.** He The licensed physician or licensed clinical
23 psychologist has examined the person on the date of the
24 certificate, ~~which date may not be more than 3 days before~~
25 ~~the date of admission to the hospital;~~ and

28 **Sec. 9. 34-B MRSA §3863, sub-§2-A,** as amended by PL 1995, c.
29 143, §1, is further amended to read:

30 **2-A. Custody agreement.** A state, county or municipal law
31 enforcement agency may meet with representatives of those public
32 and private health practitioners and health care facilities that
33 are willing and qualified to perform the certifying examination
34 required by this section in order to attempt to work out a
35 procedure for the custody of the person who is to be examined
36 while that person is waiting for that examination. Any agreement
37 must be written and signed by and filed with all participating
38 parties. In the event of failure to work out an agreement that
39 is satisfactory to all participating parties, the procedures of
40 section 3862 and this section continue to apply.

41
42
43
44 As part of an agreement the law enforcement officer requesting
45 certification may transfer protective custody of the person for
46 whom the certification is requested to another law enforcement
47 officer, a health officer if that officer agrees or the chief
48 administrative officer of a public or private health practitioner
49 or health facility or the chief administrative officer's
50 designee. Any arrangement of this sort must be part of the
written agreement between the law enforcement agency and the

2 health practitioner or health care facility. In the event of a
transfer, the law enforcement officer seeking the transfer shall
provide the written application required by this section.

4
6 A person with mental illness may not be detained or confined in
any jail or local correctional or detention facility, whether
pursuant to the procedures described in section 3862, pursuant to
8 a custody agreement, or under any other circumstances, unless
that person is being lawfully detained in relation to or is
10 serving a sentence for commission of a crime.

12 **Sec. 10. 34-B MRSA §3863, sub-§4, ¶A,** as enacted by PL 1983,
c. 459, §7, is amended to read:

14
16 A. Upon endorsement of the application and certificate by
the judge or justice, any health officer, law enforcement
18 officer or other person designated by the judge or justice
may take the person into custody and transport ~~him~~ that
20 person to the hospital designated in the application.
Transportation of an individual to a hospital under these
22 circumstances must involve the least restrictive form of
transportation available that meets the clinical needs of
that individual.

24 **Sec. 11. 34-B MRSA §3863, sub-§4, ¶C** is enacted to read:

26
28 C. When a person who is under a sentence or lawful
detention related to commission of a crime and who is
incarcerated in a jail or local correctional or detention
30 facility is admitted to a hospital under any of the
procedures in this subchapter, the county where the
32 incarceration originated shall pay all expenses incident to
transportation of the person between the hospital and the
34 jail or local correctional or detention facility.

36 **Sec. 12. 34-B MRSA §3863, sub-§6,** as enacted by PL 1983, c.
459, §7, is amended to read:

38
40 6. **Notice.** Upon admission of a person under this section,
and after consultation with the person, the chief administrative
42 officer of the hospital shall ~~mail-notice-of~~ notify, as soon as
possible regarding the fact of admission to, the person's:

- 44 A. ~~His-guardian~~ Guardian, if known;
- 46 B. ~~His-spouse~~ Spouse;
- 48 C. ~~His-parent~~ Parent;
- 50 D. ~~His-adult-child~~ Adult child; or

2 E. One of next of kin or a friend, if none of the listed
4 persons exists.

6 If the chief administrative officer has reason to believe that
8 notice to any individual in paragraphs A to E would pose risk of
harm to the person admitted, then notice may not be given to that
individual.

10 **Sec. 13. 34-B MRSA §3864, sub-§1, ¶¶B and C,** as enacted by PL
12 1983, c. 459, §7, are amended to read:

14 B. The accompanying certificate of the physician or
16 psychologist under section 3863, subsection 2; and

18 C. The certificate of the physician or psychologist under
20 section 3863, subsection 7, that:

22 (1) ~~He~~ The physician or psychologist has examined the
24 patient; and

26 (2) It is ~~his~~ the opinion of the physician or
28 psychologist that the patient is a mentally ill person
and, because of ~~his~~ that patient's illness, poses a
likelihood of serious harm. ;

30 **Sec. 14. 34-B MRSA §3864, sub-§1, ¶¶D and E** are enacted to
32 read:

34 D. A certificate, signed by the chief administrative
36 officer of the hospital, certifying that a copy of the
38 application and the accompanying attachments have been given
personally to the patient and that the patient has been
notified of the patient's right to retain an attorney or to
have an attorney appointed, of the patient's right to select
or to have the patient's attorney select an independent
examiner and regarding instructions on how to contact the
District Court; and

40 E. A copy of the notice and instructions given to the
42 patient.

44 **Sec. 15. 34-B MRSA §3864, sub-§3,** as enacted by PL 1983, c.
46 459, §7, is amended to read:

48 **3. Notice of receipt of application.** The giving of notice
of receipt of application and date of hearing under this section
is governed as follows.

2 A. Upon receipt by the District Court of the application
and accompanying documents specified in subsection 1, the
4 court shall cause written notice of the application and date
of hearing:

6 (1) ~~To be given personally or by mail to the person~~
~~within a reasonable time before the hearing, but not~~
8 ~~less than 3 days before the hearing~~ mailed within 2
10 days of filing to the person; and

12 (2) To be mailed to the person's guardian, if known,
and to ~~his~~ the person's spouse, his parent or one of
14 ~~his~~ the person's adult children or, if none of these
persons exist or if none of ~~them~~ those persons can be
16 located, to one of ~~his~~ the person's next of kin or a
friend, except that if the chief administrative officer
18 has reason to believe that notice to any of these
individuals would pose risk of harm to the person who
20 is the subject of the application, notice to that
individual may not be given.

22 B. A docket entry is sufficient evidence that notice under
this subsection has been given.

24 **Sec. 16. 34-B MRSA §3864, sub-§4, ¶A**, as enacted by PL 1983,
26 c. 459, §7, is amended to read:

28 A. Upon receipt by the District Court of the application
and the accompanying documents specified in subsection 1 and
30 at least 3 days after the person who is the subject of the
examination was notified by the hospital of the proceedings
32 and of that person's right to retain counsel or to select an
examiner, the court shall ~~forthwith~~ cause the person to be
34 examined by 2 examiners.

36 (1) Each examiner must be either a licensed physician
or a licensed clinical psychologist.

38 (2) One of the examiners ~~shall~~ must be a physician or
40 psychologist chosen by the person or by ~~his~~ that
person's counsel, if the chosen physician or
42 psychologist is reasonably available.

44 (3) Neither examiner appointed by the court may be the
certifying examiner under section 3863, subsection 2 or
46 7.

48 **Sec. 17. 34-B MRSA §3864, sub-§5, ¶B**, as amended by PL 1995,
c. 496, §4, is further amended to read:

2 B. The hearing must be conducted in as informal a manner as
4 may be consistent with orderly procedure and in a physical
6 setting not likely to have harmful effect on the mental
8 health of the person. If the setting is outside the
10 hospital to which the patient is currently admitted, the
12 hospital Department of Mental Health, Mental Retardation and
14 Substance Abuse Services shall bear the responsibility and
16 expense of transporting the patient to and from the
hearing. If the patient is to be admitted to a hospital
following the hearing, then the responsible hospital shall
transport the patient to the admitting hospital. If the
patient is to be released following the hearing, then the
responsible hospital shall return the patient to the
hospital or, at the patient's request, return the patient to
the patient's place of residence.

18 **Sec. 18. 34-B MRSA §3864, sub-§5, ¶F,** as enacted by PL 1983, c.
459, §7, is amended to read:

20 F. In each case, the applicant shall submit to the court,
22 at the time of the hearing, testimony, including expert
24 psychiatric testimony, indicating the individual treatment
26 plan to be followed by the hospital staff, if the person is
committed under this section, and shall bear any expense for
witnesses for this purpose.

28 **Sec. 19. 34-B MRSA §3864, sub-§7,** as amended by PL 1995, c.
496, §6, is further amended to read:

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

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

40 B. If the court does not issue an order of commitment
42 within 24 hours of the completion of the hearing, it shall
44 dismiss the application and order the patient discharged
immediately.

46 **Sec. 20. 34-B MRSA §3864, sub-§9,** as enacted by PL 1983, c.
48 459, §7, is repealed and the following enacted in its place:

50 **9. Transportation.** Except for transportation expenses paid
by the District Court pursuant to subsection 10, a continued

2 involuntary hospitalization hearing that requires transportation
3 of the patient to and from any hospital to a court that has
4 committed the person must be provided at the expense of the
5 Department of Mental Health, Mental Retardation and Substance
6 Abuse Services. Transportation of an individual to a hospital
7 under these circumstances must involve the least restrictive form
8 of transportation available that meets the clinical needs of that
9 individual and be in compliance with departmental regulations.

10 **Sec. 21. 34-B MRSA §3867**, as enacted by PL 1983, c. 459, §7,
11 is amended to read:

12 **§3867. Transfer from out-of-state institutions**

13
14 **1. Commissioner's authority.** The commissioner may, upon
15 request of a competent authority of the District of Columbia or
16 of a state ~~which~~ that is not a member of the Interstate Compact
17 on Mental Health, authorize the transfer of a mentally ill
18 patient directly to a ~~state-mental-health-institute~~ hospital in
19 Maine, if:

20
21 A. The patient has resided in this State for a consecutive
22 period of one year during the 3-year period immediately
23 preceding commitment in the other state or the District of
24 Columbia;

25
26 B. The patient is currently confined in a recognized
27 institution for the care of the mentally ill as the result
28 of proceedings considered legal by that state or by the
29 District of Columbia;

30
31 C. A duly certified copy of the original commitment
32 proceedings and a copy of the patient's case history is
33 supplied;

34
35 D. The commissioner, after investigation, ~~deems~~ considers
36 the transfer justifiable; and

37
38 E. All expenses of the transfer are borne by the agency
39 requesting it.

40
41 **2. Receipt of patient.** When the commissioner has
42 authorized a transfer under this section, the superintendent of
43 the ~~state-mental-health-institute~~ hospital designated by the
44 commissioner shall receive the patient as having been regularly
45 committed to the mental health institute under section 3864.

46
47 **Sec. 22. 34-B MRSA §3868, sub-§1, ¶A**, as enacted by PL 1983,
48 c. 459, §7, is amended to read:

49
50

2 A. ~~Whenever~~ Before a patient is transferred, the
3 commissioner shall give written notice of the transfer to
4 the patient's guardian, his the patient's parents or spouse
5 or, if none of these persons exists or can be located, to
6 his the patient's next of kin or friend, except that if the
7 chief administrative officer of the hospital to which the
8 patient is currently admitted has reason to believe that
9 notice to any of these individuals would pose risk of harm
10 to the person, then notice may not be given to that
11 individual.

12 **Sec. 23. 34-B MRSA §3870**, as amended by PL 1987, c. 736, §54,
13 is further amended to read:

14 **§3870. Convalescent status**

15
16 **1. Authority.** The chief administrative officer of a state
17 ~~mental-health-institute~~ hospital may release an improved patient
18 on convalescent status when he the chief administrative officer
19 believes that the release is in the best interest of the
20 patient. The chief administrative officer of a hospital may
21 release an improved patient on convalescent status when the chief
22 administrative officer believes that the release is in the best
23 interest of the patient and, when releasing an involuntarily
24 committed patient, the chief administrative officer has obtained
25 the approval of the commissioner after submitting a plan for
26 continued responsibility.

27
28
29 A. Release on convalescent status may include provisions
30 for continuing responsibility to and by the ~~state-mental~~
31 ~~health-institute~~ hospital, including a plan of treatment on
32 an outpatient or nonhospital basis.

33
34 B. Before release on convalescent status under this
35 section, the chief administrative officer of a ~~state-mental~~
36 ~~health-institute~~ hospital shall make a good faith attempt to
37 notify, by telephone, personal communication or letter, of
38 the intent to release the patient on convalescent status and
39 of the plan of treatment, if any:

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

41
42 (2) The legal guardian of an adult incompetent
43 patient, if any is known; or

44
45 (3) The spouse or adult next of kin of an adult
46 competent patient, if any is known, unless the patient
47 requests in writing that the notice not be given.
48

2 If the chief administrative officer of the hospital to which
4 the patient is currently admitted has reason to believe that
6 notice to any of the individuals listed in this paragraph
8 would pose risk of harm to the person, then notice may not
10 be given to that individual.

12 C. The state-mental-health-institute hospital is not liable
14 when good faith attempts to notify the parents, spouse or
16 guardian have failed.

18 D. Before releasing a patient on convalescent status, the
20 chief administrative officer of the hospital shall advise
22 the patient, orally and in writing, of the treatment
24 available while the patient is on convalescent status and,
26 if the patient is a voluntary patient, of the patient's
28 right to request termination of the status and, if
30 involuntarily committed, the means by which and conditions
32 under which rehospitalization may occur.

34 2. **Reexamination.** Before a patient has spent a year on
36 convalescent status, and at least once a year thereafter, the
38 chief administrative officer of the state-mental-health-institute
40 hospital shall reexamine the facts relating to the
42 hospitalization of the patient on convalescent status.

44 3. **Discharge.** Discharge from convalescent status is
46 governed as follows.

48 A. If the chief administrative officer of the state-mental
50 health-institute hospital determines that, in view of the
condition of the patient, convalescent status is no longer
necessary, he the chief administrative officer shall
discharge the patient and make a report of the discharge to
the commissioner.

B. The chief administrative officer shall terminate the
convalescent status of a voluntary patient within 10 days
after the day he the chief administrative officer receives
from the patient a request for discharge from convalescent
status.

4. **Rehospitalization.** Rehospitalization of patients under
this section is governed as follows.

A. If, prior to discharge, there is reason to believe that
it is in the best interest of an involuntarily committed
patient on convalescent status to be rehospitalized, the
commissioner or the chief administrative officer of the
state-mental-health-institute hospital, with the approval of
the commissioner, may issue an order for the immediate
rehospitalization of the patient.

2 ~~B. If the order is not voluntarily complied with, and if~~
4 ~~the order is endorsed by a District Court Judge or justice~~
6 ~~of the peace in the county in which the patient has his~~
8 ~~legal residence or is present, any health officer or police~~
10 ~~officer may take the patient into custody and transport him~~
12 ~~to:~~

14 (1) ~~The state mental health institute, if the order is~~
16 ~~issued by the chief administrative officer of the state~~
18 ~~mental health institute; or~~

20 (2) ~~A hospital designated by the commissioner, if the~~
22 ~~order is issued by the commissioner.~~

24 C. If the order is not voluntarily complied with, an
26 involuntarily committed patient on convalescent leave may be
28 returned to the hospital if the following conditions are met:

30 (1) An order is issued pursuant to paragraph A;

32 (2) The order is brought before a District Court Judge
34 or justice of the peace; and

36 (3) Based upon clear evidence that return to the
38 hospital is in the patient's best interest, the
40 District Court Judge or justice of the peace approves
42 return to the hospital.

44 After approval by the District Court Judge or justice of the
46 peace, a law enforcement officer may take the patient into
48 custody and arrange for transportation of the patient in
50 accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective
custody by law enforcement officers pursuant to section 3862.

5. Notice of change of status. Notice of the change of
convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a state
mental-health-institute hospital is to be changed, either
because of a decision of the chief administrative officer of
the state-mental-health-institute hospital or because of a
request made by a voluntary patient, the chief
administrative officer of the state-mental-health-institute
hospital shall immediately make a good faith attempt to
notify, by telephone, personal communication or letter, of
the contemplated change:

- 2 (1) The parent or guardian of a minor patient;
- 4 (2) The guardian of an adult incompetent patient, if
any is known; or
- 6 (3) The spouse or adult next of kin of an adult
8 competent patient, unless the patient requests in
writing that the notice not be given.

10 If the chief administrative officer of the hospital to which
12 the patient is currently admitted has reason to believe that
14 notice to any of the individuals listed in this paragraph
would pose risk of harm to the person, then notice may not
be given to that individual.

16 B. If the change in convalescent status is due to the
18 request of a voluntary patient, the chief administrative
20 officer of the ~~state-mental-health-institute~~ hospital shall
give the required notice within 10 days after the day he the
chief administrative officer receives the request.

22 C. The ~~state-mental-health-institute~~ hospital is not liable
24 when good faith attempts to notify the parents, spouse or
guardian have failed.

26 **Sec. 24. 34-B MRSA §3871**, as amended by PL 1995, c. 496, §§7
and 8, is further amended to read:

28

§3871. Discharge

30

32 **1. Examination.** The chief administrative officer of a
34 ~~state--mental--health--institute~~ hospital shall, as often as
practicable, but no less often than every ~~12--months~~ 30 days,
examine or cause to be examined every patient to determine his
that patient's mental status and need for continuing
36 hospitalization.

38

2. Conditions for discharge. The chief administrative
officer of a ~~state--mental--health--institute~~ hospital shall
40 discharge, or cause to be discharged, any patient when:

42

A. Conditions justifying hospitalization no longer obtain;

44

B. The patient is transferred to another hospital for
treatment for his that patient's mental or physical
46 condition;

48

C. The patient is absent from the ~~state--mental--health~~
institute hospital unlawfully for a period of 90 days;

50

2 D. Notice is received that the patient has been admitted to
another hospital, inside or outside the State, for treatment
for his that patient's mental or physical condition; or

4
6 E. Although lawfully absent from the ~~state-mental-health~~
~~institute~~ hospital, the patient is admitted to another
hospital, inside or outside the State, for treatment of his
8 that patient's mental or physical condition, except that, if
the patient is directly admitted to another hospital and it
10 is the opinion of the chief administrative officer of the
~~state-mental-health-institute~~ hospital that the patient will
12 directly reenter the ~~state-mental-health-institute~~ hospital
within the foreseeable future, the patient need not be
14 discharged.

16 **3. Discharge against medical advice.** The chief
administrative officer of a ~~state--mental--health--institute~~
18 hospital may discharge, or cause to be discharged, any patient
even though the patient is mentally ill and appropriately
20 hospitalized in the ~~state-mental-health-institute~~ hospital, if:

22 A. The patient and either the guardian, spouse or adult
next of kin of the patient request his that patient's
24 discharge; and

26 B. In the opinion of the chief administrative officer of
the hospital, the patient does not pose a likelihood of
28 serious harm due to his that patient's mental illness.

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

32 A. When a patient is discharged under this section, the
chief administrative officer of the hospital shall
34 immediately make a good faith attempt to notify the
following people, by telephone, personal communication or
36 letter, that the discharge has taken or will take place:

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

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

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

48
50 If the chief administrative officer of the hospital to which
the patient is currently admitted has reason to believe that

2 notice to any of the individuals listed in this paragraph
3 would pose a risk of harm to the person, then notice may not
4 be given to that individual.

5 B. The hospital is not liable when good faith attempts to
6 notify the parents, spouse or guardian have failed.

8 **Sec. 25. 34-B MRSA §3872,** as enacted by PL 1985, c. 615, is
9 repealed.
10

11 **SUMMARY**

12
13 This bill is the unanimous result of the work done by the
14 Task Force to Review Maine's Laws Concerning Involuntary
15 Commitment, created by the 117th Legislature pursuant to Resolve
16 1995, chapter 13. This bill revises the involuntary commitment
17 laws in order to improve the State's capacity to respond to
18 people with mental illness in community settings. The bill adds
19 language on the responsibility to share information about
20 possible dangerousness under certain circumstances; extends
21 certain provisions of the involuntary commitment laws to
22 community hospitals; adopts an amended version of the probable
23 cause standard; clarifies and amends several administrative
24 procedures; and establishes a joint responsibility of the
25 Department of Mental Health, Mental Retardation and Substance
26 Abuse Services and the Department of Corrections to provide
27 treatment and supervision mandated by the court as a condition of
28 probation or parole.