

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 325

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H.P. 235

House of Representatives, February 7, 2013

### **An Act To Repeal Provisions of the Law That Apply or Refer to State Facilities for Persons with Intellectual Disabilities**

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Judiciary suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FARNSWORTH of Portland.  
Cosponsored by Senator HAMPER of Oxford and  
Representatives: MALABY of Hancock, SANDERSON of Chelsea, SIROCKI of Scarborough.

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

2 **Sec. 1. 4 MRSA §152, sub-§4**, as amended by PL 2011, c. 542, Pt. A, §1 and c.  
3 614, §1, is repealed and the following enacted in its place:

4 **4. Exclusive jurisdiction.** Original jurisdiction, not concurrent with that of the  
5 Superior Court, of mental health commitment hearings under Title 34-B, chapter 3,  
6 subchapter 4, habitual truancy actions under Title 20-A, chapters 119 and 211 under  
7 which equitable relief may be granted and small claims actions under Title 14, chapter  
8 738:

9 **Sec. 2. 15 MRSA §101-D, sub-§5, ¶A**, as amended by PL 2011, c. 542, Pt. A,  
10 §9, is further amended to read:

11 A. Commit the defendant to the custody of the Commissioner of Health and Human  
12 Services to be placed in an appropriate institution for the care and treatment of people  
13 with mental illness or in an appropriate residential program that provides care and  
14 treatment for persons who have intellectual disabilities or autism for observation, care  
15 and treatment. At the end of 30 days or sooner, and again in the event of  
16 recommitment, at the end of 60 days and one year, the State Forensic Service or other  
17 appropriate office of the Department of Health and Human Services shall forward a  
18 report to the Commissioner of Health and Human Services relative to the defendant's  
19 competence to stand trial and its reasons. The Commissioner of Health and Human  
20 Services shall without delay file the report with the court having jurisdiction of the  
21 case. The court shall without delay set a date for and hold a hearing on the question  
22 of the defendant's competence to stand trial and receive all relevant testimony bearing  
23 on the question. If the court determines that the defendant is not competent to stand  
24 trial, but there does exist a substantial probability that the defendant will be  
25 competent to stand trial in the foreseeable future, the court shall recommit the  
26 defendant to the custody of the Commissioner of Health and Human Services to be  
27 placed in an appropriate institution for the care and treatment of people with mental  
28 illness or in an appropriate residential program that provides care and treatment for  
29 persons who have intellectual disabilities or autism for observation, care and  
30 treatment. When a person who has been evaluated on behalf of the court by the State  
31 Forensic Service or other appropriate office of the Department of Health and Human  
32 Services is committed into the custody of the Commissioner of Health and Human  
33 Services under this paragraph, the court shall order that the State Forensic Service or  
34 other appropriate office of the Department of Health and Human Services share any  
35 information that it has collected or generated with respect to the person with the  
36 institution or residential program in which the person is placed. If the defendant is  
37 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section  
38 506-A, 802 or 803-A and the court determines that the defendant is not competent to  
39 stand trial and there does not exist a substantial probability that the defendant can be  
40 competent in the foreseeable future, the court shall dismiss all charges against the  
41 defendant and, unless the defendant is subject to an undischarged term of  
42 imprisonment, order the Commissioner of Health and Human Services to commence  
43 ~~involuntary commitment~~ proceedings pursuant to Title 34-B, chapter 3, subchapter 4  
44 ~~or chapter 5, subchapter 3~~. If the defendant is charged with ~~offenses not listed in the~~

1 ~~previous sentence~~ an offense other than an offense under Title 17-A, chapter 9, 11 or  
2 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the  
3 defendant is not competent to stand trial and there does not exist a substantial  
4 probability that the defendant can be competent in the foreseeable future, the court  
5 shall dismiss all charges against the defendant and, unless the defendant is subject to  
6 an undischarged term of imprisonment, notify the appropriate authorities who may  
7 institute civil commitment proceedings for the individual. If the defendant is subject  
8 to an undischarged term of imprisonment, the court shall order the defendant into  
9 execution of that sentence and the correctional facility to which the defendant must  
10 be transported shall execute the court's order; or

11 **Sec. 3. 34-B MRSA §5461, sub-§5**, as amended by PL 2011, c. 542, Pt. A, §104,  
12 is repealed.

13 **Sec. 4. 34-B MRSA §5461, sub-§7-A**, as amended by PL 2011, c. 542, Pt. A,  
14 §105, is repealed.

15 **Sec. 5. 34-B MRSA §5461, sub-§8**, as amended by PL 2011, c. 542, Pt. A, §106,  
16 is repealed.

17 **Sec. 6. 34-B MRSA §5462, sub-§1, ¶B**, as amended by PL 2011, c. 542, Pt. A,  
18 §108, is further amended to read:

19 B. The development of a personal plan or service plan for the delivery and  
20 coordination of services to the person through a personal planning process; and

21 **Sec. 7. 34-B MRSA §5462, sub-§1, ¶C**, as amended by PL 2011, c. 542, Pt. A,  
22 §108, is repealed.

23 **Sec. 8. 34-B MRSA §5465, sub-§2, ¶¶C and D**, as enacted by PL 1983, c. 459,  
24 §7, are amended to read:

25 C. The rights of clients ~~while at a facility or~~ while in departmental programs; and

26 D. The rights and procedures for administrative review if there is dissatisfaction with  
27 any step of the process of receiving services specified in this Article ~~or if there is any~~  
28 ~~grievance arising during the course of voluntary admission to or treatment in any~~  
29 ~~facility~~, including provisions for the development of regional committees to review  
30 any ~~grievance or~~ dissatisfaction.

31 **Sec. 9. 34-B MRSA §5466, sub-§1**, as amended by PL 1983, c. 580, §16, is  
32 further amended to read:

33 **1. Entitlement.** Each client who receives services under sections 5467 to ~~5474~~ 5471  
34 is entitled to have access to an advocate.

35 **Sec. 10. 34-B MRSA §5467, sub-§2, ¶D**, as amended by PL 2011, c. 542, Pt. A,  
36 §110, is further amended to read:

37 D. Ensure the client's access to an advocate throughout the process of adult  
38 developmental services under sections 5467 to ~~5474~~ 5471;

1           **Sec. 11. 34-B MRSA §5471, sub-§2, ¶D**, as amended by PL 2003, c. 389, §15,  
2 is further amended to read:

3           D. The individual support coordinator of the planning team that developed the  
4 personal plan or service plan for the client; and

5           **Sec. 12. 34-B MRSA §5471, sub-§2, ¶E**, as amended by PL 1995, c. 560, Pt. K,  
6 §58, is repealed.

7           **Sec. 13. 34-B MRSA §5471, sub-§2, ¶F**, as amended by PL 2003, c. 389, §15, is  
8 repealed.

9           **Sec. 14. 34-B MRSA §5471, sub-§3, ¶A**, as amended by PL 2003, c. 389, §15,  
10 is further amended to read:

11           A. It must specify the respective responsibilities, where applicable, of the client, the  
12 family or guardian of the client, the regional office, ~~the facility~~ and each public and  
13 private agency that intends to provide services to the client.

14           **Sec. 15. 34-B MRSA §5471, sub-§4, ¶A**, as amended by PL 2003, c. 389, §15,  
15 is further amended to read:

16           A. No part of a service plan or personal plan may be implemented until each person  
17 required to sign the service agreement under subsection 2 has signed it, ~~except that if~~  
18 ~~a client is to be admitted to a facility, the service agreement need not be completed~~  
19 ~~until 5 days after the date of admission.~~

20           **Sec. 16. 34-B MRSA §5472**, as enacted by PL 1983, c. 459, §7, is repealed.

21           **Sec. 17. 34-B MRSA §5473**, as amended by PL 2003, c. 389, §§16 and 17, is  
22 repealed.

23           **Sec. 18. 34-B MRSA §5474**, amended by PL 2011, c. 542, Pt. A, §115, is  
24 repealed.

25           **Sec. 19. 34-B MRSA §5475**, as amended by PL 2011, c. 542, Pt. A, §116, is  
26 repealed.

27           **Sec. 20. 34-B MRSA §5476**, as amended by PL 2011, c. 542, Pt. A, §117, is  
28 repealed.

29           **Sec. 21. 34-B MRSA §5477**, as amended by PL 2011, c. 542, Pt. A, §§118 and  
30 119, is repealed.

31           **Sec. 22. 34-B MRSA §5478**, as amended by PL 2011, c. 542, Pt. A, §120, is  
32 repealed.

33           **Sec. 23. 34-B MRSA §5479**, as amended by PL 2003, c. 389, §21, is repealed.

34           **Sec. 24. 34-B MRSA §5480**, as amended by PL 2003, c. 389, §22, is repealed.

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## SUMMARY

This bill repeals the provisions of law that apply or refer to state-run facilities for persons with intellectual disabilities, including laws that allow for voluntary admission, involuntary admission and judicial commitment of persons with intellectual disabilities to state-run facilities. The State closed the last of its facilities for persons with intellectual disabilities in response to the 1994 community consent decree, Consumer Advisory Board et al. v. Glover, 989 F.2d 65, 68 (1st Cir. 1993).