

MAINE STATE LEGISLATURE

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MAJORITY

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R. 008

L.D. 1360

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HEALTH AND HUMAN SERVICES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 495, L.D. 1360, Bill, "An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Mental Health Treatment'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, provisions of law related to progressive treatment programs for certain persons with mental illness will be repealed on July 1, 2010; and

Whereas, it is necessary to extend the progressive treatment programs law and make related amendments to the laws; and

Whereas, that extension and the related changes might not take effect on July 1, 2010 unless enacted as emergency measures; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §393, sub-§1, ¶E, as enacted by PL 2007, c. 670, §6, is amended to read:

E. Has been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a

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1 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
2 4-4-A, paragraphs A to C;

3 (2) Found not criminally responsible by reason of insanity with respect to a
4 criminal charge; or

5 (3) Found not competent to stand trial with respect to a criminal charge.

6 **Sec. 2. 25 MRSA §1541, sub-§3, ¶C**, as enacted by PL 2007, c. 670, §16, is
7 amended to read:

8 C. The commanding officer shall report to the Federal Bureau of Investigation,
9 National Instant Criminal Background Check System a court's finding, upon the
10 commanding officer's receipt of an abstract from a court that a person has been:

11 (1) Committed involuntarily to a hospital pursuant to an order of the District
12 Court under Title 34-B, section 3864 because the person was found to present a
13 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
14 4-4-A, paragraphs A to D;

15 (2) Found not criminally responsible by reason of insanity with respect to a
16 criminal charge; or

17 (3) Found not competent to stand trial with respect to a criminal charge.

18 The commanding officer may adopt rules to implement the requirements of this
19 paragraph. Rules adopted pursuant to this paragraph are routine technical rules, as
20 defined in Title 5, chapter 375, subchapter 2-A.

21 **Sec. 3. 34-B MRSA §3801, sub-§4**, as amended by PL 2005, c. 519, Pt. BBBB,
22 §§1 and 2 and affected by §20, is repealed.

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

24 **4-A. Likelihood of serious harm.** "Likelihood of serious harm" means:

25 A. A substantial risk of physical harm to the person as manifested by recent threats
26 of, or attempts at, suicide or serious self-inflicted harm;

27 B. A substantial risk of physical harm to other persons as manifested by recent
28 homicidal or violent behavior or by recent conduct placing others in reasonable fear
29 of serious physical harm;

30 C. A reasonable certainty that the person will suffer severe physical or mental harm
31 as manifested by recent behavior demonstrating an inability to avoid risk or to protect
32 the person adequately from impairment or injury; or

33 D. For the purposes of section 3873-A, in view of the person's treatment history,
34 current behavior and inability to make an informed decision, a reasonable likelihood
35 that the person's mental health will deteriorate and that the person will in the
36 foreseeable future pose a likelihood of serious harm as defined in paragraphs A, B or
37 C.

38 **Sec. 5. 34-B MRSA §3801, sub-§4-B** is enacted to read:

1 **4-B. Medical practitioner.** "Medical practitioner" or "practitioner" means a
2 licensed physician, registered physician assistant, certified psychiatric clinical nurse
3 specialist, certified nurse practitioner or licensed clinical psychologist.

4 **Sec. 6. 34-B MRSA §3801, sub-§5,** as enacted by PL 1983, c. 459, §7, is
5 amended to read:

6 **5. Mentally ill person.** "Mentally ill person" means a person having a psychiatric or
7 other disease ~~which that~~ substantially impairs his that person's mental health, ~~including or~~
8 ~~creates a substantial risk of suicide.~~ "Mentally ill person" includes persons suffering from
9 ~~the effects of from~~ the use of drugs, narcotics, hallucinogens or intoxicants, including
10 alcohol, ~~but not including mentally retarded or sociopathic persons.~~ A person with
11 developmental disabilities or a person diagnosed as a sociopath is not for those reasons
12 alone a mentally ill person.

13 **Sec. 7. 34-B MRSA §3801, sub-§7,** as amended by PL 2007, c. 319, §2, is
14 further amended to read:

15 **7. Patient.** "Patient" means a person under observation, care or treatment in a
16 psychiatric hospital or residential care facility pursuant to this subchapter, a person
17 receiving services from an assertive community treatment team, a person receiving
18 intensive mental health management services from the department or a person being
19 evaluated for emergency admission under section 3863 in a hospital emergency
20 department.

21 **Sec. 8. 34-B MRSA §3801, sub-§7-A,** as enacted by PL 2005, c. 519, Pt. BBBB,
22 §3 and affected by §20, is amended to read:

23 **7-A. Progressive treatment program.** "Progressive treatment program" or
24 "program" means a program of court-ordered services provided to participants under
25 section ~~3873~~ 3873-A.

26 **Sec. 9. 34-B MRSA §3801, sub-§7-B,** as enacted by PL 2007, c. 319, §3, is
27 amended to read:

28 **7-B. Psychiatric hospital.** "Psychiatric hospital" means:

29 A. A state mental health institute; ~~or~~

30 B. A nonstate mental health institution; ~~or~~

31 C. A designated nonstate mental health institution.

32 **Sec. 10. 34-B MRSA §3831, sub-§6,** as amended by PL 2007, c. 319, §6, is
33 further amended to read:

34 **6. Adults with advance health care directives.** An adult with an advance health
35 care directive authorizing psychiatric hospital treatment may be admitted on an informal
36 voluntary basis if the conditions specified in the advance health care directive for the
37 directive to be effective are met in accordance with the method stated in the advance
38 health care directive or, if no such method is stated, as determined by a physician or a
39 psychologist. If no conditions are specified in the advance health care directive as to how
40 the directive becomes effective, the person may be admitted on an informal voluntary
41 basis if the person has been determined to be incapacitated pursuant to Title 18-A, Article

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1 5, Part 8. A person may be admitted only if the person does not at the time object to the
2 admission or, if the person does object, if the person has directed in the advance health
3 care directive that admission to the psychiatric hospital may occur despite that person's
4 objections. The duration of the stay in the psychiatric hospital of a person under this
5 subsection may not exceed 5 working days. If at the end of that time the chief
6 administrative officer of the psychiatric hospital recommends further hospitalization of
7 the person, the chief administrative officer shall proceed in accordance with section 3863,
8 subsection § 5-A.

9 This subsection does not create an affirmative obligation of a psychiatric hospital to
10 admit a person consistent with the person's advance health care directive. This subsection
11 does not create an affirmative obligation on the part of the psychiatric hospital or
12 treatment provider to provide the treatment consented to in the person's advance health
13 care directive if the physician or psychologist evaluating or treating the person or the
14 chief administrative officer of the psychiatric hospital determines that the treatment is not
15 in the best interest of the person.

16 **Sec. 11. 34-B MRSA §3862, sub-§1**, as amended by PL 2007, c. 178, §1, is
17 further amended to read:

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

- 25 A. May take the person into protective custody; and
- 26 B. If the law enforcement officer does take the person into protective custody, shall
- 27 deliver the person immediately for examination by a medical practitioner as provided
- 28 in section 3863 or, for a person taken into protective custody who has an advance
- 29 health care directive authorizing mental health treatment, for examination as provided
- 30 in Title 18-A, section 5-802, subsection (d) to determine the individual's capacity and
- 31 the existence of conditions specified in the advance health care directive for the
- 32 directive to be effective. ~~The examination may be performed by a licensed physician,~~
- 33 ~~a licensed clinical psychologist, a physician's assistant, a nurse practitioner or a~~
- 34 ~~certified psychiatric clinical nurse specialist.~~

35 When, ~~in~~ formulating probable cause, the law enforcement officer ~~relies~~ may rely upon
36 information provided by a 3rd-party informant, ~~if the officer shall confirm~~ confirms that
37 the informant has ~~reason to believe, based upon the informant's recent personal~~
38 ~~observations of or conversations with a person,~~ personal knowledge sufficient to justify a
39 belief that the person may be mentally ill and that due to that condition the person
40 presents a threat of imminent and substantial physical harm to that person or to other
41 persons.

42 **Sec. 12. 34-B MRSA §3862, sub-§3**, as enacted by PL 1983, c. 459, §7, is
43 amended to read:

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1 **3. Certificate executed.** If the certificate is executed by the examiner under section
2 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer
3 under section 3863 and may detain the person for a reasonable period of time; not to
4 exceed 18 hours, pending as may be necessary to obtain that endorsement.

5 **Sec. 13. 34-B MRSA §3863, sub-§1,** as amended by PL 2007, c. 319, §9, is
6 further amended to read:

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

10 A. The ~~person's applicant's~~ belief that the person is mentally ill and, because of the
11 person's illness, poses a likelihood of serious harm; and

12 B. The grounds for this belief.

13 **Sec. 14. 34-B MRSA §3863, sub-§2,** as amended by PL 2007, c. 319, §9, is
14 further amended to read:

15 **2. Certifying examination.** The written application must be accompanied by a
16 dated certificate, signed by a ~~licensed physician, physician's assistant, certified~~
17 ~~psychiatric clinical nurse specialist, nurse~~ medical practitioner or licensed clinical
18 ~~psychologist,~~ stating:

19 A. ~~The physician, physician's assistant, certified psychiatric clinical nurse specialist,~~
20 ~~nurse~~ That the practitioner or psychologist has examined the person on the date of the
21 certificate; and

22 B. ~~The physician, physician's assistant, certified psychiatric clinical nurse specialist,~~
23 ~~nurse~~ That the medical practitioner or psychologist is of the opinion that the person is
24 mentally ill and, because of that illness, poses a likelihood of serious harm. The
25 written certificate must include a description of the grounds for that opinion.;

26 C. That adequate community resources are unavailable for care and treatment of the
27 person's mental illness; and

28 D. The grounds for the practitioner's opinion, which may be based on personal
29 observation or on history and information from other sources considered reliable by
30 the examiner.

31 **Sec. 15. 34-B MRSA §3863, sub-§5,** as amended by PL 2007, c. 319, §9, is
32 repealed.

33 **Sec. 16. 34-B MRSA §3863, sub-§5-A** is enacted to read:

34 **5-A. Continuation of hospitalization.** If there is need for further hospitalization of
35 the person as determined by the chief administrative officer of the hospital, the chief
36 administrative officer shall first determine if the person may be informally admitted under
37 section 3831. If informal admission is not suitable or is refused by the person, the chief
38 administrative officer may seek involuntary commitment in accordance with this
39 subsection.

40 A. If the person is at a state mental health institute, the chief administrative officer
41 may seek involuntary commitment by applying for an order under section 3864.

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1 B. If the person is at a designated nonstate mental health institution, the chief
2 administrative officer may seek involuntary commitment only by requesting the
3 commissioner to apply for an order under section 3864.

4 C. An application under this subsection must be made to the District Court having
5 territorial jurisdiction over the psychiatric hospital to which the person is admitted on
6 an emergency basis and must be filed within 3 days from the date of admission of the
7 patient under this section, except that, if the 3rd day falls on a weekend or holiday,
8 the application must be filed on the next business day following that weekend or
9 holiday. If no application to the District Court is timely filed, the person must be
10 promptly discharged.

11 **Sec. 17. 34-B MRSA §3863, sub-§6, ¶E,** as enacted by PL 1983, c. 459, §7, is
12 amended to read:

13 E. ~~One of~~ Either the next of kin or a friend, if ~~none of the listed persons exists no~~
14 guardian or immediate family member is known or can be quickly located.

15 **Sec. 18. 34-B MRSA §3863, sub-§7,** as amended by PL 2007, c. 319, §9, is
16 further amended to read:

17 **7. Post-admission examination.** Every patient admitted to a psychiatric hospital
18 under this section must be examined as soon as practicable after the patient's admission.
19 If findings required for admission under subsection 2 are not certified in a 2nd opinion by
20 a staff physician or licensed clinical psychologist within 24 hours after admission, the
21 person must be immediately discharged.

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

25 ~~B. The examiner may not be the certifying examiner under this section or under~~
26 ~~section 3864.~~

27 ~~C. If the post-admission examination is not held within 24 hours after the time of~~
28 ~~admission, or if a staff physician or licensed clinical psychologist fails or refuses after~~
29 ~~the examination to certify that, in the staff physician's or licensed clinical~~
30 ~~psychologist's opinion, the person is mentally ill and due to the person's mental~~
31 ~~illness poses a likelihood of serious harm, the person must be immediately~~
32 ~~discharged.~~

33 **Sec. 19. 34-B MRSA §3863, sub-§8,** as amended by PL 2009, c. 276, §1, is
34 further amended to read:

35 **8. Rehospitalization from progressive treatment program.** ~~The assertive~~
36 ~~community treatment~~ An ACT team physician, psychologist, certified psychiatric clinical
37 ~~nurse specialist or nurse practitioner~~ or the commissioner may make a written application
38 apply under this section to admit to a state mental health institute a person patient who
39 fails to fully participate in the progressive treatment program in accordance with section
40 ~~3873, subsection 5~~ 3873-A. ~~The provisions of this section apply to that application,~~
41 ~~except that the standard for admission is governed by section 3873, subsection 5,~~
42 ~~paragraph B.~~

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Sec. 20. 34-B MRSA §3864, sub-§1, as amended by PL 2007, c. 319, §10, is further amended to read:

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5 ~~5-A~~, ~~paragraph B~~, must be accompanied by:

- A. The emergency application under section 3863, subsection 1;
- B. The accompanying certificate of the ~~physician or psychologist~~ medical practitioner under section 3863, subsection 2;
- C. The certificate of the physician or psychologist under section 3863, subsection 7 ~~that;~~
 - ~~(1) The physician or psychologist has examined the patient; and~~
 - ~~(2) It is the opinion of the physician or psychologist that the patient is a mentally ill person and, because of that patient's illness, poses a likelihood of serious harm;~~
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have 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;~~
 - (1) The patient's right to retain an attorney or to have an attorney appointed;
 - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
 - (3) How to contact the District Court; and
- E. A copy of the notice and instructions given to the patient.

Sec. 21. 34-B MRSA §3864, sub-§4, as amended by PL 2007, c. 472, §1, is further amended to read:

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

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by ~~2 examiners~~ a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner.

~~(1) Except as provided in subparagraph (1-A), each examiner must be either a licensed physician or a licensed clinical psychologist.~~

~~(1 A) If the application requests an order for involuntary treatment pursuant to subsection 1 A, one examiner must be a licensed physician or a licensed clinical psychologist and one examiner must be a person who is qualified to prescribe medication relevant to the patient's care as a licensed physician, certified nurse practitioner or registered physician assistant.~~

~~(2 A) If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, then the court shall choose that examiner as one of the 2 designated by the court.~~

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

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

E. The ~~examiners~~ examiner shall report to the court on:

(1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;

(2) When the establishment of a progressive treatment plan under section ~~3873~~ 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;

(3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection ~~4~~ 4-A; ~~and~~

(4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;

(5) Whether adequate community resources are available for care and treatment of the person's mental illness; and

(6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program.

G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner.

Sec. 22. 34-B MRSA §3864, sub-§5, ¶A, as amended by PL 2009, c. 281, §3, is further amended to read:

A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) ~~On~~ For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued ~~for cause~~ for a period not to exceed ~~10~~ 21 additional days.

~~(1 A) On a motion by any party or by the court on its own motion, the hearing on involuntary treatment may be continued for cause for a period not to exceed 21 days from the date of entry of the order on the application for commitment.~~

1 (2) If the hearing on commitment is not held within the time specified, or within
2 the specified continuance period, the court shall dismiss the application and order
3 the person discharged forthwith.

4 (2-A) If the hearing on involuntary treatment is not held within the time
5 specified, or within the specified continuance period, the court shall dismiss the
6 application for involuntary treatment.

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

9 **Sec. 23. 34-B MRSA §3864, sub-§6**, as amended by PL 2007, c. 319, §10, is
10 further amended to read:

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

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

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

18 (1-A) That adequate community resources for care and treatment of the person's
19 mental illness are unavailable;

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

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

25 B. If the District Court makes the findings described in paragraph A, subparagraphs
26 ~~1~~ (1), (1-A) and 2 (2), but is not satisfied with the individual treatment plan as
27 offered, it may continue the case for not longer than 10 days, pending reconsideration
28 and resubmission of an individual treatment plan by the psychiatric hospital.

29 C. If the District Court makes the findings in section 3873-A, subsection 1, the court
30 may issue an order under section 3873-A requiring the person to participate in a
31 progressive treatment program.

32 **Sec. 24. 34-B MRSA §3864, sub-§7**, as amended by PL 2007, c. 319, §10, is
33 further amended to read:

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

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

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

4 **Sec. 25. 34-B MRSA §3864, sub-§7-A, ¶C**, as enacted by PL 2007, c. 446, §4
5 and affected by §7, is amended to read:

6 C. ~~The hospital and person parties~~ may agree to ~~changes in change, terminate or~~
7 extend the treatment plan during the time period of an order for involuntary
8 treatment.

9 **Sec. 26. 34-B MRSA §3864, sub-§7-A, ¶D**, as enacted by PL 2007, c. 446, §4
10 and affected by §7, is amended to read:

11 ~~D. If a change in the treatment plan is needed and the hospital and patient do not~~
12 ~~agree on the change, the hospital shall~~ For good cause shown, any party may apply to
13 the court for a to change in or terminate the treatment plan.

14 **Sec. 27. 34-B MRSA §3871, sub-§6**, as enacted by PL 2005, c. 519, Pt. BBBB,
15 §13 and affected by §20, is amended to read:

16 **6. Discharge to progressive treatment program.** If a person participates in the
17 progressive treatment program under section ~~3873~~ 3873-A, the time period of a
18 commitment under this section terminates on entry into the progressive treatment
19 program.

20 **Sec. 28. 34-B MRSA §3873**, as amended by PL 2009, c. 276, §2 and c. 321, §§1
21 to 4, is repealed.

22 **Sec. 29. 34-B MRSA §3873-A** is enacted to read:

23 **§3873-A. Progressive treatment program**

24 **1. Application.** The superintendent or chief administrative officer of a psychiatric
25 hospital, the commissioner or the director of an ACT team, except as limited by
26 subsection 10, may obtain an order from the District Court to admit a patient to a
27 progressive treatment program upon the following conditions:

28 A. The patient suffers from a severe and persistent mental illness;

29 B. The patient poses a likelihood of serious harm;

30 C. The patient has the benefit of a suitable individualized treatment plan;

31 D. Community resources are available to support the treatment plan;

32 E. The patient is unlikely to follow the treatment plan voluntarily;

33 F. Court-ordered compliance will help to protect the patient from interruptions in
34 treatment, relapses or deterioration of mental health; and

35 G. Compliance will enable the patient to survive more safely in a community setting
36 without posing a likelihood of serious harm.

37 **2. Contents of the application.** The application must be accompanied by a
38 certificate of a medical practitioner providing the facts and opinions necessary to support

1 the application. The certificate must indicate that the examiner's opinions are based on
2 one or more recent examinations of the patient or upon the examiner's recent personal
3 treatment of the patient. Opinions of the examiner may be based on personal observation
4 or on history and information from other sources considered reliable by the examiner.

5 The applicant must also provide a written statement certifying that a copy of the
6 application and the accompanying documents have been given personally to the patient
7 and that the patient and the patient's guardian or next of kin, if any, have been notified of:

8 A. The patient's right to retain an attorney or to have an attorney appointed;

9 B. The patient's right to select or to have the patient's attorney select an independent
10 examiner; and

11 C. How to contact the District Court.

12 **3. Notice of hearing.** Upon receipt by the District Court of the application or any
13 motion relating to the application, the court shall cause written notice of hearing to be
14 mailed within 2 days to the applicant, to the patient and to the following persons if
15 known: to anyone serving as the patient's guardian and to the patient's spouse, a parent or
16 an adult child, if any. If no immediate relatives are known or can be located, notice must
17 be mailed to a person identified as the patient's next of kin or a friend, if any are known.
18 If the applicant has reason to believe that notice to any individual would pose risk of
19 harm to the patient, notice to that individual may not be given. A docket entry is
20 sufficient evidence that notice under this subsection has been given.

21 **4. Examinations.** Examinations under this section are governed as follows.

22 A. Upon receipt by the District Court of the application and the accompanying
23 documents specified in subsection 1 and at least 3 days after the person who is the
24 subject of the examination is notified by the applicant of the proceedings and of that
25 person's right to retain counsel or to select an examiner, the court shall cause the
26 person to be examined by a medical practitioner. If the person under examination or
27 the counsel for that person selects a qualified examiner who is reasonably available,
28 the court shall give preference to choosing that examiner.

29 B. The examination must be held at a psychiatric hospital, a crisis center, an ACT
30 team facility or at another suitable place not likely to have a harmful effect on the
31 mental health of the patient.

32 C. The examiner shall report to the court on:

33 (1) Whether the patient is a mentally ill person within the meaning of section
34 3801, subsection 5;

35 (2) Whether the patient is suffering from a severe and persistent mental illness
36 within the meaning of section 3801, subsection 8-A; and

37 (3) Whether the patient poses a likelihood of serious harm within the meaning of
38 section 3801, subsection 4-A.

39 **5. Hearings.** Hearings under this section are governed as follows.

1 A. The District Court shall hold a hearing on the application or any subsequent
2 motion not later than 14 days from the date when the application or motion is filed.
3 For good cause shown, on a motion by any party or by the court on its own motion,
4 the hearing may be continued for a period not to exceed 21 additional days. If the
5 hearing is not held within the time specified, or within the specified continuance
6 period, the court shall dismiss the application or motion. In computing the time
7 periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

8 B. The hearing must be conducted in as informal a manner as may be consistent with
9 orderly procedure and in a physical setting not likely to harm the mental health of the
10 patient. The applicant shall transport the patient to and from the place of hearing. If
11 the patient is released following the hearing, the patient must be transported to the
12 patient's place of residence if the patient so requests.

13 C. The court shall conduct the hearing in accordance with accepted rules of
14 evidence. The patient, the applicant and all other persons to whom notice is required
15 to be sent must be afforded an opportunity to appear at the hearing to testify and to
16 present and cross-examine witnesses. The court may, in its discretion, receive the
17 testimony of any other person and may subpoena any witness.

18 D. The patient must be afforded an opportunity to be represented by counsel, and, if
19 neither the patient nor others provide counsel, the court shall appoint counsel for the
20 patient.

21 E. At the time of hearing, the applicant shall submit to the court expert testimony to
22 support the application and to describe the proposed individual treatment plan. The
23 applicant shall bear the expense of providing witnesses for this purpose.

24 F. The court may consider, but is not bound by, an advance directive or durable
25 power of attorney executed by the patient and may receive testimony from the
26 patient's guardian or attorney in fact.

27 G. A stenographic or electronic record must be made of the proceedings. The record
28 and all notes, exhibits and other evidence are confidential and must be retained as
29 part of the District Court records for a period of 2 years from the date of the hearing.

30 H. The hearing is confidential and a report of the proceedings may not be released to
31 the public or press, except by permission of the patient or the patient's counsel and
32 with approval of the presiding District Court Judge, except that the court may order a
33 public hearing on the request of the patient or patient's counsel.

34 I. Except as provided in this subsection, the provisions of section 3864, subsections
35 10 and 11 apply to expenses and the right of appeal.

36 6. Order. After notice, examination and hearing, the court may issue an order
37 effective for a period of up to 12 months directing the patient to follow an individualized
38 treatment plan and identifying incentives for compliance and potential consequences for
39 noncompliance.

40 7. Compliance. To ensure compliance with the treatment plan, the court may:

1 A. Order that the patient be committed to the care and supervision of an ACT team
2 or other outpatient facility with such restrictions or conditions as may be reasonable
3 and necessary to ensure plan compliance;

4 B. Issue an order of emergency commitment under section 3863 conditioned on
5 receiving a certificate from a medical practitioner that the patient has failed to comply
6 with an essential requirement of the treatment plan; and

7 C. Order that any present or conditional restrictions on the patient's liberty or control
8 over the patient's assets or affairs be suspended or ended upon achievement of the
9 designated goals under the treatment plan.

10 **8. Consequences.** In addition to any conditional remedies contained in the court's
11 order, if the patient fails to comply with the treatment plan, the applicant may file with
12 the court a motion for enforcement supported by a certificate from a medical practitioner
13 identifying the circumstances of noncompliance. If after notice and hearing the court
14 finds that the patient has been noncompliant and that the patient presents a likelihood of
15 serious harm, the court may authorize emergency hospitalization under section 3863 if
16 the practitioner's certificate supporting the motion complies with section 3863, subsection
17 2. Nothing in this section precludes the use of protective custody by law enforcement
18 officers under section 3862.

19 **9. Motion to dissolve, modify or extend.** For good cause shown, any party to the
20 application may move to dissolve or modify an order or to extend the term of the
21 treatment plan for an additional term of up to one year.

22 **10. Limitation.** The director of an ACT team may apply to the District Court to
23 obtain an order under subsection 1 to admit a patient to a progressive treatment program
24 only if:

25 A. The ACT team was in existence on the effective date of this section;

26 B. The ACT team complies with nationally recognized essential standards and basic
27 principles for the provision of mental health services at the ACT team level as
28 identified in rules adopted by the department; and

29 C. The ACT team meets the criteria for ACT teams set forth in section 3801,
30 subsection 11 and applicable state rules and federal laws and regulations.

31 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
32 chapter 375, subchapter 2-A.

33 **Sec. 30. Application.** All progressive treatment plans in effect July 1, 2010 must
34 be continued under the provisions of the Maine Revised Statutes, Title 34-B, section
35 3873-A.

36 **Sec. 31. Report.** The Department of Health and Human Services shall conduct a
37 review and analysis of the progressive treatment program established under the Maine
38 Revised Statutes, Title 34-B, section 3873-A and shall report to the joint standing
39 committee of the Legislature having jurisdiction over health and human services matters
40 by January 1, 2012. The review process must include the collection and analysis of data
41 regarding participants in the progressive treatment program over periods of time prior to,
42 during and after participation in the program. The review process must include work

1 with a broad group of stakeholders to compile a list of resources that would be needed if
 2 the State were to implement assisted outpatient mental health treatment for persons who
 3 have been ordered by a court to receive mental health treatment outside of a psychiatric
 4 hospital.

5 **Sec. 32. Emergency rule-making authority.** The Department of Health and
 6 Human Services shall adopt emergency rules on or before October 1, 2010 under the
 7 Maine Revised Statutes, Title 5, sections 8054 and 8073 in order to implement
 8 rulemaking under Title 34-B, section 3873-A, subsection 10 relating to ACT team
 9 compliance with nationally recognized essential standards and basic principles for the
 10 provision of mental health services at the ACT team level. The department may adopt the
 11 rules without having to demonstrate that immediate adoption is necessary to avoid a
 12 threat to public health, safety or general welfare. The rules must identify nationally
 13 recognized essential standards and basic principles for ACT teams providing mental
 14 health services under the progressive treatment program pursuant to Title 34-B, section
 15 3873-A.

16 **Sec. 33. Delayed implementation.** Notwithstanding the Maine Revised Statutes,
 17 Title 34-B, section 3873-A, subsection 1, the director of an ACT team may not apply to
 18 the District Court to obtain an order to admit a patient to a progressive treatment program
 19 until the Department of Health and Human Services adopts rules pursuant to Title 34-B,
 20 section 3873-B, subsection 10 identifying nationally recognized essential standards and
 21 basic principles for the provision of mental health services by ACT teams and until the
 22 transition of claims processing under the Department of Health and Human Services
 23 MaineCare program to the department's new system in fiscal year 2010-11.

24 **Sec. 34. Appropriations and allocations.** The following appropriations and
 25 allocations are made.

26 **JUDICIAL DEPARTMENT**

27 **Courts - Supreme, Superior and District 0063**

28 Initiative: Deappropriates funds due to an anticipated reduction in the number of
 29 psychological examinations.

| | | | |
|----|---------------------------|----------------|-------------------|
| 30 | GENERAL FUND | 2009-10 | 2010-11 |
| 31 | All Other | \$0 | (\$87,600) |
| 32 | | | |
| 33 | GENERAL FUND TOTAL | <u>\$0</u> | <u>(\$87,600)</u> |

34 **Emergency clause.** In view of the emergency cited in the preamble, this
 35 legislation takes effect when approved.

36 **SUMMARY**

37 This amendment is the majority report of the committee. The amendment replaces
 38 the bill. It provides a definition for "medical practitioner" in the laws on commitment for
 39 mental illness. It redefines "likelihood of serious harm," "mentally ill person" and
 40 "patient." It decreases the number of examiners for the purposes of mental health

1 commitment from 4 to 2. It increases the time period, with an extension, for a hearing on
2 court commitment from 24 days total to 35 days total. It establishes a new option for the
3 court in a civil commitment hearing, the option of ordering the person to participate in a
4 program of outpatient treatment, and provides for compliance and consequences for
5 noncompliance with the treatment program. It allows an alternative community treatment
6 team or the Commissioner of Health and Human Services to petition the court for an
7 order that an alternative community treatment team participant be ordered to participate
8 in outpatient treatment. It extends the time period in which the District Court must hold a
9 hearing under the progressive treatment program from 14 to 21 days. It decreases the
10 examiners for civil commitment under the Maine Revised Statutes, Title 34-B, section
11 3864 from 2 examiners to one and gives preference to the patients' choice of examiner. It
12 extends the time period for the progressive treatment program from 6 months to 12
13 months. It requires a comprehensive report from the Department of Health and Human
14 Services by January 1, 2012. It delays implementation of the provisions that authorize an
15 ACT team director to apply for a court order to admit a patient to a progressive treatment
16 program until rulemaking has been completed and the new MaineCare claims
17 management process is functioning. The amendment authorizes emergency rulemaking
18 to adopt rules regarding nationally recognized essential standards and basic principles for
19 ACT teams.

20 **FISCAL NOTE REQUIRED**

21 (See attached)



124th MAINE LEGISLATURE

LD 1360

LR 1770(03)

An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

| | 2009-10 | 2010-11 | Projections 2011-12 | Projections 2012-13 |
|-----------------------------------|---------|------------|------------------------|------------------------|
| Net Cost (Savings) | | | | |
| General Fund | \$0 | (\$87,600) | (\$87,600) | (\$87,600) |
| Appropriations/Allocations | | | | |
| General Fund | \$0 | (\$87,600) | (\$87,600) | (\$87,600) |

Fiscal Detail and Notes

This bill includes a General Fund deappropriation of \$87,600 in fiscal year 2010-11 from the Judicial Department due to an anticipated decrease in the number of psychological examinations. The additional costs to the Department of Health and Human Services can be absorbed utilizing existing budgeted resources.