

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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Legislative Document

No. 1360

S.P. 495

In Senate, April 2, 2009

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

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator NUTTING of Androscoggin.
Cosponsored by Senators: MARRACHÉ of Kennebec, MILLS of Somerset, RAYE of
Washington, Representatives: LEWIN of Eliot, PIEH of Bremen.

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

2 **Sec. 1. 34-B MRSA §3601**, as amended by PL 1987, c. 246, §3, is further
3 amended to read:

4 **§3601. Definitions**

5 As used in this subchapter, unless the context otherwise indicates, the following
6 terms have the following meanings.

7 **1. Agency.** "Agency" means a person, firm, association or corporation, but does not
8 include the individual or corporate professional practice of one or more psychologists or
9 psychiatrists.

10 **1-A. Case management services.** "Case management services" means those
11 services which assist an individual in gaining access to and making effective use of the
12 range of medical, psychological and other related services available to them.

13 **1-B. Long-term mentally ill.** "Long-term mentally ill" means persons who suffer
14 certain mental or emotional disorders, such as organic brain syndrome, schizophrenia,
15 recurrent depressive and manic-depressive disorders, paranoid and other psychoses, plus
16 other disorders which may become chronic, that erode or prevent the capacities in relation
17 to 3 or more of the primary aspects of daily life, such as personal hygiene and self-care,
18 self-direction, interpersonal relationships, social transactions, learning, recreation and
19 economic self-sufficiency. While these persons may be at risk of institutionalization,
20 there is no requirement that these persons are or have been residents of institutions
21 providing mental health services.

22 **2. Mental health services.** "Mental health services" means out-patient counseling,
23 other psychological, psychiatric, diagnostic or therapeutic services and other allied
24 services.

25 **3. Assertive community treatment.** "Assertive community treatment" has the same
26 meaning as in section 3801, subsection 11.

27 **4. Assisted outpatient treatment.** "Assisted outpatient treatment" means court-
28 ordered commitment to community mental health treatment, provided by the department
29 directly or indirectly through contracted services, including assertive community
30 treatment if appropriate to the person ordered to participate in assisted outpatient
31 treatment.

32 **5. Chronically disabled.** "Chronically disabled" means that a person is incapable of
33 making an informed medical decision and, based on the person's severe and persistent
34 mental illness and psychiatric history, that the person is unlikely to comply with treatment
35 and, as a consequence, the person's current condition is likely to deteriorate until the
36 mental illness significantly impairs the person's judgment, reason, behavior or capacity to
37 recognize reality and has a substantial probability of causing the person to suffer or
38 continue to suffer severe psychiatric, emotional or physical harm.

1 **6. Community mental health treatment.** "Community mental health treatment"
2 means a comprehensive system of delivering mental health treatment services to a person
3 who suffers from a severe and persistent mental illness through outpatient mental health
4 services, including but not limited to assertive community treatment.

5 **7. Family member.** "Family member" means a grandparent, parent, sibling or child
6 of the person who is the subject of an application filed under section 3612, whether
7 related by blood, adoption or marriage.

8 **8. Gravely disabled.** "Gravely disabled" means that a person is unable to make an
9 informed medical decision about mental health treatment and has behaved in such a
10 manner as to indicate the likelihood of being unlikely, without supervision and the
11 assistance of others, to satisfy the need for nourishment, personal or medical care, shelter,
12 self-protection and safety, with the result that it is probable that bodily harm, significant
13 psychiatric deterioration or debilitation or serious illness is likely to result unless
14 adequate treatment is provided.

15 **9. In need of assisted outpatient treatment.** "In need of assisted outpatient
16 treatment" means that a person is suffering from a severe and persistent mental illness
17 based on a clinical determination and as a result of the mental illness:

18 A. Is unlikely to survive safely in the community without supervision and the
19 support of family, friends and licensed mental health professionals and is unlikely to
20 voluntarily comply with recommended treatment; and

21 B. Poses a likelihood of serious harm, as defined in section 3801, subsection 4, or is
22 gravely or chronically disabled and is likely to benefit from assisted outpatient
23 treatment.

24 **10. Severe and persistent mental illness.** "Severe and persistent mental illness" has
25 the same meaning as in section 3801, subsection 8-A.

26 **Sec. 2. 34-B MRSA §3602,** as enacted by PL 1983, c. 459, §7, is amended to
27 read:

28 **§3602. Purpose**

29 The purpose of this subchapter is to expand community mental health services,
30 encourage participation in a program of community mental health services by persons in
31 local communities, obtain better understanding of the need for those services and, secure
32 aid for programs of community mental health services by state aid and local financial
33 support and provide for assisted outpatient treatment and for mental health services to
34 persons with severe and persistent mental illness who are the subject of a court order of
35 assisted outpatient treatment.

36 **Sec. 3. 34-B MRSA §3604, sub-§1,** as enacted by PL 1983, c. 459, §7, is
37 amended to read:

38 **1. Provision of services.** The commissioner may provide mental health services
39 throughout the State and for that purpose may cooperate with other state agencies,

1 municipalities, persons, unincorporated associations and nonstock corporations. The
2 commissioner shall provide community mental health treatment for persons with severe
3 and persistent mental illness who are ordered by a court to participate in assisted
4 outpatient treatment under section 3612 beginning no later than 3 working days after
5 entry of the order by the court.

6 **Sec. 4. 34-B MRSA §3604, sub-§5,** as amended by PL 2007, c. 286, §5, is
7 further amended to read:

8 **5. Exclusion.** ~~Beginning October 1, 1996, an~~ An entity that applies for the award or
9 renewal of a grant or contract for the provision of mental health services must be a
10 participating member of the institute council or the community service network, as
11 established in section 3608, for the region of the State subject to that grant or contract and
12 must provide community mental health treatment to persons ordered by a court to
13 participate in assisted outpatient treatment under section 3612.

14 **Sec. 5. 34-B MRSA §3610, first ¶,** as amended by PL 2007, c. 286, §10, is
15 further amended to read:

16 The department is responsible for providing a safety net of adult mental health
17 services for ~~people~~ persons with major mental illness who the department or its designee
18 determines can not otherwise be served by the community service networks and for
19 persons ordered by a court to participate in assisted outpatient treatment under section
20 3612. The department may develop contracts to deliver safety net services if the
21 department determines contracts to be appropriate and cost-effective. The state-operated
22 safety net must include, but is not limited to:

23 **Sec. 6. 34-B MRSA §3610, sub-§2-A** is enacted to read:

24 **2-A. Community mental health treatment.** Community mental health treatment
25 for persons ordered by a court to participate in assisted outpatient treatment pursuant to
26 section 3612;

27 **Sec. 7. 34-B MRSA §3612** is enacted to read:

28 **§3612. Court-ordered assisted outpatient treatment**

29 A person who is 19 years of age or older who is suffering from a severe and
30 persistent mental illness and is in need of assisted outpatient treatment may be ordered by
31 a court to participate in assisted outpatient treatment in accordance with the following
32 procedures.

33 **1. Application; certifying examination.** A law enforcement officer or family
34 member may make a written application for a court order that a person who meets the
35 criteria of paragraphs A and B participate in assisted outpatient treatment including:

36 A. A statement of the applicant's good faith belief that the person suffers from a
37 severe and persistent mental illness and, because of the person's illness, is in need of
38 assisted outpatient treatment and the grounds for this belief; and

1 B. A certificate from a licensed physician or clinical psychologist stating that the
2 physician or psychologist has examined the person and that the physician or
3 psychologist is of the opinion that the person meets the criteria for assisted outpatient
4 treatment. If the person with regard to whom the application is made refuses to
5 undergo an examination, the applicant may apply to the court for an examination in
6 accordance with the procedures of section 3863.

7 **2. Judicial review.** The application and certificate of mental health examination
8 under subsection 1 must be reviewed by a Judge of the District Court, after notice to the
9 person with regard to whom the application is made, and a hearing held on the application
10 within 14 days of the date of filing of the application. Upon motion of any party and
11 upon finding good cause, the hearing may be continued for up to 10 days.

12 A. Upon receipt of the application and accompanying documents, the District Court
13 shall give written notice of the application and provide the date of the hearing by
14 mailing notice through the United States Postal Service within 2 days of the filing of
15 the application to the person with regard to whom the application was filed or to the
16 legal guardian of the person. A docket entry is sufficient evidence that notice under
17 this paragraph has been given.

18 B. The hearing must be held in as informal a manner as is consistent with orderly
19 procedure and in a physical setting not likely to have a harmful effect on the mental
20 health of the person with regard to whom the application was filed.

21 C. If the person with regard to whom the application was filed requires transportation
22 to and from the hearing, the department shall bear the responsibility and expense of
23 transportation. The court shall pay any costs for witness fees and expenses and other
24 costs under this subsection.

25 D. At the hearing the person who is the subject of the application has the right of
26 representation by an attorney of the person's choice or if no attorney is chosen by the
27 person at the choice of the department and at the department's expense.

28 E. The court shall receive all material and relevant evidence regarding the
29 application. The applicant, the person with regard to whom the application was made
30 and all other persons allowed by the court may attend the hearing for the purpose of
31 presenting evidence, including psychiatric and psychological evidence and a
32 proposed individual treatment plan, and examining witnesses.

33 F. The court shall maintain a record of the hearing and all proceedings with regard to
34 the application.

35 G. The hearing is confidential and may not be open to the public except by request of
36 the person with regard to whom the application was made or counsel for the person.
37 The record of the hearing and proceedings is confidential and may not be disclosed to
38 the public except with the permission of the person with regard to whom the
39 application was made or that person's counsel.

40 **3. Order of participation in assisted outpatient treatment.** The judge shall enter a
41 judgment on the application under subsection 1 within 24 hours of completion of the
42 hearing under subsection 2.

1 A. If the judge finds by clear and convincing evidence that the person with regard to
2 whom the application was made is in need of assisted outpatient treatment, the judge
3 shall enter an order that the person participate in assisted outpatient treatment for a
4 period no longer than 6 months.

5 B. An order that a person participate in assisted outpatient treatment must include an
6 individualized treatment plan for assisted outpatient treatment. The plan may
7 include, as appropriate to the person, medication and medication management;
8 community mental health treatment; periodic blood tests or urinalysis; individual or
9 group therapy; day or partial day programming; educational and vocational activities;
10 alcohol and substance abuse treatment, including testing; supervision of living
11 arrangements; and any other services to treat the underlying mental illness, assist the
12 person with living and functioning in the community and prevent relapse or
13 deterioration of mental health.

14 C. After entry of the initial order that a person participate in assisted outpatient
15 treatment, any material modifications to the individualized treatment plan under
16 paragraph B that are not agreed to by the person ordered to participate must be
17 approved by the court.

18 4. Appeals. A person ordered by the District Court to participate in assisted
19 outpatient treatment may appeal from that order to the Superior Court.

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

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

23 C. The order of the District Court remains in effect pending the appeal.

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

26 5. Review. A court that has ordered that a person participate in assisted outpatient
27 treatment may review the order and the progress of the person in assisted outpatient
28 treatment at any time. The procedures of subsection 2 apply to the review proceeding,
29 except that notice of the review proceeding must be given to any person recognized as an
30 interested party in the initial proceeding or any subsequent review proceeding. If, upon
31 reviewing an order of participation in assisted outpatient treatment, a court determines
32 that the person who was ordered to participate will benefit from continued participation,
33 the court may order a continuation of participation for up to 12 months.

34 6. Nonparticipation. If a person ordered to participate in assisted outpatient
35 treatment does not comply with the individualized treatment plan under subsection 3,
36 paragraph B and the person's mental health deteriorates to the extent that the person poses
37 a likelihood of serious harm as defined by section 3801, subsection 4, any health officer,
38 law enforcement officer or other person may make a written application to admit the
39 person to a psychiatric hospital under the procedures for involuntary emergency
40 hospitalization under section 3863.

41 7. Educational and training materials. The department shall develop and publish
42 educational and training materials describing assisted outpatient treatment and the judicial

1 process for distribution to providers and consumers of mental health services, law
2 enforcement, the courts and the general public.

3 **Sec. 8. Report.** The Department of Health and Human Services shall submit a
4 report describing implementation of assisted outpatient treatment under the Maine
5 Revised Statutes, Title 34-B, chapter 3, subchapter 3, article 1 to the joint standing
6 committee of the Legislature having jurisdiction over health and human services matters
7 on or before January 1, 2015.

8 **Sec. 9. Effective date.** This Act takes effect January 1, 2010.

9 **SUMMARY**

10 This bill enables law enforcement or a family member of a person with a severe and
11 persistent mental illness who is in need of assisted outpatient treatment to petition the
12 District Court for an order that the person must participate in assisted outpatient
13 treatment. The assisted outpatient treatment order lasts for 6 months and is renewable for
14 an additional 12 months. The application, hearing, review and appeal process includes
15 notice, a mental health examination, court-appointed or retained counsel, the right to
16 present evidence and cross-examine witnesses and a record of the proceedings. The order
17 to participate in assisted outpatient treatment includes within it an individualized
18 treatment plan.

19 The bill requires the Department of Health and Human Services to provide
20 community mental health services, including assignment of an assertive community
21 treatment team, for a person who is ordered to participate in assisted outpatient treatment.

22 The bill requires providers of mental health services who apply for grants and
23 contracts with the Department of Health and Human Services to provide community
24 mental health treatment to persons ordered by a court to participate in assisted outpatient
25 treatment.

26 The bill includes as a duty of the Department of Health and Human Services, under
27 the category of safety net services, providing services for persons ordered to participate in
28 assisted outpatient treatment.