

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1855

S.P. 669

April 12, 2007

An Act To Clarify Involuntary Admissions for Psychiatric Hospitalizations

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Received by the Secretary of the Senate on April 11, 2007. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator NUTTING of Androscoggin.
Cosponsored by Representative CANAVAN of Waterville.

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

2 **Sec. 1. 34-B MRSA §3801, sub-§1**, as enacted by PL 1983, c. 459, §7, is
3 repealed.

4 **Sec. 2. 34-B MRSA §3801, sub-§7**, as enacted by PL 1983, c. 459, §7, is
5 amended to read:

6 **7. Patient.** "Patient" means a person under observation, care or treatment in a
7 psychiatric hospital or residential care facility pursuant to this subchapter or a person
8 being evaluated for emergency admission under section 3863 in a hospital emergency
9 department.

10 **Sec. 3. 34-B MRSA §3801, sub-§7-B** is enacted to read:

11 **7-B. Psychiatric hospital.** "Psychiatric hospital" means:

12 A. A state mental health institute; or

13 B. A nonstate mental health institution.

14 **Sec. 4. 34-B MRSA §3802, sub-§3**, as enacted by PL 1983, c. 459, §7, is
15 amended to read:

16 **3. Visitation.** Visit each psychiatric hospital or residential care facility regularly to
17 review the commitment procedures of all new patients admitted between visits and visit
18 other hospitals as necessary to review protocols and procedures related to certification of
19 patients under section 3863;

20 **Sec. 5. 34-B MRSA §3803**, as enacted by PL 1983, c. 459, §7, is amended to
21 read:

22 **§3803. Patient's rights**

23 A patient in a psychiatric hospital or residential care facility under this subchapter has
24 the following rights.

25 **1. Civil rights.** Every patient is entitled to exercise all civil rights, including, but not
26 limited to, the right to civil service status, the right to vote, rights relating to the granting,
27 renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law,
28 the right to enter into contractual relationships and the right to manage ~~his~~ the patient's
29 property, unless:

30 A. The chief administrative officer of the psychiatric hospital or residential care
31 facility determines that it is necessary for the medical welfare of the patient to impose
32 restrictions on the exercise of these rights and, if restrictions are imposed, the
33 restrictions and the reasons for them ~~shall~~ must be made a part of the clinical record
34 of the patient;

35 B. A patient has been adjudicated incompetent and has not been restored to legal
36 capacity; or

1 C. The exercise of these rights is specifically restricted by other statute or rule, but
2 not solely because of the fact of admission to a psychiatric hospital or residential care
3 facility.

4 **2. Humane care and treatment.** Every patient is entitled to humane care and
5 treatment and, to the extent that facilities, equipment and personnel are available, to
6 medical care and treatment in accordance with the highest standards accepted in medical
7 practice.

8 **3. Restraints and seclusion.** Restraint, including any mechanical means of
9 restricting movement, and seclusion, including isolation by means of doors ~~which that~~
10 cannot be opened by the patient, may not be used on a patient, unless the chief
11 administrative officer of the psychiatric hospital or residential care facility or ~~his~~ the chief
12 administrative officer's designee determines that either is required by the medical needs
13 of the patient.

14 A. The chief administrative officer of the psychiatric hospital or facility shall record
15 and make available for inspection every use of mechanical restraint or seclusion and
16 the reasons for its use.

17 B. The limitation of the use of seclusion in this section does not apply to maximum
18 security installations.

19 **4. Communication.** Patient communication rights are as follows.

20 A. Every patient is entitled to communicate by sealed envelopes with the
21 department, a member of the clergy of ~~his~~ the patient's choice, ~~his~~ the patient's
22 attorney and the court ~~which that~~ ordered ~~his~~ the patient's hospitalization, if any.

23 B. Every patient is entitled to communicate by mail in accordance with the rules of
24 the psychiatric hospital.

25 **5. Visitors.** Every patient is entitled to receive visitors unless definitely
26 contraindicated by ~~his~~ the patient's medical condition, except that ~~he~~ the patient may be
27 visited by a member of the clergy of ~~his~~ the patient's choice or ~~his~~ the patient's attorney at
28 any reasonable time.

29 **6. Sterilization.** A patient may not be sterilized except in accordance with chapter 7.

30 **Sec. 6. 34-B MRSA §3831**, as amended by PL 1999, c. 423, §3, is further
31 amended to read:

32 **§3831. Admission**

33 A psychiatric hospital ~~for the mentally ill~~ may admit on an informal voluntary basis
34 for care and treatment of a mental illness any person desiring admission or the adult ward
35 of a legally appointed guardian, subject to the following conditions.

36 **1. Availability of accommodations.** Except in cases of medical emergency,
37 voluntary admission is subject to the availability of suitable accommodations.

1 **2. Standard hospital information.** Standard hospital information may be elicited
2 from the person if, after examination, the chief administrative officer of the psychiatric
3 hospital ~~deems~~ determines the person suitable for admission, care and treatment.

4 **3. Persons under 18 years of age.** Any person under 18 years of age must have the
5 consent of ~~his~~ the person's parent or guardian.

6 **4. State mental health institute.** Any person under 18 years of age must have the
7 consent of the commissioner for admission to a state mental health institute.

8 **5. Adults under guardianship.** An adult ward may be admitted on an informal
9 voluntary basis only if ~~his~~ the adult ward's legally appointed guardian consents to the
10 admission and the ward makes no objection to the admission.

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

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

34 **Sec. 7. 34-B MRSA §3832,** as amended by PL 2005, c. 519, Pt. BBBB, §4 and
35 affected by §20, is further amended to read:

36 **§3832. Freedom to leave**

37 **1. Patient's right.** A patient admitted under section 3831 is free to leave the
38 psychiatric hospital at any time after admission within 16 hours of the patient's request
39 unless application for admission of the person under section 3863 is initiated within that
40 time.

1 **2. Notice.** The chief administrative officer of the psychiatric hospital shall cause
2 every patient admitted under section 3831 to be informed, at the time of admission, of:

3 A. ~~His~~ The patient's status as an informally admitted patient; and

4 B. ~~His~~ The patient's freedom to leave the psychiatric hospital under this section.

5 **Sec. 8. 34-B MRSA §3861, sub-§2,** as amended by PL 1997, c. 422, §5, is
6 further amended to read:

7 **2. State mental health institute.** The chief administrative officer of a state mental
8 health institute:

9 A. May receive for observation, diagnosis, care and treatment in the ~~hospital~~ state
10 mental health institute any person whose admission is applied for under section 3831
11 or 3863 if the certifying examination conducted pursuant to section 3863, subsection
12 2 was completed no more than 2 days before the date of admission; and

13 B. May receive for observation, diagnosis, care and treatment in the ~~hospital~~ state
14 mental health institute any person whose admission is applied for under section 3864
15 or is ordered by a court.

16 Any business entity contracting with the department for psychiatric physician services or
17 any person contracting with a state mental health institute or the department to provide
18 services pertaining to the admission, treatment or discharge of patients under sections
19 3863 and 3864 within a state mental health institute or any person contracting with a
20 business entity to provide those services within a state mental health institute is deemed
21 to be a governmental entity or an employee of a governmental entity for purposes of civil
22 liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the
23 admission, treatment or discharge of patients within a state mental health institute under
24 sections 3863 and 3864.

25 **Sec. 9. 34-B MRSA §3862, sub-§1, ¶B,** as amended by PL 1999, c. 423, §4, is
26 further amended to read:

27 B. If the law enforcement officer does take the person into protective custody, shall
28 deliver the person immediately for examination as provided in section 3863 or, for a
29 person taken into protective custody who has an advance health care directive
30 authorizing mental health treatment, for examination as provided in Title 18-A,
31 section 5-802, subsection (d) to determine the individual's capacity and the existence
32 of conditions specified in the advance health care directive for the directive to be
33 effective. ~~If the examination occurs in a hospital emergency room, the~~ The
34 examination may be performed by a licensed physician, a licensed clinical
35 psychologist, a physician's assistant, a nurse practitioner or a certified psychiatric
36 clinical nurse specialist. ~~If the examination does not occur in a hospital emergency~~
37 ~~room, the examination may be performed only by a licensed physician or licensed~~
38 ~~clinical psychologist.~~

39 **Sec. 10. 34-B MRSA §3863,** as amended by PL 2005, c. 519, Pt. BBBB, §§5 to 8
40 and affected by §20, is further amended to read:

1 **§3863. Emergency procedure**

2 A person may be admitted to a ~~mental~~ psychiatric hospital on an emergency basis
3 according to the following procedures.

4 **1. Application.** Any health officer, law enforcement officer or other person may
5 make a written application to admit a person to a ~~mental~~ psychiatric hospital, subject to
6 the prohibitions and ~~penalties~~ penalties of section 3805, stating:

7 A. ~~His~~ The person's belief that the person is mentally ill and, because of ~~his~~ the
8 person's illness, poses a likelihood of serious harm; and

9 B. The grounds for this belief.

10 **2. Certifying examination.** The written application must be accompanied by a
11 dated certificate, signed by a licensed physician, physician's assistant, certified
12 psychiatric clinical nurse specialist, nurse practitioner or ~~a~~ licensed clinical psychologist,
13 stating:

14 A. The physician, physician's assistant, certified psychiatric clinical nurse
15 specialist, nurse practitioner or psychologist has examined the person on the date of
16 the certificate; and

17 B. The physician, physician's assistant, certified psychiatric clinical nurse specialist,
18 nurse practitioner or psychologist is of the opinion that the person is mentally ill and,
19 because of that illness, poses a likelihood of serious harm. The written certificate
20 must include a description of the grounds for that opinion.

21 **2-A. Custody agreement.** A state, county or municipal law enforcement agency
22 may meet with representatives of those public and private health practitioners and health
23 care facilities that are willing and qualified to perform the certifying examination required
24 by this section in order to attempt to work out a procedure for the custody of the person
25 who is to be examined while that person is waiting for that examination. Any agreement
26 must be written and signed by and filed with all participating parties. In the event of
27 failure to work out an agreement that is satisfactory to all participating parties, the
28 procedures of section 3862 and this section continue to apply.

29 As part of an agreement the law enforcement officer requesting certification may transfer
30 protective custody of the person for whom the certification is requested to another law
31 enforcement officer, a health officer if that officer agrees or the chief administrative
32 officer of a public or private health practitioner or health facility or the chief
33 administrative officer's designee. Any arrangement of this sort must be part of the written
34 agreement between the law enforcement agency and the health practitioner or health care
35 facility. In the event of a transfer, the law enforcement officer seeking the transfer shall
36 provide the written application required by this section.

37 A person with mental illness may not be detained or confined in any jail or local
38 correctional or detention facility, whether pursuant to the procedures described in section
39 3862, pursuant to a custody agreement, or under any other circumstances, unless that
40 person is being lawfully detained in relation to or is serving a sentence for commission of
41 a crime.

1 **3. Judicial review.** The application and accompanying certificate must be reviewed
2 by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a
3 justice of the peace, who may review the original application and accompanying
4 certificate or a facsimile transmission of them.

5 A. If the judge or justice finds the application and accompanying certificate to be
6 regular and in accordance with the law, the judge or justice shall endorse them and
7 promptly send them to the admitting ~~mental~~ psychiatric hospital. For purposes of
8 carrying out the provisions of this section, an endorsement transmitted by facsimile
9 machine has the same legal effect and validity as the original endorsement signed by
10 the judge or justice.

11 B. A person may not be held against the person's will in ~~the~~ a hospital under this
12 section, ~~whether informally admitted under section 3831 or sought to be involuntarily~~
13 ~~admitted under this section, unless the application and certificate have been endorsed~~
14 ~~by a judge or justice,~~ except that a person for whom an examiner has executed the
15 certificate under subsection 2 may be detained in a hospital for a reasonable period of
16 time, not to exceed ~~48~~ 24 hours, pending endorsement by a judge or justice, if:

17 (1) For a person informally admitted under section 3831, the chief administrative
18 officer of the psychiatric hospital undertakes to secure the endorsement
19 immediately upon execution of the certificate by the examiner; and

20 (2) For a person sought to be involuntarily admitted under this section, the
21 person or persons ~~transporting the person sought to be involuntarily admitted to~~
22 ~~the hospital~~ seeking the involuntary admission undertake to secure the
23 endorsement immediately upon execution of the certificate by the examiner.

24 C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be
25 admitted informally under section 3831 or involuntarily under this section may be
26 transported to a psychiatric hospital and held there for evaluation and treatment ~~at a~~
27 ~~hospital~~ pending judicial endorsement of the application and certificate if the
28 endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00
29 p.m.

30 **4. Custody and transportation.** Custody and transportation under this section are
31 governed as follows.

32 A. Upon endorsement of the application and certificate by the judge or justice, a
33 law enforcement officer or other person designated by the judge or justice may take
34 the person into custody and transport that person to the psychiatric hospital
35 designated in the application. Transportation of an individual to a psychiatric
36 hospital under these circumstances must involve the least restrictive form of
37 transportation available that meets the clinical needs of that individual.

38 B. The Department of Health and Human Services is responsible for any
39 transportation expenses under this section, including return from the psychiatric
40 hospital if admission is declined. The department shall utilize any 3rd-party payment
41 sources that are available.

42 C. When a person who is under a sentence or lawful detention related to
43 commission of a crime and who is incarcerated in a jail or local correctional or

1 detention facility is admitted to a psychiatric hospital under any of the procedures in
2 this subchapter, the county where the incarceration originated shall pay all expenses
3 incident to transportation of the person between the psychiatric hospital and the jail or
4 local correctional or detention facility.

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

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

12 B. If the chief administrative officer ~~of the hospital~~ determines that admission of the
13 person as an informally admitted patient is not suitable, or if the person declines
14 admission as an informally admitted patient, the chief administrative officer ~~of the~~
15 ~~hospital~~ may seek involuntary commitment of the ~~patient~~ person by filing an
16 application for the issuance of an order for hospitalization under section 3864, except
17 that if the psychiatric hospital is a designated nonstate mental health institution and if
18 the patient was admitted under the contract between the psychiatric hospital and the
19 department for receipt by the psychiatric hospital of involuntary patients, then the
20 chief administrative officer may seek involuntary commitment only by requesting the
21 commissioner to file an application for the issuance of an order for hospitalization
22 under section 3864.

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

26 (2) The application must be filed within 3 days from the date of admission of the
27 patient under this section, except that, if the 3rd day falls on a weekend or
28 holiday, the application must be filed on the next business day following that
29 weekend or holiday.

30 C. If neither readmission on an informal voluntary basis nor application to the
31 District Court is effected under this subsection, the chief administrative officer of the
32 psychiatric hospital to which the person was admitted on an emergency basis shall
33 discharge the person immediately.

34 D. If the chief administrative officer of the psychiatric hospital has filed an
35 application in the District Court for an order of hospitalization under section 3864 but
36 the hearing on the application has not yet been conducted, the chief administrative
37 officer may also submit in the interim a request for an administrative hearing before a
38 hearing officer employed by or under contract with the department to administer
39 medication on an involuntary basis to the patient if the court orders such
40 commitment. In such cases, the administrative hearing to consider the request for
41 involuntary treatment must be held within 4 business days of the date of the court's
42 order permitting involuntary hospitalization under section 3864.

1 **6. Notice.** Upon admission of a person under this section, and after consultation
2 with the person, the chief administrative officer of the psychiatric hospital shall notify, as
3 soon as possible regarding the fact of admission, the person's:

- 4 A. Guardian, if known;
- 5 B. Spouse;
- 6 C. Parent;
- 7 D. Adult child; or
- 8 E. One of next of kin or a friend, if none of the listed persons exists.

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

12 **7. Post-admission examination.** Every patient admitted to a psychiatric hospital
13 ~~shall~~ must be examined as soon as practicable after ~~his~~ the patient's admission.

14 A. The chief administrative officer of the psychiatric hospital shall arrange for
15 examination by a staff physician or licensed clinical psychologist of every patient
16 hospitalized under this section.

17 B. The examiner may not be the certifying examiner under this section or under
18 section 3864.

19 C. If the post-admission examination is not held within 24 hours after the time of
20 admission, or if a staff physician or licensed clinical psychologist fails or refuses after
21 the examination to certify that, in ~~his~~ the staff physician's or licensed clinical
22 psychologist's opinion, the person is mentally ill and due to ~~his~~ the person's mental
23 illness poses a likelihood of serious harm, the person ~~shall~~ must be immediately
24 discharged.

25 **8. Rehospitalization from progressive treatment program.** The assertive
26 community treatment team physician or psychologist may make a written application
27 under this section to admit to a state mental health institute a person who fails to fully
28 participate in the progressive treatment program in accordance with section 3873,
29 subsection 5. The provisions of this section apply to that application, except that the
30 standard for admission is governed by section 3873, subsection 5, paragraph B.

31 **Sec. 11. 34-B MRSA §3864**, as amended by PL 2005, c. 519, Pt. BBBB, §§9 and
32 10 and affected by §20, is further amended to read:

33 **§3864. Judicial procedure and commitment**

34 **1. Application.** An application to the District Court to admit a person to a ~~mental~~
35 psychiatric hospital, filed under section 3863, subsection 5, paragraph B, ~~shall~~ must be
36 accompanied by:

- 37 A. The emergency application under section 3863, subsection 1;

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

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

5 (1) The physician or psychologist has examined the patient; and

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

8 D. A written statement, signed by the chief administrative officer of the psychiatric
9 hospital, certifying that a copy of the application and the accompanying documents
10 have been given personally to the patient and that the patient and the patient's
11 guardian or next of kin have been notified of the patient's right to retain an attorney or
12 to have an attorney appointed, of the patient's right to select or to have the patient's
13 attorney select an independent examiner and regarding instructions on how to contact
14 the District Court; and

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

16 **2. Detention pending judicial determination.** Notwithstanding any other
17 provisions of this subchapter, a person, with respect to whom an application for the
18 issuance of an order for hospitalization has been filed, may not be released or discharged
19 during the pendency of the proceedings, unless:

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

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

24 C. A court orders release or discharge upon a writ of habeas corpus under section
25 3804; or

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

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

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

35 (1) To be mailed within 2 days of filing to the person; and

36 (2) To be mailed to the person's guardian, if known, and to the person's spouse,
37 parent or one of the person's adult children or, if none of these persons exist or if
38 none of those persons can be located, to one of the person's next of kin or a
39 friend, except that if the chief administrative officer has reason to believe that

1 notice to any of these individuals would pose risk of harm to the person who is
2 the subject of the application, notice to that individual may not be given.

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

5 **4. Examination.** Examinations under this section are governed as follows.

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

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

13 (2) One of the examiners must be a physician or psychologist chosen by the
14 person or by that person's counsel, if the chosen physician or psychologist is
15 reasonably available.

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

18 B. The examination ~~shall~~ must be held at the psychiatric hospital or at any other
19 suitable place not likely to have a harmful effect on the mental health of the person.

20 ~~C. If the report of the examiners is to the effect that the person is not mentally ill or
21 does not pose a likelihood of serious harm, the application shall be ordered
22 discharged forthwith.~~

23 ~~D. If the report of the examiners is to the effect that the person is mentally ill or
24 poses a likelihood of serious harm, the hearing shall be held on the date, or on the
25 continued date, which the court has set for the hearing.~~

26 E. The examiners shall report to the court as to whether the person is a mentally ill
27 person within the meaning of section 3801, subsection 5 or is a person with severe
28 and persistent mental illness, as appropriate to the proceedings for which the
29 examination was performed.

30 F. The examiners shall report to the court as to whether the person presents a
31 likelihood of serious harm within the meaning of section 3801, subsection 4.

32 **5. Hearing.** Hearings under this section are governed as follows.

33 A. The District Court shall hold a hearing on the application not later than 14 days
34 from the date of the application.

35 (1) On a motion by any party, the hearing may be continued for cause for a
36 period not to exceed 10 additional days.

37 (2) If the hearing is not held within the time specified, or within the specified
38 continuance period, the court shall dismiss the application and order the person
39 discharged forthwith.

1 (3) In computing the time periods set forth in this paragraph, the Maine Rules of
2 Civil Procedure apply.

3 B. The hearing must be conducted in as informal a manner as may be consistent
4 with orderly procedure and in a physical setting not likely to have harmful effect on
5 the mental health of the person. If the setting is outside the psychiatric hospital to
6 which the patient is currently admitted, the Department of Health and Human
7 Services shall bear the responsibility and expense of transporting the patient to and
8 from the hearing. If the patient is to be admitted to a psychiatric hospital following
9 the hearing, then the ~~responsible~~ hospital from which the patient came shall transport
10 the patient to the admitting psychiatric hospital. If the patient is to be released
11 following the hearing, then the ~~responsible~~ hospital from which the patient came shall
12 return the patient to ~~the~~ that hospital or, at the patient's request, return the patient to
13 the patient's place of residence.

14 C. The court shall receive all relevant and material evidence ~~which~~ that may be
15 offered in accordance with accepted rules of evidence and accepted judicial
16 dispositions. A hearing must be held on every application, even if the examiners'
17 report indicates that the person is not mentally ill or does not pose a likelihood of
18 serious harm.

19 (1) The person, the applicant and all other persons to whom notice is required to
20 be sent ~~shall~~ must be afforded an opportunity to appear at the hearing to testify
21 and to present and cross-examine witnesses.

22 (2) The court may, in its discretion, receive the testimony of any other person
23 and may subpoena any witness.

24 D. The person ~~shall~~ must be afforded an opportunity to be represented by counsel,
25 and, if neither the person nor others provide counsel, the court shall appoint counsel
26 for the person.

27 E. In addition to proving that the patient is a mentally ill individual, the applicant
28 must show:

29 (1) By evidence of the patient's recent actions and behavior, that due to the
30 patient's mental illness the patient poses a likelihood of serious harm; and

31 (2) That, after full consideration of less restrictive treatment settings and
32 modalities, inpatient hospitalization is the best available means for the treatment
33 of the person.

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

38 G. A stenographic or electronic record ~~shall~~ must be made of the proceedings in all
39 judicial hospitalization hearings.

40 (1) The record and all notes, exhibits and other evidence ~~shall be~~ are
41 confidential.

1 (2) The record and all notes, exhibits and other evidence ~~shall~~ must be retained
2 as part of the District Court records for a period of 2 years from the date of the
3 hearing.

4 H. The hearing ~~shall be~~ is confidential and ~~no~~ a report of the proceedings may not
5 be released to the public or press, except by permission of the person or ~~his~~ the
6 person's counsel and with approval of the presiding District Court Judge, except that
7 the court may order a public hearing on the request of the person or ~~his~~ the person's
8 counsel.

9 **6. Court findings.** Procedures dealing with the District Court's findings under this
10 section are as follows.

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

13 (1) Clear and convincing evidence that the person is mentally ill and that the
14 person's recent actions and behavior demonstrate that the person's illness poses a
15 likelihood of serious harm;

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

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

21 B. If the District Court makes the findings described in paragraph A, subparagraphs
22 1 and 2, but is not satisfied with the individual treatment plan as offered, it may
23 continue the case for not longer than 10 days, pending reconsideration and
24 resubmission of an individual treatment plan by the psychiatric hospital.

25 **7. Commitment.** Upon making the findings described in subsection 6, the court
26 may order commitment to a psychiatric hospital for a period not to exceed 4 months in
27 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 after the completion
29 of the hearing, or it may take the matter under advisement and issue an order within
30 24 hours of the hearing.

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

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

1 **9. Transportation.** Except for transportation expenses paid by the District Court
2 pursuant to subsection 10, a continued involuntary hospitalization hearing that requires
3 transportation of the patient to and from any psychiatric hospital to a court that has
4 committed the person must be provided at the expense of the Department of Health and
5 Human Services. Transportation of an individual to a psychiatric hospital under these
6 circumstances must involve the least restrictive form of transportation available that
7 meets the clinical needs of that individual and be in compliance with departmental
8 regulations.

9 **10. Expenses.** With the exception of expenses incurred by the applicant pursuant to
10 subsection 5, paragraph F, the District Court ~~shall be~~ is responsible for any expenses
11 incurred under this section, including fees of appointed counsel, witness and notice fees
12 and expenses of transportation for the person.

13 **11. Appeals.** A person ordered by the District Court to be committed to a
14 psychiatric hospital may appeal from that order to the Superior Court.

15 A. The appeal is on questions of law only.

16 B. Any findings of fact of the District Court may not be set aside unless clearly
17 erroneous.

18 C. The order of the District Court ~~shall remain~~ remains in effect pending the appeal.

19 D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to
20 the conduct of the appeals, except as otherwise specified in this subsection.

21 **Sec. 12. 34-B MRSA §3865**, as enacted by PL 1983, c. 459, §7, is amended to
22 read:

23 **§3865. Hospitalization by federal agency**

24 If a person ordered to be hospitalized under section 3864 is eligible for hospital care
25 or treatment by any agency of the United States, the court, upon receipt of a certificate
26 from the agency showing that facilities are available and that the person is eligible for
27 care or treatment in the facilities, may order ~~him~~ the person to be placed in the custody of
28 the agency for hospitalization.

29 **1. Rules and rights.** A person admitted under this section to any psychiatric
30 hospital or institution operated by any agency of the United States, inside or outside the
31 State, is subject to the rules of the agency, but retains all rights to release and periodic
32 court review granted by this subchapter.

33 **2. Powers of chief administrative officer.** The chief administrative officer of any
34 psychiatric hospital or institution operated by a federal agency in which the person is
35 hospitalized has, with respect to the person, the same powers as the chief administrative
36 officer of psychiatric hospitals or the commissioner within this State with respect to
37 detention, custody, transfer, conditional release or discharge of patients.

38 **3. Court jurisdiction.** Every order of hospitalization issued under this section is
39 conditioned on the retention of jurisdiction in the courts of this State to, at any time:

- 1 A. Inquire into the mental condition of a person hospitalized; and
- 2 B. Determine the necessity for continuance of ~~his~~ the person's hospitalization.

3 **Sec. 13. 34-B MRSA §3866**, as enacted by PL 1983, c. 459, §7, is amended to
4 read:

5 **§3866. Members of the Armed Forces**

6 **1. Admission to psychiatric hospital.** Any member of the Armed Forces of the
7 United States who was a resident of the State at the time of ~~his~~ the member's induction
8 into the service and who is determined by a federal board of medical officers to have a
9 mental disease not incurred in line of duty ~~shall~~ must be received, at the discretion of the
10 commissioner and without formal commitment, at either of the state ~~hospitals for the~~
11 ~~mentally ill~~ mental health institutes, upon delivery at the ~~hospital~~ institute designated by
12 the commissioner of:

- 13 A. The member of the Armed Forces; and
- 14 B. The findings of the board of medical officers that ~~he~~ the member is mentally ill.

15 **2. Status.** After delivery of the member of the Armed Forces at the ~~hospital~~ state
16 mental health institute designated by the commissioner, ~~his~~ the member's status ~~shall be~~ is
17 the same as if ~~he~~ the member had been committed to the ~~hospital~~ institute under section
18 3864.

19 **Sec. 14. 34-B MRSA §3867**, as amended by PL 1997, c. 422, §20, is further
20 amended to read:

21 **§3867. Transfer from out-of-state institutions**

22 **1. Commissioner's authority.** The commissioner may, upon request of a competent
23 authority of the District of Columbia or of a state that is not a member of the Interstate
24 Compact on Mental Health, authorize the transfer of a mentally ill ~~patient~~ person directly
25 to a ~~hospital~~ state mental health institute in Maine, if:

- 26 A. The ~~patient~~ person has resided in this State for a consecutive period of one year
27 during the 3-year period immediately preceding commitment in the other state or the
28 District of Columbia;
- 29 B. The ~~patient~~ person is currently confined in a recognized institution for the care
30 of the mentally ill as the result of proceedings considered legal by that state or by the
31 District of Columbia;
- 32 C. A duly certified copy of the original commitment proceedings and a copy of the
33 ~~patient's~~ person's case history is supplied;
- 34 D. The commissioner, after investigation, considers the transfer justifiable; and
- 35 E. All expenses of the transfer are borne by the agency requesting it.

36 **2. Receipt of patient.** When the commissioner has authorized a transfer under this
37 section, the superintendent of the ~~hospital~~ state mental health institute designated by the

1 commissioner shall receive the patient as having been regularly committed to the state
2 mental health institute under section 3864.

3 **Sec. 15. 34-B MRSA §3868**, as amended by PL 1997, c. 422, §21, is further
4 amended to read:

5 **§3868. Transfer to other institutions**

6 **1. To other hospitals.** The commissioner may transfer, or authorize the transfer of,
7 a patient from one hospital to another, either inside or outside the State, if the
8 commissioner determines that it would be consistent with the medical or psychiatric
9 needs of the patient to do so.

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

16 B. In making all such transfers, the commissioner shall give due consideration to
17 the relationship of the patient to ~~his~~ the patient's family, guardian or friends, in order
18 to maintain relationships and encourage visits beneficial to the patient.

19 **2. To federal agency.** Upon receipt of a certificate of an agency of the United States
20 that facilities are available for the care or treatment of any involuntarily hospitalized
21 person and that the person is eligible for care and treatment in a hospital or institution of
22 the agency, the chief administrative officer of the psychiatric hospital may cause ~~his~~ the
23 person's transfer to the agency of the United States for hospitalization.

24 A. Upon making such a transfer, the chief ~~administrator of the hospital~~
25 administrative officer shall notify the court ~~which~~ that ordered hospitalization and the
26 persons specified in subsection 1, paragraph A.

27 B. ~~No~~ A person may not be transferred to an agency of the United States if ~~he~~ the
28 person is confined pursuant to conviction of any felony or misdemeanor or if ~~he~~ the
29 person has been acquitted of the charge solely on the ground of mental illness, unless
30 before the transfer the court originally ordering confinement of the person enters an
31 order for transfer after appropriate motion and hearing.

32 C. Any person transferred under this section to an agency of the United States is
33 deemed to be hospitalized by the agency pursuant to the original order of
34 hospitalization.

35 **Sec. 16. 34-B MRSA §3869**, as enacted by PL 1983, c. 459, §7, is amended to
36 read:

37 **§3869. Return from unauthorized absence**

38 If any patient committed under section 3864 leaves the grounds of the psychiatric
39 hospital without authorization of the chief administrative officer of the psychiatric

1 hospital or ~~his~~ the chief administrative officer's designee, or refuses to return to the
2 psychiatric hospital from a community pass when requested to do so by the chief
3 administrative officer or ~~his~~ the chief administrative officer's designee, law enforcement
4 personnel of the State or of any of its subdivisions may, upon request of the chief
5 administrative officer or ~~his~~ the chief administrative officer's designee, assist in the return
6 of the patient to the psychiatric hospital.

7 **Sec. 17. 34-B MRSA §3870**, as amended by PL 2005, c. 519, Pt. BBBB, §§11
8 and 12 and affected by §20, is further amended to read:

9 **§3870. Convalescent status**

10 **1. Authority.** The chief administrative officer of a state mental health institute may
11 release an improved patient on convalescent status when the chief administrative officer
12 believes that the release is in the best interest of the patient and that the patient does not
13 pose a likelihood of serious harm. The chief administrative officer of a nonstate mental
14 health institute may release an improved patient on convalescent status when the chief
15 administrative officer believes that the release is in the best interest of the patient, the
16 patient does not pose a likelihood of serious harm and, when releasing an involuntarily
17 committed patient, the chief administrative officer has obtained the approval of the
18 commissioner after submitting a plan for continued responsibility.

19 A. Release on convalescent status may include provisions for continuing
20 responsibility to and by the psychiatric hospital, including a plan of treatment on an
21 outpatient or nonhospital basis.

22 B. Before release on convalescent status under this section, the chief administrative
23 officer of a psychiatric hospital shall make a good faith attempt to notify, by
24 telephone, personal communication or letter, of the intent to release the patient on
25 convalescent status and of the plan of treatment, if any:

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

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

34 C. The psychiatric hospital is not liable when good faith attempts to notify the
35 parents, spouse or guardian have failed.

36 D. Before releasing a patient on convalescent status, the chief administrative officer
37 of the psychiatric hospital shall advise the patient, orally and in writing, of the terms
38 of the patient's convalescent status, the treatment available while the patient is on
39 convalescent status and, if the patient is a voluntary patient, of the patient's right to
40 request termination of the status and, if involuntarily committed, the means by which
41 and conditions under which rehospitalization may occur.

1 **2. Reexamination.** Before a patient has spent a year on convalescent status, and at
2 least once a year thereafter, the chief administrative officer of the psychiatric hospital
3 shall reexamine the facts relating to the hospitalization of the patient on convalescent
4 status.

5 **3. Discharge.** Discharge from convalescent status is governed as follows.

6 A. If the chief administrative officer of the psychiatric hospital determines that, in
7 view of the condition of the patient, convalescent status is no longer necessary, the
8 chief administrative officer shall discharge the patient and make a report of the
9 discharge to the commissioner.

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

13 C. Discharge from convalescent status occurs upon expiration of the period of
14 involuntary commitment.

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

17 A. If, prior to discharge, there is reason to believe that it is in the best interest of an
18 involuntarily committed patient on convalescent status to be rehospitalized, or if an
19 ~~involuntary~~ involuntarily committed patient on convalescent status poses a likelihood
20 of serious harm, the commissioner, or the chief administrative officer of the
21 psychiatric hospital, with the approval of the commissioner, may issue an order for
22 the immediate rehospitalization of the patient.

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

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

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

29 (3) Based upon clear and convincing evidence that return to the psychiatric
30 hospital is in the patient's best interest or that the patient poses a likelihood of
31 serious harm, the District Court Judge or justice of the peace approves return to
32 the psychiatric hospital.

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

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

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

1 A. If the convalescent status of a patient in a psychiatric hospital is to be changed,
2 either because of a decision of the chief administrative officer of the psychiatric
3 hospital or because of a request made by a voluntary patient, the chief administrative
4 officer of the psychiatric hospital shall immediately make a good faith attempt to
5 notify, by telephone, personal communication or letter, of the contemplated change:

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

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

14 B. If the change in convalescent status is due to the request of a voluntary patient,
15 the chief administrative officer of the psychiatric hospital shall give the required
16 notice within 10 days after the day the chief administrative officer receives the
17 request.

18 C. The psychiatric hospital is not liable when good faith attempts to notify the
19 parents, spouse or guardian have failed.

20 **Sec. 18. 34-B MRSA §3871**, as amended by PL 2005, c. 519, Pt. BBBB, §13 and
21 affected by §20, is further amended to read:

22 **§3871. Discharge**

23 **1. Examination.** The chief administrative officer of a psychiatric hospital shall, as
24 often as practicable, but no less often than every 30 days, examine or cause to be
25 examined every patient to determine that patient's mental status and need for continuing
26 hospitalization.

27 **2. Conditions for discharge.** The chief administrative officer of a psychiatric
28 hospital shall discharge, or cause to be discharged, any patient when:

- 29 A. Conditions justifying hospitalization no longer obtain;
- 30 B. The patient is transferred to another hospital for treatment for that patient's
31 mental or physical condition;
- 32 C. The patient is absent from the psychiatric hospital unlawfully for a period of 90
33 days;
- 34 D. Notice is received that the patient has been admitted to another hospital, inside
35 or outside the State, for treatment for that patient's mental or physical condition; or
- 36 E. Although lawfully absent from the psychiatric hospital, the patient is admitted to
37 another hospital, inside or outside the State, for treatment of that patient's mental or
38 physical condition, except that, if the patient is directly admitted to another hospital
39 and it is the opinion of the chief administrative officer of the psychiatric hospital that

1 the patient will directly reenter the psychiatric hospital within the foreseeable future,
2 the patient need not be discharged.

3 **3. Discharge against medical advice.** The chief administrative officer of a
4 psychiatric hospital may discharge, or cause to be discharged, any patient even though the
5 patient is mentally ill and appropriately hospitalized in the psychiatric hospital, if:

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

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

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

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

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

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

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

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

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

27 **6. Discharge to progressive treatment program.** If a person participates in the
28 progressive treatment program under section 3873, the time period of a commitment
29 under this section terminates on entry into the progressive treatment program.

30 SUMMARY

31 This bill makes the following changes to the Maine Revised Statutes, Title 34-B
32 provisions governing hospitalization of psychiatric patients.

33 1. It deletes the definition of "hospital," and adds the definition of "psychiatric
34 hospital." The definition of "patient" is also expanded so that it describes not only
35 persons receiving care in inpatient beds, but also persons being assessed in hospital
36 emergency departments.

37 2. It gives the Commissioner of Health and Human Services power to investigate
38 complaints not only of patients in psychiatric hospitals but also of patients in general

1 hospital emergency rooms who are being evaluated for certification for commitment. It
2 gives the commissioner clear authority to visit nonpsychiatric hospitals that are involved
3 in the certification process in order to review procedures related to the early steps of
4 commitment.

5 3. It places the phrase "psychiatric hospital" where the word "hospital" was used in
6 the past to retain the meaning under the new definitions.

7 4. It amends the law concerning a certification outside the hospital emergency room
8 to permit a physician's assistant, certified psychiatric clinical nurse specialist or nurse
9 practitioner, as well as a licensed physician or licensed clinical psychologist, to make the
10 certification.

11 5. It clarifies that a judicial officer can review a faxed certification. It clarifies that a
12 patient may be held in any hospital for up to 18 hours while a placement and judicial
13 endorsement are being sought. It amends the law so that the person seeking a patient's
14 admission, rather than the law enforcement officer or ambulance service transporting the
15 patient, is responsible for ensuring that the certification is judicially endorsed.

16 6. It clarifies that a regular hospital may see a person in the emergency room and
17 decide that the person needs to be involuntarily committed to a psychiatric hospital to
18 receive the best care for that person. It clarifies that both kinds of hospitals are involved
19 in this commitment process.

20 7. It deletes the requirement that an application be dismissed if the 2 examiners
21 report that the person is not mentally ill or does not pose a likelihood of serious harm.
22 Instead, it provides that a hearing must be held on every application to give others a
23 chance to testify, even if the examiners do not support the application.