

# MAINE STATE LEGISLATURE

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MINORITY

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
119TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "B" to H.P. 499, L.D. 706, Bill, "An Act to Expedite Treatment of Certain Persons with Mental Illness"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

PART A

Sec. A-1. 18-A MRSA §5-802, sub-§(d), as enacted by PL 1995, c. 378, Pt. A, §1, is amended to read:

(d) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of an advanced advance health-care directive must be made by the primary physician or by a court of competent jurisdiction or, for an individual who has included a directive authorizing mental health treatment in an advance health-care directive, by a person qualified to conduct an examination pursuant to Title 34-B, section 3863. This subsection is repealed January 1, 2002.

Sec. A-2. 18-A MRSA §5-802, sub-§(i) is enacted to read:

(i) An advance health-care directive is valid for purposes of directing mental health treatment. The terms of the directive must be construed in accordance with this Part and Title 34-B, sections 3831 and 3862. This subsection is repealed January 1, 2002.

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2           **Sec. A-3. 34-B MRSA §3831, sub-§6** is enacted to read:

4           **6. Adults with advance health care directives.** An adult  
 6 with an advance health care directive authorizing mental health  
 8 hospital treatment may be admitted on an informal voluntary basis  
 10 if the conditions specified in the advance health care directive  
 12 for the directive to be effective are met in accordance with the  
 14 method stated in the advance health care directive or, if no such  
 16 method is stated, as determined by a physician or a  
 18 psychologist. If no conditions are specified in the advance  
 20 health care directive as to how the directive becomes effective,  
 22 the person may be admitted on an informal voluntary basis if the  
 24 person has been determined to be incapacitated pursuant Title  
18-A, Article 5, Part 8. A person may be admitted only if the  
person does not at the time object to the admission or, if the  
person does object, if the person has directed in the advance  
health care directive that admission to the hospital may occur  
despite that person's objections. The duration of the stay in  
the hospital of a person under this subsection may not exceed 5  
working days. If at the end of that time the chief  
administrative officer of the hospital recommends further  
hospitalization of the person, the chief administrative officer  
shall proceed in accordance with section 3863, subsection 5.

26 This subsection does not create an affirmative obligation of a  
 28 hospital to admit a person consistent with the person's advance  
 30 health care directive. This subsection does not create an  
 32 affirmative obligation on the part of a hospital or treatment  
 34 provider to provide the treatment consented to in the person's  
advance health care directive if the physician or psychologist  
evaluating or treating the person or the chief administrative  
officer of the hospital determines that the treatment is not in  
the best interest of the person.

36 This subsection is repealed January 1, 2002.

38           **Sec. A-4. 34-B MRSA §3862**, as amended by PL 1997, c. 683, Pt.  
 40 A, §20, is further amended to read:

42           **§3862. Protective custody**

44           **1. Law enforcement officer's power.** If a law enforcement  
 46 officer has reasonable grounds to believe, based upon probable  
 48 cause, that a person may be mentally ill and that due to that  
 50 condition the person presents a threat of imminent and  
 52 substantial physical harm to that person or to other persons, or  
if a law enforcement officer knows that a person has an advance  
health care directive authorizing mental health treatment and the  
officer has reasonable grounds to believe, based upon probable  
cause, that the person lacks capacity, the law enforcement  
 officer:

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- 2           A. May take the person into protective custody; and
- 4           B. If the law enforcement officer does take the person into
- 6           protective custody, shall deliver the person immediately for
- 8           examination as provided in section 3863 or, for a person
- 10           taken into protective custody who has an advance health care
- 12           directive authorizing mental health treatment, for
- 14           examination as provided in Title 18-A, section 5-802,
- 16           subsection (d) to determine the individual's capacity and
- 18           the existence of conditions specified in the advance health
- 20           care directive for the directive to be effective. If the
- examination occurs in a hospital emergency room, the
- examination may be performed by a licensed physician, a
- licensed clinical psychologist, a physician's assistant, a
- nurse practitioner or a certified psychiatric clinical nurse
- specialist. If the examination does not occur in a hospital
- emergency room, the examination may be performed only by a
- licensed physician or licensed clinical psychologist.

22           When, in formulating probable cause, the law enforcement officer

24           relies upon information provided by a 3rd-party informant, the

26           officer shall confirm that the informant has reason to believe,

28           based upon the informant's recent personal observations of or

            conversations with a person, that the person may be mentally ill

            and that due to that condition the person presents a threat of

            imminent and substantial physical harm to that person or to other

            persons.

30           **2. Certificate not executed.** If a certificate relating to

32           the person's likelihood of serious harm is not executed by the

34           examiner under section 3863, and, for a person who has an advance

36           health care directive authorizing mental health treatment, if the

examiner determines that the conditions specified in the advance

health care directive for the directive to be effective have not

been met or, in the absence of stated conditions, that the person

does not lack capacity, the officer shall:

38           A. Release the person from protective custody and, with his

40           the person's permission, return him the person forthwith to

42           his the person's place of residence, if within the

            territorial jurisdiction of the officer;

44           B. Release the person from protective custody and, with his

46           the person's permission, return him the person forthwith to

48           the place where he the person was taken into protective

            custody; or

50           C. If the person is also under arrest for a violation of

52           law, retain him the person in custody until he the person is

            released in accordance with the law.

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3. **Certificate executed.** If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a reasonable period of time, not to exceed 18 hours, pending that endorsement.

3-A. Advance health care directive effect. If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

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

5. **Repeal.** This section is repealed January 1, 2002.

**PART B**

**Sec. B-1. 18-A MRSA §5-802, sub-§(d-1)** is enacted to read:

(d-1) Unless otherwise specified in a written advance health-care directive, a determination that an individual lacks or has recovered capacity or that another condition exists that affects an individual instruction, the authority of an agent or the validity of the authority of an advance health-care directive must be made by the primary physician or, by a court of competent jurisdiction.

**Sec. B-2. 34-B MRSA §3862-A** is enacted to read:

**§3862-A. Protective custody**

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

- A. May take the person into protective custody; and
- B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination as provided in section 3863. If the examination occurs in a hospital emergency room, the examination may be

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2 performed by a licensed physician, a licensed clinical  
4 psychologist, a physician's assistant, a nurse practitioner  
6 or a certified psychiatric clinical nurse specialist. If  
the examination does not occur in a hospital emergency room,  
the examination may be performed only by a licensed  
physician or licensed clinical psychologist.

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

16  
18 2. Certificate not executed. If a certificate relating to  
20 the person's likelihood of serious harm is not executed by the  
examiner under section 3863, the officer shall:

22 A. Release the person from protective custody and, with the  
24 person's permission, return the person forthwith to the  
person's place of residence, if within the territorial  
jurisdiction of the officer;

26 B. Release the person from protective custody and, with the  
28 person's permission, return the person forthwith to the  
place where the person was taken into protective custody; or

30 C. If the person is also under arrest for a violation of  
32 law, retain the person in custody until the person is  
released in accordance with the law.

34 3. Certificate executed. If the certificate is executed by  
36 the examiner under section 3863, the officer shall undertake  
38 forthwith to secure the endorsement of a judicial officer under  
section 3863 and may detain the person for a reasonable period of  
time, not to exceed 18 hours, pending that endorsement.

40 4. Transportation costs. The costs of transportation under  
42 this section must be paid in the manner provided under section  
44 3863. Any person transporting an individual to a hospital under  
the circumstances described in this section shall use the least  
restrictive form of transportation available that meets the  
security needs of the situation.

46  
48 **Sec. B-3. Effective date.** This Part takes effect January 1,  
2002.'

50 Further amend the bill by inserting at the end before the  
52 summary the following:

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**'FISCAL NOTE**

The additional costs associated with the new procedures for mental health treatment agreements can be absorbed by the Department of Mental Health, Mental Retardation and Substance Abuse Services utilizing existing budgeted resources.'

**SUMMARY**

This amendment is the minority report of the committee. It differs from the majority report in that this amendment contains a sunset of January 1, 2002 for all changes concerning advance health care directives for mental health treatment. Part A enacts the changes with a self-repealing date of January 1, 2002. Part B reenacts the law as it currently exists, effective January 1, 2002.

This amendment replaces the bill.

This amendment amends the Uniform Health-care Decisions Act to specifically provide for advance health care directives that authorize mental health treatment. An advance health care directive allows a person who is competent when executing the directive to consent to specific health care in the future. It allows persons to make decisions about their health care prior to the time when they are no longer considered competent to make those decisions for themselves.

Under this amendment, an advance health care directive authorizing mental health treatment may contain conditions that specify when the directive becomes effective, and it may specify a particular method for determining when those conditions are met. It may also provide consent to hospitalization for mental health treatment, which may be honored if the person at the time of examination and hospitalization lacks capacity, even if the person objects to the hospitalization.

This amendment also amends the voluntary hospitalization and protective custody laws as they apply to persons with advance health care directives authorizing mental health treatment. A person may be admitted on an informal voluntary basis if the conditions in the advance health care directive are met or, if there are no conditions specified, if the person has been determined to be incapacitated in accordance with the provisions of the Uniform Health-care Decisions Act. A person may be admitted only if the person does not object to the admission or if the person's advance health care directive provides for such admission and the person is incapacitated, even if the person objects. The duration of the stay in the hospital of the person may not exceed 5 working days. Further hospitalization is

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2 possible only with the consent of the person or through the  
emergency admission procedures.

4 This amendment clarifies that, although the advance health  
6 care directive provides consent to informal voluntary  
hospitalization, there is no affirmative obligation on the  
8 hospital's part to admit the person. Admission may not be in the  
best interest of the person or the hospital may not be able to  
10 provide the appropriate treatment for various reasons; this  
amendment ensures that the hospital is not obligated to admit the  
12 person solely because the person's advance health care directive  
authorizes the admission. This amendment also creates no  
14 obligation on the hospital or treatment provider to provide the  
treatment consented to in the advance health care directive if  
16 the physician or psychologist treating or evaluating the person  
or the chief administrative officer of the hospital determines  
18 that the treatment is not in the person's best interest.

20 This amendment authorizes a law enforcement officer to take  
into protective custody a person that the officer knows has an  
22 advance health care directive authorizing mental health treatment  
if the officer has reasonable grounds to believe, based on  
24 probable cause, that the person lacks capacity. The law  
enforcement officer must then deliver the person immediately for  
26 examination in accordance with the Uniform Health-care Decisions  
Act to determine whether the person is competent and whether the  
28 conditions of the advance health care directive are met. If the  
examiner determines that the person does not lack capacity or  
30 that the conditions are not met, the person must be released from  
protective custody. If the examiner determines that the person  
32 lacks capacity or that the conditions stated in the advance  
health care directive are met, the person may be treated in  
34 accordance with the terms of the advance health care directive.  
The amendment also adds a fiscal note to the bill.