

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

SECOND REGULAR SESSION-2002

Legislative Document

No. 2068

H.P. 1563

House of Representatives, January 11, 2002

**An Act to Implement the Recommendations of the Committee to Study
the Needs of Persons with Mental Illness Who are Incarcerated Relating
to Treatment and Aftercare Planning in Prisons and Jails.**

Reported by Speaker SAXL for the Committee to Study the Needs of Persons with Mental Illness Who Are Incarcerated pursuant to Joint Order 2001, H.P. 1383.

Reference to the Joint Standing Committee on Criminal Justice suggested and printing ordered under Joint Rule 218.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

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

PART A

Sec. A-1. 22 MRSA §3174-CC is enacted to read:

§3174-CC. Medicaid eligibility during incarceration

The department shall establish procedures to ensure that a person receiving federally approved Medicaid services prior to incarceration does not lose Medicaid eligibility as a result of that incarceration, even if Medicaid coverage is limited or suspended during the period of incarceration. Nothing in this section requires or permits the department to maintain an incarcerated person's Medicaid eligibility if the person no longer meets eligibility requirements or refuses coverage.

PART B

Sec. B-1. **Improvement of access to inpatient beds.** The Commissioner of Behavioral and Developmental Services shall develop memorandums of agreement with the Department of Corrections and county jail administrators to establish procedures and policies that improve access to inpatient beds at a state mental health institution for people with mental illness transferred from the Department of Corrections or county jails.

PART C

Sec. C-1. 15 MRSA §2211-A, sub-§10 is enacted to read:

10. Reincarceration planning. For each person hospitalized pursuant to this section, the Department of Behavioral and Developmental Services, in consultation with the sheriff or other person responsible for the local or county correctional facility and before the person is transferred back to the correctional facility, shall develop a written treatment plan describing the treatment to be provided to the person during the remainder of that person's incarceration.

Sec. C-2. 34-A MRSA §3069, sub-§3 is enacted to read:

3. Reincarceration planning. For each person hospitalized pursuant to this section, the Department of Behavioral and Developmental Services, in consultation with the chief administrative officer of the correctional or detention facility and before the person is transferred back to the correctional or detention facility, shall develop a written treatment plan

2 describing the treatment to be provided to the person during the
3 remainder of that person's incarceration.

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5 **PART D**

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7 **Sec. D-1. 34-B MRSA §1207, sub-§1, ¶¶B-3 and B-4** are enacted to
8 read:

10 B-3. Information may be disclosed to the Department of
11 Corrections if:

12 (1) The client is in the custody of the Department of
13 Corrections;

14 (2) The client is suffering an acute mental
15 deterioration such that the client is not capable of
16 granting informed written consent; and

17 (3) The information is necessary in order for the
18 Department of Corrections to carry out its statutory
19 functions;

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23 B-4. Information may be disclosed to a sheriff responsible
24 for a county detention facility if:

25 (1) The client is in the custody of that facility;

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27 (2) The client is suffering an acute mental
28 deterioration such that the client is not capable of
29 granting informed written consent; and

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31 (3) The information is necessary in order for the
32 facility to carry out its statutory functions;

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35 **PART E**

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37 **Sec. E-1. Examination of treatment of incarcerated mentally ill**
38 **persons.** The Department of Corrections and the Maine Jail
39 Association shall examine and develop ways of treating
40 incarcerated persons with mental illness in the least restrictive
41 setting possible that does not compromise security. The
42 department and Maine Jail Association shall report the results of
43 this examination and any actions taken together with any
44 recommendations to the joint standing committee of the
45 Legislature having jurisdiction over criminal justice matters no
46 later than January 30, 2003. The joint standing committee may
47 report out legislation in response to the report to the First
48 Regular Session of the 121st Legislature.
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PART F

Sec. F-1. 34-B MRSA c. 17 is enacted to read:

CHAPTER 17

OMBUDSMAN FOR MENTALLY ILL INMATES

§17001. Ombudsman program

1. Definitions. As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Ombudsman" means the director of the program and persons employed by or volunteering to perform the work of the program.

B. "Program" means the ombudsman program established under this section.

2. Program established. The ombudsman program is established as an independent program within the Executive Department to provide ombudsman services to persons with mental illness who are in the custody of the Department of Corrections or a county correctional facility. The program shall consider and promote the best interests of persons with mental illness who are incarcerated, answer inquiries and investigate, advise and work toward resolution of complaints of infringement of the rights or interests of persons with mental illness who are incarcerated. The program must be staffed under contract by an attorney, or a master's level social worker, who must have experience in advocacy for persons with mental illness, and support staff as determined necessary. The program functions through the staff of the program and volunteers recruited and trained to assist in the duties of the program.

3. Contracted services. The program shall operate by contract with a nonprofit organization that the Executive Department determines to be free of potential conflict of interest and best able to provide the services on a statewide basis. The ombudsman may not be actively involved in state-level political party activities or publicly endorse, solicit funds for or make contributions to political parties on the state level or candidates for statewide elective office. The ombudsman may not be a candidate for or hold any statewide elective or appointive public office.

2 4. Duties. The program shall provide services directly or
3 under contract and may set priorities for service among the types
4 of inquiries and complaints. The program shall:

5 A. Provide information to the public about the services of
6 the program through a comprehensive outreach program. The
7 ombudsman shall provide information through a toll-free
8 telephone number or numbers;

9 B. Answer inquiries and investigate and work toward
10 resolution of complaints regarding the performance and
11 services of the department, the Department of Corrections,
12 and any county correctional facility;

13 C. Participate in conferences, meetings and studies that may
14 improve the performance and services of the department, the
15 Department of Corrections and any county correctional
16 facility;

17 D. Provide services to persons with mental illness who are
18 incarcerated to assist them in protecting their rights;

19 E. Inform persons of the means of obtaining services from
20 the department, the Department of Corrections, a county
21 correctional facility and any other entity that may offer
22 services;

23 F. Provide information and referral services;

24 G. Analyze and provide opinions and recommendations on state
25 programs, rules, policies and laws to agencies, the Governor
26 and the Legislature;

27 H. Determine what types of inquiries and complaints will be
28 accepted for action by the program and adopt policies and
29 procedures regarding communication with persons making the
30 inquiries or complaints and appropriate agencies and
31 facility administrators and staff;

32 I. Apply for and use grants, gifts and funds for the purpose
33 of performing the duties of the program; and

34 J. Collect and analyze records and data relevant to the
35 duties and activities of the program and make reports as
36 required by law or determined by the ombudsman to be
37 appropriate.

38 5. Access to persons, files and records. As necessary for
39 the duties of the program, the ombudsman has access to the files
40 and records of the department, the Department of Corrections and
41 any county correctional facility.

2 any county correctional facility, without fee, and to the
3 personnel of the departments and facilities for the purposes of
4 investigation of an inquiry or complaint. The ombudsman may also
5 enter the premises of any state or county correctional facility
6 for the purposes of investigation of an inquiry or complaint
7 without prior notice. The program shall maintain the
8 confidentiality of all information or records obtained under this
9 subsection.

10 **6. Confidentiality of records.** Information or records
11 maintained by the program relating to a complaint or inquiry are
12 confidential and may not be disclosed unless the disclosure is
13 permitted by law and consented to by the ombudsman or ordered by
14 court. Records maintained by the program are not public records
15 as defined in Title 1, chapter 13.

16 **7. Liability.** Any person who in good faith submits a
17 complaint or inquiry to the program pursuant to this section is
18 immune from any civil or criminal liability for that act. For
19 the purpose of any civil or criminal proceedings, there is a
20 rebuttable presumption that any person acting pursuant to this
21 section did so in good faith. The ombudsman and employees and
22 volunteers in the program are employees of the State for the
23 purposes of the Maine Tort Claims Act, Title 14, section 8101.

24 **8. Penalties.** A person who intentionally obstructs or
25 hinders the lawful performance of the ombudsman's duties commits
26 a Class E crime. A person who penalizes or imposes a restriction
27 on a person who makes a complaint or inquiry to the ombudsman as
28 a result of that complaint or inquiry commits a Class E crime.
29 The Attorney General shall enforce this subsection under Title 5,
30 section 191.

31 **9. Information.** Beginning January 1, 2003, information
32 about the services of the program and any applicable grievance
33 and appeal procedures must be provided to all inmates in the
34 custody of the Department of Corrections and all inmates in
35 county correctional facilities.

36 **10. Report.** The program shall report to the Governor, the
37 department and the Legislature by December 31st each year on the
38 activities and services of the program, priorities among types of
39 inquiries and complaints that have been set by the program,
40 waiting lists for services, the provision of outreach services
41 and recommendations for changes in policies, rules or laws to
42 improve the provision of services.

43 **11. Oversight.** The joint standing committee of the
44 Legislature having jurisdiction over criminal justice matters
45 shall review annually the operations of the program and may make
46 recommendations for changes in the program.

2 recommendations to the Governor regarding the contract for
3 services under this section. The committee may submit legislation
4 that it determines necessary to amend or repeal this section.

5 **Sec. F-2. Appropriations and allocations.** The following
6 appropriations and allocations are made.

8 **EXECUTIVE DEPARTMENT**

10 **Ombudsman Program**

12 New Initiative: Provides funds to contract with a nonprofit
13 organization to operate an ombudsman program. Funding is
14 included for one Ombudsman position and one support staff
15 position, operating costs and one-time, start-up costs.

16	General Fund	2002-03
18	All Other	\$133,815

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SUMMARY

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24 This bill implements the recommendations of the Committee to
25 Study the Needs of Persons with Mental Illness Who Are
26 Incarcerated relating to treatment and aftercare planning in
state prisons and county jails.