

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

5mg
ROPS

1

Date: 3/7/12

L.D. 1688

(Filing No. H-747)

2

HEALTH AND HUMAN SERVICES

3

Reproduced and distributed under the direction of the Clerk of the House.

4

STATE OF MAINE

5

HOUSE OF REPRESENTATIVES

6

125TH LEGISLATURE

7

SECOND REGULAR SESSION

8

COMMITTEE AMENDMENT "A" to H.P. 1240, L.D. 1688, Bill, "An Act To Clarify the Status of Patients Held under Involuntary Commitment Applications"

9

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

10

Sec. 1. 15 MRSA §393, sub-§4-A, as enacted by PL 2007, c. 670, §9 and affected by §24, is amended to read:

11

4-A. Application for relief. Except as otherwise provided, a person subject to the federal prohibition against possession of firearms pursuant to 18 United States Code, Section 922(g)(4) as a result of being adjudicated a mental defective or committed to any psychiatric hospital pursuant to Title 34-B, section 3863 and who has not been committed to a psychiatric hospital pursuant to an order of the District Court pursuant to Title 34-B, section 3864 may, after the expiration of 5 years from the date of final discharge from commitment, apply to the commissioner for relief from the disability.

12

13

Relief is not available under this subsection for a person found not criminally responsible by reason of insanity or incompetent to stand trial in a criminal case or a person adjudged by a Probate Court to lack the capacity to contract or manage the person's own affairs.

14

15

A. An application under this subsection must be on a form developed by the commissioner. The application must include the applicant's full name; all aliases; date and place of birth; place of legal residence; occupation; make and model of the firearm sought to be possessed; reason for the request; date, place and docket number of commitment; name of institution to which applicant was committed; names of providers that provided mental health treatment for the applicant; date of discharge from commitment; release for all mental health records; and any other information determined by the commissioner to be of assistance. The application must be accompanied by certified or attested copies of the commitment from which the applicant seeks relief and the report of an independent psychologist or psychiatrist licensed to practice in this State specifically addressing the factors set forth in paragraph E. The commissioner may establish a roster of psychologists and psychiatrists qualified and interested in doing these evaluations. The psychologist or

16

17

18

19

20

21

COMMITTEE AMENDMENT

ROFS

1 psychiatrist must be available for cross-examination. The psychologist or psychiatrist
2 listed on the roster is an employee for the purposes of the Maine Tort Claims Act for
3 evaluations under this paragraph.

4 B. The commissioner has the independent authority to establish the following, to be
5 paid by the applicant:

6 (1) Application fee; and

7 (2) Fees for evaluations required by paragraph A.

8 C. Upon receipt of a completed application, the commissioner shall notify persons
9 who received notice of the commitment pursuant to Title 34-B, section 3864,
10 subsection 3, paragraph A, subparagraph (2) and the district attorney, chief of police
11 and sheriff in the municipality and county where the applicant resides of the filing of
12 the application, with a request to provide to the commissioner any information
13 relevant to the factors in paragraph E.

14 D. Upon receipt of a completed application, the commissioner shall review the
15 application and determine whether the person has made a prima facie showing of the
16 elements of paragraph E. If the commissioner determines that the person has made a
17 prima facie showing, the commissioner shall schedule a hearing.

18 E. The burden of proof is on the applicant to prove, by clear and convincing
19 evidence, that the circumstances that led to the involuntary commitment to a hospital
20 have changed, that the applicant is not likely to act in a manner dangerous to public
21 safety and that granting the application for relief will not be contrary to the public
22 interest.

23 F. If the commissioner finds by clear and convincing evidence that the circumstances
24 that led to the involuntary commitment have changed, that the applicant is not likely
25 to act in a manner dangerous to public safety and that granting the application for
26 relief will not be contrary to the public interest, the commissioner may grant relief.

27 G. Notwithstanding any other provision of law, and except as indicated in this
28 paragraph, all applications for relief pursuant to this subsection and documents made
29 a part of the application, refusals and any information of record collected by the
30 commissioner during the process of determining whether an applicant qualifies for
31 relief are confidential and may not be made available for public inspection or copying
32 unless:

33 (1) The applicant waives this confidentiality in writing or on the record of any
34 hearing; or

35 (2) A court of record so orders. Proceedings relating to the grant or denial of
36 relief are not public proceedings under Title 1, chapter 13.

37 The commissioner shall make a permanent record, in the form of a summary, of the
38 final decision regarding each application. The summary must include the name of the
39 applicant and indicate whether the application for relief was granted or denied. The
40 information contained in this summary is available for public inspection.

ROFS

1 H. An applicant may appeal the denial of an application for relief under this
2 subsection within 30 days of receipt of the written notice of decision by filing a
3 complaint in the District Court for de novo review in the district where the
4 Department of Public Safety has its principal office. Hearings are closed unless
5 otherwise agreed to by the applicant. A party aggrieved by a decision of the District
6 Court may not appeal as of right. The time for taking the appeal and the manner and
7 any conditions for the taking of the appeal are as the Supreme Judicial Court provides
8 by rule.

9 **Sec. 2. 34-B MRSA §3863, sub-§9** is enacted to read:

10 **9. Limitation.** Admission to a psychiatric hospital on an emergency basis under the
11 provisions of this section is not commitment to a psychiatric hospital.

12 **Sec. 3. 34-B MRSA §3873-A, sub-§7, ¶B,** as enacted by PL 2009, c. 651, §29,
13 is amended to read:

14 B. ~~Issue an order of emergency commitment~~ Endorse an application for admission to
15 a psychiatric hospital under section 3863 conditioned on receiving a certificate from a
16 medical practitioner that the patient has failed to comply with an essential
17 requirement of the treatment plan; and'

18 **SUMMARY**

19 This amendment replaces the bill and clarifies that an application for admission to a
20 psychiatric hospital under the Maine Revised Statutes, Title 34-B, section 3863 is not a
21 commitment to a psychiatric hospital. It retains the effect of the bill. The amendment
22 strikes a reference to commitment under Title 34-B, section 3863 in the criminal laws on
23 firearms possession.