

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

SECOND REGULAR SESSION-2022

Legislative Document

No. 2008

H.P. 1496

House of Representatives, March 9, 2022

**An Act To Establish a Court Process for Involuntary Substance Use
Disorder Treatment**

(AFTER DEADLINE)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

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

A handwritten signature in cursive script that reads "R(t) B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative MADIGAN of Waterville.
Cosponsored by Senator MOORE of Washington and
Representatives: COLLINGS of Portland, Speaker FECTEAU of Biddeford, HARNETT of
Gardiner, MEYER of Eliot, MILLETT of Cape Elizabeth, O'NEIL of Saco, TALBOT ROSS of
Portland, ZAGER of Portland.

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

2 **Sec. 1. 5 MRSA §20056** is enacted to read:

3 **§20056. Court-ordered treatment for persons with substance use disorder**

4 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
5 following terms have the following meanings.

6 A. "Authorized person" means a family member, friend or guardian of the respondent.

7 B. "Intervention" means a meeting with the respondent and other persons facilitated by
8 a licensed substance use disorder professional to discuss concerns about the
9 respondent's substance use and the need for the respondent to enter treatment.

10 C. "Licensed substance use disorder professional" means a person licensed under Title
11 32, chapter 31, 36, 48, 56, 81, 83 or 119 with experience treating persons with
12 substance use disorder.

13 D. "Peer recovery coach" means a person recovering from substance use disorder who
14 is trained to provide peer mentoring and coaching to a person with substance use
15 disorder.

16 E. "Respondent" means a person for whom treatment under this section is sought.

17 **2. Jurisdiction.** The District Court has jurisdiction over proceedings under this
18 section.

19 **3. Commencement of proceeding.** An authorized person may file with the District
20 Court a petition according to this section seeking up to 360 consecutive days of treatment
21 for a respondent.

22 **4. Form of petition.** A petition filed pursuant to this section must include the
23 following information:

24 A. The petitioner's relationship to the respondent;

25 B. The respondent's name, residence and current location;

26 C. If known and as applicable, the name and residence of the respondent's:

27 (1) Parents;

28 (2) Guardian or other person with custody of the respondent;

29 (3) Spouse; and

30 (4) Near relative; and

31 D. The factual basis for the petition.

32 The petition must be captioned "In the interest of [respondent's name]."

33 **5. Ex parte proceeding.** Upon receipt of a petition filed pursuant to this section, the
34 District Court shall conduct an ex parte proceeding to review the petition. The court shall
35 review the allegations contained in the petition and examine the petitioner under oath
36 regarding the contents of the petition. If the court determines that there is good cause to
37 believe that treatment for the respondent may be warranted, the court shall:

- 1 A. Schedule a date for a hearing within 14 days to determine whether there are grounds
2 for treatment of the respondent pursuant to subsection 10;
- 3 B. Notify the respondent, the petitioner and any person identified in subsection 4,
4 paragraph C of the date of the hearing;
- 5 C. Notify the respondent of the respondent's right to retain an attorney or to have an
6 attorney appointed;
- 7 D. Cause the respondent to participate in an intervention in accordance with subsection
8 8; and
- 9 E. Cause the respondent to be examined by a licensed substance use disorder
10 professional in accordance with subsection 9.
- 11 **6. Appointment of attorney; procedure.** The District Court shall appoint an attorney
12 to represent the respondent in a proceeding on a petition under this section if:
- 13 A. The respondent requests representation;
- 14 B. The court determines that the respondent needs representation; or
- 15 C. It comes to the court's attention that the respondent wishes to contest any aspect of
16 the proceeding.
- 17 **7. Appointment of attorney; responsibilities.** An attorney appointed under
18 subsection 6 shall:
- 19 A. Make reasonable efforts to ascertain the respondent's wishes;
- 20 B. Advocate for the respondent's wishes to the extent reasonably ascertainable;
- 21 C. If the respondent's wishes are not reasonably ascertainable, advocate for the result
22 that is the least restrictive option in type, scope and duration, consistent with the
23 respondent's interests;
- 24 D. Ensure that the respondent's rights are upheld; and
- 25 E. Protect the respondent from any abuse, exploitation, punishment or retaliation in the
26 context of the proceedings.
- 27 **8. Intervention; dismissal of petition.** No later than 24 hours before the date of the
28 hearing scheduled pursuant to subsection 5, the respondent shall participate in an
29 intervention. The intervention must be facilitated by a licensed substance use disorder
30 professional with experience in facilitating interventions. The intervention must include
31 the respondent, the petitioner, a peer recovery coach and safe and supportive family
32 members or friends of the respondent. Before the intervention, the licensed substance use
33 disorder professional shall meet with the petitioner and family members or friends of the
34 respondent about how to make the intervention successful. If the respondent consents to
35 treatment, the District Court shall dismiss the petition.
- 36 **9. Recommendations by licensed substance use disorder professionals.** No later
37 than 24 hours before the date of the hearing scheduled pursuant to subsection 5, the
38 respondent must be examined by 2 licensed substance use disorder professionals, one of
39 whom must be a physician licensed under Title 32, chapter 36 or 48. The examination must
40 consist of:

- 1 A. Separate meetings with the respondent, petitioner and safe and supportive family
- 2 members or friends of the respondent;
- 3 B. The review and consideration of the respondent's co-occurring medical and mental
- 4 health diagnoses;
- 5 C. An assessment of the respondent's safety and treatment needs; and
- 6 D. Referrals to recovery support services in the respondent's community.

7 The licensed substance use disorder professionals shall submit their findings and
8 recommendations to the District Court within 24 hours of completion of the examination.
9 The recommendations must include the type, scope and duration of treatment appropriate
10 for the respondent.

11 **10. Grounds for court-ordered treatment.** The District Court shall hold a hearing
12 pursuant to subsection 5 prior to ordering treatment for the respondent. A court may order
13 treatment for the respondent if:

- 14 A. The court finds, by clear and convincing evidence, that:
 - 15 (1) The respondent is a person with substance use disorder;
 - 16 (2) The respondent presents an imminent danger to the respondent or another
 - 17 person as a result of the respondent's substance use disorder; and
 - 18 (3) The respondent could reasonably benefit from treatment; and

19 B. Two licensed substance use disorder professionals who performed an examination
20 under subsection 9 recommended treatment for the respondent.

21 **11. Duration of court order; review.** An order issued pursuant to subsection 10 may
22 not exceed 360 consecutive days and must be subject to regular review by the District
23 Court. The court shall vacate the order if there is no longer clear and convincing evidence
24 to support the order or if the petitioner withdraws the petition.

25 **12. Requirements of substance use disorder treatment.** Any treatment ordered by
26 the District Court pursuant to subsection 10 must include safe and supportive family
27 members or friends of the respondent and must connect the respondent to recovery support
28 services in the respondent's community.

29 **13. Emergency relief.** At any time, a court may order a respondent hospitalized for a
30 period not to exceed 72 hours if the court:

- 31 A. Finds, by clear and convincing evidence, that:
 - 32 (1) The respondent is a person with substance use disorder;
 - 33 (2) The respondent presents an imminent danger to the respondent or another
 - 34 person as a result of the respondent's substance use disorder; and
 - 35 (3) The respondent could reasonably benefit from treatment; and

36 B. The respondent was examined by a licensed substance use disorder professional
37 who has certified that the respondent meets the criteria in paragraph A.

38 The respondent must be released after 72 hours.

39 **14. Imminent danger.** For the purposes of subsections 10 and 13, a respondent is
40 considered to present an imminent danger if the respondent or another person is at risk of

1 substantial physical harm as a result of the respondent's substance use disorder, including,
2 but not limited to, actions that deprive a person of the basic means of survival, such as
3 reasonable shelter, food or clothing.

4 **15. Enforcement.** A respondent may be held in contempt of court if the respondent
5 does not:

6 A. Attend an examination required pursuant to subsection 5, paragraph E; or

7 B. Comply with the District Court's order issued pursuant to subsection 10.

8 The court may issue a summons for the respondent to appear at a time and place in order
9 to attend an examination or be transported to a hospital. A law enforcement agency may
10 transport the respondent to the hospital.

11 **16. Protections for respondent.** All of the rights applicable to persons subject to
12 involuntary hospitalization pursuant to Title 34-B, chapter 3, subchapter 4, article 3 apply
13 to a respondent under this section. The respondent may not be detained or confined in any
14 jail or local correctional or detention facility pending transportation to a hospital pursuant
15 to subsection 10 or 13 or transportation to an examination pursuant to subsection 5,
16 paragraph E, unless the District Court has previously found the respondent to be in
17 contempt of court under subsection 15.

18 **17. Public awareness.** A hospital licensed under Title 22, chapter 405 shall post
19 information about this section in its emergency department. The department shall adopt
20 rules to implement this subsection. Rules adopted pursuant to this subsection are routine
21 technical rules as defined in chapter 375, subchapter 2-A.

22 **Sec. 2. Department of Health and Human Services to adopt rules.** No later
23 than January 1, 2023, the Department of Health and Human Services shall adopt rules to
24 implement the Maine Revised Statutes, Title 5, section 20056, subsection 17 relating to
25 posting information about this Act in hospital emergency departments.

26 SUMMARY

27 This bill establishes a court process to require a person with a substance use disorder
28 to participate in substance use disorder treatment. It is modeled after the Matthew Casey
29 Wethington Act for Substance Abuse Intervention in Kentucky.