

MAINE STATE LEGISLATURE

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Date: 6/18/15

L.D. 1391
(Filing No. H-479)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT ^A to H.P. 941, L.D. 1391, Bill, "An Act Regarding the Treatment of Forensic Patients"

Amend the bill in section 1 by striking out all of the first line (page 1, line 2 in L.D.) and inserting the following:

'Sec. 1. 15 MRSA §§106, 107 and 108 are enacted to read:'

Amend the bill in section 1 in §106 in subsection 2 in the 6th line (page 1, line 11 in L.D.) by striking out the following: "antipsychotic" and inserting the following: 'psychiatric'

Amend the bill in section 1 in §106 in subsection 3 in paragraph B in subparagraph (2) in division (a) in the first line (page 2, line 1 in L.D.) by striking out the following: "stand trial" and inserting the following: 'proceed'

Amend the bill in section 1 in §106 in subsection 3 in paragraph B in subparagraph (4) in the first line (page 2, line 7 in L.D.) by striking out the following: "likely" and inserting the following: 'unlikely'

Amend the bill in section 1 in §106 by striking out all of subsection 4 (page 2, lines 12 to 15 in L.D.)

Amend the bill in section 1 in §106 in subsection 5 in the 2nd line (page 2, line 17 in L.D.) by striking out the following: "antipsychotic" and inserting the following: 'psychiatric'

Amend the bill in section 1 in §106 in subsection 5 in the 5th line (page 2, line 20 in L.D.) by striking out the following: "antipsychotic" and inserting the following: 'psychiatric'

Amend the bill in section 1 in §106 by renumbering the subsections to read consecutively.

Amend the bill in section 1 in §107 in subsection 1 by striking out all of paragraphs A to E (page 2, lines 31 to 37 in L.D.) and inserting the following:

COMMITTEE AMENDMENT

1 'A. "Commissioner" means the Commissioner of Health and Human Services or the
2 commissioner's designee.

3 B. "Department" means the Department of Health and Human Services.

4 C. "Patient" means a person held in a hospital under section 101-D or 103.

5 D. "Psychiatrist" includes a physician assistant working under the supervision of a
6 psychiatrist and a psychiatric nurse practitioner.'

7 Amend the bill in section 1 in §107 in subsection 3 by striking out all of paragraph B
8 (page 3, lines 14 to 16 in L.D.) and inserting the following:

9 'B. A psychiatrist has determined that, as a result of the patient's mental illness or
10 disorder, the patient poses a substantial risk of harm to self or others or there is a
11 reasonable certainty that the patient will suffer severe physical or mental harm as
12 manifested by recent behavior demonstrating an inability to avoid risk or to protect
13 the patient adequately from impairment or injury.'

14 Amend the bill in section 1 in §107 in subsection 3 in paragraph H by striking out all
15 of subparagraph (2) (page 4, lines 15 to 17 in L.D.) and inserting the following:

16 '(2) As a result of that illness or disorder the patient poses a substantial risk of
17 harm to self or others or there is a reasonable certainty that the patient will suffer
18 severe physical or mental harm as manifested by recent behavior demonstrating
19 an inability to avoid risk or to protect the patient adequately from impairment or
20 injury if not medicated.'

21 Amend the bill in section 1 in §107 in subsection 3 by striking out all of paragraph K
22 (page 4, lines 29 to 33 in L.D.) and inserting the following:

23 'K. The historical course of the patient's mental illness or disorder, as determined by
24 available relevant information about the course of the patient's mental illness or
25 disorder, is considered when it has direct bearing on the determination of whether the
26 patient, as the result of a mental illness or disorder, poses a substantial risk of harm to
27 self or others or there is a reasonable certainty that the patient will suffer severe
28 physical or mental harm as manifested by recent behavior demonstrating an inability
29 to avoid risk or to protect the patient adequately from impairment or injury.'

30 Amend the bill in section 1 in §107 in subsection 7 in paragraph A in the next to the
31 last line (page 5, line 23 in L.D.) by striking out the following: "acts need be" and
32 inserting the following: 'acts necessarily need to be'

33 Amend the bill in section 1 in §107 in subsection 7 by striking out all of paragraph B
34 (page 5, lines 25 to 32 in L.D.) and inserting the following:

35 'B. The commissioner may order an extension of an authorization under this
36 subsection. An order extending an authorization that is in effect must be granted
37 based on clear and convincing evidence that:

38 (1) The patient has a mental illness or disorder;

39 (2) As a result of that illness or disorder the patient poses a substantial risk of
40 harm to self or others or there is a reasonable certainty that the patient will suffer
41 severe physical or mental harm as manifested by recent behavior demonstrating

COMMITTEE AMENDMENT "A" to H.P. 941, L.D. 1391

1 an inability to avoid risk or to protect the patient adequately from impairment or
2 injury if not medicated;

3 (3) There is no less intrusive alternative to involuntary medication; and

4 (4) The need for treatment outweighs the risks and side effects.'

5 Amend the bill in section 1 in §107 in subsection 8 in the 5th line (page 5, line 39 in
6 L.D.) by inserting after the following: "change to the" the following: 'conditions leading
7 to the original order or the'

8 Amend the bill in section 1 in §107 in subsection 8 in the 8th line (page 5, line 42 in
9 L.D.) by inserting after the following: "change in" the following: 'the conditions leading
10 to the original order or the patient's'

11 Amend the bill in section 1 in §107 in subsection 8 in paragraph C in the last line
12 (page 6, line 17 in L.D.) by inserting after the following: "proceeding." the following: 'If
13 the hearing officer determines that a hearing is warranted, the patient must be provided
14 counsel at the department's expense at least 7 days prior to the hearing.'

15 Amend the bill in section 1 in §107 in subsection 8 in paragraph D by striking out all
16 of the last sentence (page 6, lines 21 and 22 in L.D.) and inserting the following: 'The
17 decision whether to terminate the authorization of involuntary treatment rests with the
18 commissioner, who shall act within 48 hours upon the hearing officer's recommendation.'

19 Amend the bill in section 1 by inserting at the end the following:

20 **§108. Court-ordered independent examinations**

21 Before making a determination under section 106 or 107, a court may order an
22 independent psychiatric or medical examination of the patient. The Department of Health
23 and Human Services, within 30 days after receiving a request from the Administrative
24 Office of the Courts, shall reimburse the Judicial Department for the full amount of fees
25 paid by the Judicial Department to providers of psychiatric and medical examinations of
26 forensic patients ordered by the court.'

27 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
28 section number to read consecutively.

29 **SUMMARY**

30 This amendment changes the references to "antipsychotic" medication to
31 "psychiatric" medication to more accurately describe the type of medication that may be
32 administered.

33 The amendment changes the terminology from competency "to stand trial" to
34 competency "to proceed" to be consistent throughout the bill.

35 The amendment revises the definition of "Commissioner of Health and Human
36 Services" to include the commissioner's designee.

37 The amendment deletes the definition of "gravely disabled" and replaces it with the
38 standard that the patient poses a substantial risk of harm to self or others or there is a
39 reasonable certainty that the patient will suffer severe physical or mental harm as

1 manifested by recent behavior demonstrating an inability to avoid risk or to protect the
2 patient adequately from impairment or injury if not medicated.

3 The amendment revises the factors that the commissioner must consider in order to
4 continue the extension of the order allowing treatment without the patient's consent. The
5 commissioner must find by clear and convincing evidence that:

- 6 1. The patient has a mental illness or disorder;
- 7 2. As a result of that illness or disorder the patient poses a substantial risk of harm to
8 self or others or there is a reasonable certainty that the patient will suffer severe physical
9 or mental harm as manifested by recent behavior demonstrating an inability to avoid risk
10 or to protect the patient adequately from impairment or injury if not medicated;
- 11 3. There is no less intrusive alternative to involuntary medication; and
- 12 4. The need for treatment outweighs the risks and side effects.

13 The amendment clarifies that the patient or the patient's designated representative
14 may request that the treatment authorization be terminated early by filing a request with
15 the department that demonstrates that there is a significant change to the conditions that
16 led to the original order or the patient's medical condition. If the hearing officer
17 determines that a hearing on the request is warranted, then the patient must be provided
18 counsel at the Department of Health and Human Services' expense at least 7 days before
19 the hearing. If the hearing officer recommends termination of the treatment authorization
20 to the commissioner, the commissioner must either order the termination or deny the
21 request for termination within 48 hours of the recommendation.

22 This amendment adds a new section that clarifies that the court may order an
23 independent psychiatric or medical examination to make a determination under the bill.
24 The Administrative Office of the Courts is directed to request that the Department of
25 Health and Human Services reimburse the full amount of fees paid to the providers of the
26 examinations. The Department of Health and Human Services is directed to reimburse
27 the Judicial Department within 30 days after the request.

28 **FISCAL NOTE REQUIRED**
29 **(See attached)**



127th MAINE LEGISLATURE

LD 1391

LR 1977(02)

An Act Regarding the Treatment of Forensic Patients

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-479)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services and to the Judicial Department to implement the provisions of this bill, including the cost of evaluations, are expected to be minor and can be absorbed within existing budgeted resources.