

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND EIGHTH LEGISLATURE

FIRST REGULAR SESSION

January 5, 1977 to July 25, 1977

PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 164, SUBSECTION 6.

PORTLAND LITHOGRAPH COMPANY
PORTLAND, MAINE
1977

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

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B. Any licensee who has requested a permit and has been denied, or whose permit has been revoked or suspended, may, within 30 days of the denial, suspension or revocation, appeal the decision to the municipal board of appeals, as defined in Title 30, section 2411. The municipal board of appeals may grant or reinstate the permit if it finds that the permitted activities would not constitute a detriment to the public health, safety or welfare, or that the denial, revocation or suspension was arbitrary and capricious.

5. Unorganized territories. If a licensed premise is located in an unorganized territory, the county commissioners of the county in which the unorganized territory is located shall grant, suspend or revoke permits in the same manner and with the same authority as municipal officers. The county commissioners shall adopt rules and regulations in the same manner as municipal officers.

6. Admission. A licensed hotel, Class A restaurant, Class A tavern or restaurant malt liquor licensee who has been issued an amusement permit may charge admission in designated areas approved by the municipal permit.

7. Definition of entertainment. For the purposes of this section, "entertainment" shall include any amusement, performance, exhibition or diversion for patrons or customers of the licensed premises whether provided by professional entertainers or by full-time or part-time employees of the licensed premises whose incidental duties include activities with an entertainment value.

Sec. 2. 30 MRSA § 2411, sub-§ 4, as enacted by PL 1971, c. 455, § 1, is amended by adding a new sentence to read:

Any board of appeals operating under this section shall hear any appeal submitted to the board in accordance with Title 28, section 702.

Sec. 3. Transition. The State Liquor Commission shall continue to issue special amusement permits for licensees in a municipality under Title 28, section 704, as in effect on the day before the effective date of this Act, until the municipality has adopted ordinances or established rules and regulations under this Act, but in no event shall the commission issue any permits after June 30, 1978. All special amusement permits issued by the commission prior to June 30, 1978, shall be valid for one year from their date of issue.

Effective October 24, 1977

CHAPTER 502

AN ACT to Revise the Statutes Relating to Services for Mentally Retarded Persons.

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

Sec. 1. 18 MRSA § 3621 as enacted by PL 1969, c. 265, is amended to read:

§ 3621. Public guardian; Bureau of Mental Retardation

The Bureau of Mental Retardation established under Title 34, section ~~2061~~ 2611, shall act as public guardian for mentally retarded persons as provided in this subchapter and whenever the term, "public guardian" is used in this subchapter it shall mean and refer to the Bureau of Mental Retardation.

Sec. 2. 18 MRSA § 3622, 2nd sentence, as enacted by PL 1969, c. 265, is amended to read:

The authority of the public guardian shall be exercised by the Director of Mental Retardation, whose office is established under Title 34, section ~~2062~~ 2612 and by any persons duly delegated by the Director of Mental Retardation to exercise such authority including a staff of competent social workers, or competent social workers assigned to the public guardian by the Department of Mental Health and Corrections.

Sec. 3. 34 MRSA, cc. 184, 184-A, 184-B, 184-C, 186 and 187, as amended, are repealed.

Sec. 4. 34 MRSA Pt. 4-A is enacted to read:

PART 4-A

SERVICES FOR MENTALLY RETARDED PERSONS

CHAPTER 221

GENERAL PROVISIONS

§ 2601. Statement of policy

1. Services. It is the policy of the State of Maine to provide education, training and habilitative services to mentally retarded persons who need those services.

2. Setting. It is further the policy of the State that the setting for such services shall, consistent with adequate care and treatment:

A. Impose the fewest possible restrictions on the liberty of mentally retarded persons; and

B. Be as close as possible to the patterns and norms of the mainstream of society.

§ 2602. Definitions

As used in this Part, unless the context otherwise indicates, the following words shall have the following meanings.

1. Bureau. "Bureau" means the Bureau of Mental Retardation in the

Department of Mental Health and Corrections.

2. Commissioner. "Commissioner" means the Commissioner of Mental Health and Corrections.

3. Department. "Department" means the Department of Mental Health and Corrections.

4. Mental retardation. "Mental retardation" means a condition of significantly subaverage intellectual functioning manifested during a person's developmental period, existing concurrently with demonstrated deficits in adaptive behavior.

5. Region. "Region" means any of the regions established by the bureau.

§ 2603. Treatment by spiritual means

Nothing in this Part shall replace or limit the right of any mentally retarded person to treatment by spiritual means alone, through prayer, if such is requested by the person or by his next of kin or legal guardian.

CHAPTER 223

BUREAU OF MENTAL RETARDATION

§ 2611. Bureau of Mental Retardation

There is established within the Department of Mental Health and Corrections a Bureau of Mental Retardation which, at the direction of the commissioner, shall be responsible for:

1. Institutions. The supervision of mental retardation programs in the institutions of the department;

2. Community-based services. Ensuring that mentally retarded persons residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Human Services, are provided with, insofar as possible, residential accommodations and access to habilitation services appropriate to their needs;

3. Statewide system. The planning, promotion, coordination and development of a complete and integrated statewide system of mental retardation services; and

4. Liaison. Serving as liaison, coordinator and consultant to the several state departments in order to develop the statewide system of mental retardation services.

§ 2612. Director; duties

The commissioner shall, with the consent of the Maine Committee on

Problems of the Mentally Retarded, appoint and set the salary, subject to the approval of the Governor, for the Director of the Bureau of Mental Retardation, who shall be a person with training and experience in mental retardation program administration or who has had satisfactory experience in the direction of work of a comparable nature. The director shall serve at the pleasure of the commissioner. It shall be the duty of the director to carry out the purposes of the bureau.

§ 2613. Maine Committee on Problems of the Mentally Retarded; duties

There shall be a Maine Committee on Problems of the Mentally Retarded composed of 12 members, consisting of one member from the House of Representatives appointed by the Speaker of the House and one member from the Senate appointed by the President of the Senate, the President of the Maine Association for Retarded Citizens, and 9 representative citizens appointed by the Governor, who shall designate a chairman. Appointments shall be made for 3 years. Members of the committee shall serve without pay, but will be reimbursed for expenses on the same basis as state employees. The terms of the members serving on the effective date of this Part shall not terminate or be modified as the result of this Part.

The duties of the Maine Committee on Problems of the Mentally Retarded shall be to act in an advisory capacity to the commissioner and to the director of the bureau in assessing present programs, planning future programs and in developing means to meet the needs of the retarded in Maine.

§ 2614. State Planning and Advisory Council on Developmental Disabilities

1. Council established. The Governor shall establish a State Planning and Advisory Council on Developmental Disabilities and appoint appropriate representatives, not only including such representatives as are required as a condition of eligibility for benefits under the Act entitled, "Development Disabilities Services and Facilities Construction Act of 1970," as enacted by P.L. 91-517 on October 30, 1970, by the Congress of the United States, but also ensuring that there is at least one representative from each of the regions established by the bureau. This council shall consult with the director of the bureau in carrying out the purposes of this chapter.

2. Sole administering agency; powers. Except where a single state agency is otherwise designated or established in accordance with any other state law, the bureau is designated to be the sole agency of the State to establish and administer any statewide plan for the construction, equipment, maintenance or operation of any facility for the provision of care, treatment, diagnosis, rehabilitation, training or related services, which plan is now or may hereafter be required as a condition to the eligibility for benefits pursuant to the provisions of the Federal Act specified in subsection 1. The bureau is also authorized to receive, administer and expend any funds that may be available under this Federal Act or from any other sources, public or private, for such purposes.

§ 2615. Legislative purpose

The purpose of sections 2615 to 2619 is to provide protective and supportive services to those persons who are incapacitated by reason of mental retardation and who, with some assistance, are capable of living and functioning in society.

§ 2616. Definitions

As used in sections 2615 to 2619, unless the context indicates otherwise, the following terms shall have the following meanings.

1. Incapacitated person. The term "incapacitated person" means any person who is impaired by reason of mental retardation to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his person or property.

2. Protective services. The term "protective services" means services the object of which is to protect an incapacitated person from himself and from others. These services shall consist of evaluation of the need for service and mobilization on the person's behalf of appropriate existing services. These services shall include, but need not be limited to, arrangements for appropriate living quarters, obtaining financial benefits to which the person is entitled, and securing medical services, supplies and legal services. In those situations where exploitation, prevention of injury, protection of the person and his property and serving the necessities or amenities of life are at issue, these protective services shall include seeking the appointment of a public or private guardian for the incapacitated person.

3. Supportive services. The term "supportive services" means services the objective of which is to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible. These supportive services shall include, but need not be limited to, counseling, transportation, assistance in obtaining adequate housing, medical and psychiatric care and nutritional services.

4. Ward. The term "ward" means a person for whom the bureau has been duly appointed guardian pursuant to Title 18, chapter 501, subchapter III-A.

§ 2617. Responsibility and role of bureau

1. Responsibility. The bureau is authorized to respond to complaints concerning and requests for assistance from or on behalf of all incapacitated persons. Services provided by the bureau shall be protective or supportive in nature.

2. Role. The role of the bureau shall be primarily that of supervision and coordination.

3. Acquiescence and consultation. With the exception of seeking the appointment of a guardian, protective or supportive services shall be initiated only:

A. With the acquiescence of the incapacitated person; and

B. After consultation, insofar as possible, with the family or the guardian of the incapacitated person.

§ 2618. Payment for services

The bureau may pay for protective and supportive services to incapacitated

persons from its own resources, by mobilizing available community resources or by purchase of services from voluntary or state agencies.

To the extent that assets are available to incapacitated persons or wards, the cost of services shall be borne by the estate of persons receiving the services.

The department, through the bureau and its other agents, is authorized to receive as payee any benefits from social security, veterans administration, railroad retirement or any other like benefits paid on behalf of any mentally retarded individual, and shall apply such benefits toward the care and treatment of any such mentally retarded individual.

§ 2619. Rules

1. Rules promulgated. The bureau shall promulgate rules for the administration of sections 2615 to 2618.

2. Public hearing. The bureau shall hold a public hearing prior to adopting these rules. Notice of the public hearing shall be published once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby.

3. Rules amended or repealed. Rules may be amended or repealed at any time by the bureau after like notice and hearing of the portions amended or repealed.

CHAPTER 225

STATE-OPERATED FACILITIES FOR MENTALLY RETARDED PERSONS

§ 2631. Facilities maintained

The Department of Mental Health and Corrections shall maintain 3 residential facilities for the care and treatment of mentally retarded persons.

§ 2632. Pineland Center

1. Pineland Center maintained. Pineland Center, heretofore established at New Gloucester in the County of Cumberland, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and may be maintained for the training, education, treatment and care of persons between the ages of 3 and 16 who are mentally ill. The provisions of chapter 229 shall in all relevant respects apply to the aforementioned mentally ill persons.

2. Superintendent; appointment. The head of Pineland Center shall be called the superintendent. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Superintendent of Pineland Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of superintendent. The superintendent shall be a person qualified by reason of training and experience to deal with the problems of mentally retarded persons and shall be either a psychiatrist, a hospital administrator, a psychologist, or a person with a master's degree in education, social work, public administration, public health or rehabilitation. In making the appointment, the commissioner and the Maine Committee on Problems of the Mentally Retarded shall give due consideration to the appointee's qualifications and experience in mental retardation matters.

4. Responsibilities of superintendent. The superintendent shall:

A. Be responsible for the training, education, treatment and care of all persons received into Pineland Center;

B. Be responsible for the discharge of all such persons, except those placed in Pineland Center under Title 15, sections 101 or 103; and

C. Have direct supervision, management and control of the grounds, buildings and property and offices and employees of Pineland Center, subject to the approval of the commissioner.

§ 2633. Aroostook Residential Center

1. Aroostook Residential Center maintained. Aroostook Residential Center, heretofore established at Presque Isle in the County of Aroostook, shall be maintained for the training, education, treatment and care of persons who are mentally retarded and may provide living accommodations for mentally retarded individuals in order that they attend education and training programs.

2. Director; appointment. The head of the Aroostook Residential Center shall be called the director. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Director of the Aroostook Residential Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of director. The director shall be a person qualified by education and experience to administer a facility providing services to the mentally retarded.

4. Responsibilities of director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Aroostook Residential Center;

B. Be responsible for the discharge of all persons received into the Aroostook Residential Center; and

C. Have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Aroostook Residential Center, subject to the approval of the commissioner.

§ 2634. Elizabeth Levinson Center

1. Elizabeth Levinson Center maintained. The Elizabeth Levinson Center, heretofore established at Bangor in the County of Penobscot, shall be maintained for the training, education, treatment and care of persons who are mentally retarded.

2. Director; appointment. The head of the Elizabeth Levinson Center shall be called the director and the commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the Director of the Elizabeth Levinson Center. The appointment shall be for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

3. Qualifications of director. The director shall be a person qualified by education and experience to administer a facility providing services to the mentally retarded.

4. Responsibilities of the director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Elizabeth Levinson Center;

B. Be responsible for the discharge of all persons received into Elizabeth Levinson Center; and

C. Have direct supervision, management and control of the grounds, buildings and property and officers and employees of the Elizabeth Levinson Center, subject to the approval of the commissioner.

CHAPTER 227

COMMUNITY-BASED SERVICES FOR MENTALLY RETARDED PERSONS

§ 2641. Assistance for community-based mental retardation services and programs

One purpose of this chapter is to assist in the establishment and expansion of community-based mental retardation services and programs for mentally retarded persons residing in the community. To carry out this purpose, the Department of Mental Health and Corrections may allocate money for the development of group homes, for capital construction, for the purchase of buildings and for supportive services and other activities. The department shall encourage persons in local communities to participate in the provision of such services so that these persons can have a better understanding of the need for such services. When offering financial assistance to community-based programs, the department shall follow the procedures set forth in this chapter.

The 2nd purpose of this chapter is to assist in the establishment and expansion of community-based mental retardation programs specifically for retarded persons residing in privately-operated residential care facilities.

§ 2642. Powers

The department may provide and help finance mental retardation services and programs throughout the State for mentally retarded persons residing in the community, including those persons residing in privately-operated residential care facilities. The department may cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance such services and programs.

The department, through the bureau, shall adopt and promulgate rules, regulations and standards relating to the administration of the services authorized by this chapter. Under this chapter, funds will be granted by the department only to those applicants whose programs provide for adequate standards of professional service. The department may receive and use for the purpose of this chapter money appropriated by the State and grants by the United States Government and gifts from individuals and any other sources.

§ 2643. Municipalities and other governmental units

A municipality or other governmental unit, such as a county, school district or health district, through its local board of health or other town or governmental agency approved by the department, is authorized to adopt and carry out a program of mental retardation services established or approved by the department and appropriate money for that purpose. A municipality or other governmental unit may join with another municipality or governmental unit to carry out such a program.

2644. State aid

Upon application to the department by a municipality, governmental unit, unincorporated association or nonstock corporation organized for the improvement of community health and welfare, the department may grant to such applicant money to be used for carrying out its mental retardation services, including any necessary capital expenditures or purchase of buildings.

§ 2645. Fees

Any program authorized by the department may include the provision of services by the department or the municipality, governmental unit, unincorporated association or nonstock corporation directly to individuals, for which a fee may be charged, if the individual is financially able to pay the same. Fees received by the municipality, governmental unit, unincorporated association or nonstock corporation shall be utilized by each in carrying out its programs approved under this chapter.

§ 2646. Amount

Any amount of money granted by the department to a program pursuant to this chapter shall not exceed in any single year $\frac{3}{4}$ of the operating expenses incurred by the applicant receiving the grant after deducting from said expense the fees, if any, received for the services rendered, except that no more

than $\frac{1}{2}$ of the operating expenses shall be paid from the General Fund appropriation. The department may grant funds for capital construction or purchase of buildings. Consideration shall be given to the ability of the municipality or governmental unit to support the mental retardation services, as reflected by the state's evaluation of the component communities. As to unincorporated associations or nonstock corporations, all income and resources shall be taken into account.

CHAPTER 229

PROCESS FOR PROVISION OF MENTAL RETARDATION SERVICES

§ 2651. Statement of policy

1. Steps to ensure receipt of service. It is the policy of the State that, in order to ensure that mentally retarded persons, receive, to the extent possible, needed services, the following steps shall be taken for each person who has been found by the Department of Mental Health and Corrections to be mentally retarded and in need of services:

- A. An assessment of the person's needs;
- B. The development of a prescriptive program plan of services for the person;
- C. A determination of the suitability and quality of needed services which are available to the person, first in the community and second in state-operated facilities; and
- D. Insofar as possible, obtaining high quality and suitable services for the person.

2. Persons involved with procedures. It is further the policy of the State that, to the extent possible, the mentally retarded person and his legal guardian or next of kin, shall be involved with the steps specified in subsection 1. In addition, an advocate shall be available to the mentally retarded person throughout these steps.

§ 2652. General provisions

1. Definitions. As used in this chapter, unless the context indicates otherwise, the following words shall have the following meanings.

A. "Advocate" means a person:

- (1) Who is familiar with the procedures, involved both in admitting mentally retarded persons to a facility and in providing services to such persons; and
- (2) Who is capable of advocating solely on behalf of a mentally retarded person.

B. "Client" means a person asking the department for mental retardation services or the person for whom such services are asked.

C. "Community" means the municipality or other area in which the client resides when applying for services.

D. "Comprehensive evaluation" means a comprehensive set of evaluations which:

(1) Results in the distinguishing of mental retardation from other conditions;

(2) Determines the severity of disability resulting from mental retardation and other conditions; and

(3) Estimates the degree to which mental retardation and other conditions can be ameliorated.

E. "Facility" means a residential facility operated by the department for mentally retarded clients.

F. "Habilitation" means a process by which a person is assisted to acquire and maintain skills which:

(1) Enable him to cope more effectively with the demands of his own person and of the environment;

(2) Raise the level of his physical, mental and social efficiency; and

(3) Upgrade his sense of well-being.

G. "Interdisciplinary team" means a team of persons, including at least one professional, which team is established and conducted in accordance with professional standards, for the purpose of evaluating mentally retarded clients and recommending services for these clients.

H. "Person in need of institutional services" means a person who, because of mental retardation and other severely disabling conditions, is unable to care for himself and to avoid or to protect himself from severe physical or psychological impairment, and who therefore needs habilitation in an institutional setting designed to improve such person's ability to care for and protect himself.

I. "Prescriptive program plan" means a detailed written plan outlining a mentally retarded client's specific needs for education, training, treatment and habilitation services, along with the methods to be utilized in providing treatment, education and habilitation to the client. A prescriptive program plan shall be formulated by an appropriately constituted interdisciplinary team.

J. "Professional" means a person who is licensed by the State to practice medicine or psychology and who has had training and experience in the diagnosis and treatment of mentally retarded persons.

K. "Service agreement" means a written form in which the persons designated in section 2656 agree to the type of services and programs for and the manner of providing services to the client.

L. "Voluntary admission" means the reception into a facility of a mentally retarded client who understand the nature, purpose and proposed duration of the admission and his right to leave the facility and thus to terminate the admission at any time, and who consents to such admission; or a mentally retarded client whose eligibility for admission to the facility has been certified by the District Court under section 2657, subsections 4 and 5.

2. Notification. The department shall provide the client, if he is competent; the client's next of kin or legal guardian, if such exists; and the client's advocate:

A. With timely written notice in advance of procedures and actions to be taken with respect to the development, implementation and assessment of prescriptive program plans; and

B. With access to copies of correspondence and reports concerning the clients, in accordance with Title 34, section 1-B.

3. Rules. By not later than 90 days after the effective date of this chapter, the commissioner shall promulgate and adopt rules for the effective implementation of this chapter.

A. The rules shall include, but need not be limited to, rules pertaining to:

(1) The membership, functions and procedures of the interdisciplinary teams;

(2) The procedures to be used in developing prescriptive programs and service agreements;

(3) The rights of clients while at a facility or while in departmental programs; and

(4) The rights and procedures for administrative review in the event of either dissatisfaction with any step of the process of receiving services specified in this chapter or any grievance arising during the course of voluntary admission to or treatment in any facility, including provisions for the development of regional committees to review any grievance or dissatisfaction.

B. The Joint Standing Committee on Health and Institutional Services shall review all rules promulgated by the department pursuant to this chapter. Such review shall occur by no later than March of each year.

C. The commissioner shall hold at least one public hearing prior to adopting these rules. Notice of any public hearing shall be published at least once, within 14 to 30 days before the hearing, in the state paper and in other newspapers or journals of general circulation adequate to provide reasonable notice to the public affected thereby.

D. Rules may be amended or repealed at any time by the commissioner after like notice and hearing of the portions amended or repealed.

4. Advocate. Each client who receives services pursuant to sections 2653 to 2657 shall be represented by an advocate. The department shall develop a list of advocates, including attorneys, for each region of the bureau.

§ 2653. Application for services

1. Application initiated. An application for mental retardation services provided by the department shall be initiated at or referred to a regional office of the bureau.

2. Observation and assessment. Within 5 work days the department shall:

A. Observe the client in his current environment;

B. Obtain a brief family survey;

C. Make a preliminary assessment of the client's abilities and needs, and of the relevant services presently available to the client; and

D. Ensure the client's representation by an advocate throughout the process of mental retardation services specified under sections 2653 to 2657, provided that the client does not refuse such representation.

§ 2654. Evaluation and report

1. Evaluation required. After completing the actions specified in section 2653, subsection 2, the department shall, forthwith, cause a comprehensive evaluation of the client, including a consideration of physical, emotion, social and cognitive factors, to be conducted.

2. Location of evaluation. The comprehensive evaluation shall be conducted locally, except where resources required to carry out the evaluation are not available.

3. Interdisciplinary team. The comprehensive evaluation shall be carried out by an interdisciplinary team.

4. Report of interdisciplinary team. Within 30 days of an application made pursuant to section 2653 the department shall obtain a report of the interdisciplinary team's findings, and shall furnish copies of the report pursuant to the provisions of section 2652, subsection 2. The professional shall state specifically in the report whether or not the client is mentally retarded.

A. If the report of the interdisciplinary team concludes that the client is not mentally retarded, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

B. If the report of the interdisciplinary team concludes that the client is mentally retarded and is in need of services, the department, through the

interdisciplinary team, shall develop and begin to implement a prescriptive program plan for this client within 60 days of the application made under section 2653.

§ 2655. Prescriptive program plan

1. Individually tailored plan. Each prescriptive program plan shall be individually tailored to the client's age, sex, condition, abilities, experiences and needs.

2. Contents of plan. Each prescriptive program plan shall:

A. Define training and treatment goals for the client without regard to service availability;

B. List all available and applicable programs of treatment, education and habilitation;

C. Weigh the advantages of each program in paragraph B in terms of cost, effectiveness, convenience and the client's needs;

D. Recommend the optimal course of action; and

E. Include plans for the active and continued exploration of suitable program alternatives.

3. Implementation. Implementation of all portions of a prescriptive program plan shall occur at the earliest possible time.

4. Agreement. All portions of a prescriptive program plan shall be agreed to, prior to implementation, by the client, if he is able, and by his next of kin or legal guardian, if such person exists and is available.

5. Recommendations of plan. Each prescriptive program plan shall recommend that the client be admitted to a facility, receive services in the community under the supervision of a regional office, or cease to receive services from the department.

§ 2656. Service agreements

1. Service agreement required. Each prescriptive program plan shall be carried out pursuant to a written service agreement.

2. Signatures. Each service agreement shall be signed and dated by at least:

A. The client, if he is able;

B. The client's legal guardian or next of kin, if such person exists and is available;

C. A physician or psychologist serving on the interdisciplinary team which developed the prescriptive plan for the client;

D. The head of the appropriate regional office, when a client is being admitted to or discharged from a facility or when a client is under the supervision of the regional office;

E. The head of the facility or his agent, when a client is being admitted to, treated in or discharged from a facility; and

F. The head, or his agent, of other public or private agencies or groups which agree to provide services to the client.

3. Contents. Each service agreement shall include at least the following information.

A. It shall specify the respective responsibilities, where applicable, of the client, the family or legal guardian of the client, the regional office, the facility, and each public and private agency which intends to provide services to the client.

B. It shall identify by job classification or other description each individual who is responsible for carrying out each portion of the prescriptive program plan.

C. It shall specify the date on which the review required in subsection 5 shall occur.

4. Period of agreement. No portion of a prescriptive program plan shall be implemented until each person required under subsection 2 has signed the service agreement for the plan. The existing prescriptive program plan, if any, shall be considered in effect until all persons so required have signed the new service agreement. In no case shall a prescriptive program plan be in effect for a period of time which is longer than one year and 2 weeks from the date on which the last person signed the service agreement for the plan.

5. Review. At least 30 days prior to the termination of a service agreement, an interdisciplinary team shall meet in order to assess the present prescriptive program plan and, if further services are recommended, in order to prepare a new plan.

6. Amendment. Any major changes in a client's prescriptive program plan, shall occur only after the service agreement has been amended and signed by the persons specified in subsection 2.

§ 2657. Voluntary admission to and discharge from a facility

1. Recommendation of admission. If admission to a facility is recommended by an interdisciplinary team, the prescriptive program plan shall include the following information.

A. There shall be documentation that:

(1) The client requires treatment, education and habilitation of an intensive nature;

- (2) The client can benefit from programs at the facility; and
- (3) Appropriate programs for treatment, education and habilitation are not presently available in the community or the facility is the treatment setting of the client's choice.

B. There shall be:

- (1) Plans for preparing the client for admission, including, unless specifically contraindicated, a preadmission visit to the facility; and
- (2) Plans to facilitate, at the earliest feasible time, the client's return to the community.

2. Application. If an interdisciplinary team recommends that a client should be admitted to a facility, an application for voluntary admission to a facility may be made, in a form which shall be prescribed by the department, by the client or a representative of his choice, the client's legal guardian or next of kin or any other responsible person.

This application shall be processed through the regional office of the bureau. The regional office shall state that it believes that compelling needs of the client are not being met; shall state in writing the factual basis of this belief; and shall provide to the facility all available results of evaluations of the client which may be relevant, including the findings and recommendations of the interdisciplinary team. The regional office shall submit the application to the facility.

3. Admission. The facility shall admit the client on a voluntary basis only after:

A. The superintendent or his designee has determined that the client understands the nature, purpose and proposed duration of the admission; understands his right, and the limitations to this right, to leave the facility and to terminate the admission at any time; and consents to the admission; or

B. The superintendent or his designee has determined that the client is not capable of requesting and consenting to admission to the facility and an order certifying the client's eligibility for admission has been issued by a District Court Judge in accordance with subsection 4; or

C. An initial prescriptive program plan has been developed according to section 2655 and a service agreement for carrying out the plan has been executed pursuant to section 2656.

4. Judicial certification of eligibility for admission. Whenever the superintendent of a facility or his designee determines that a mentally retarded client is not capable of requesting and consenting to his admission to the facility on a voluntary basis, the following provisions shall govern the admission of the client to the facility.

A. The regional office, with the consent of the parent or legal guardian of the client, if available, may initiate a proceeding, in the District Court

having jurisdiction where the client resides, to certify the client's eligibility for admission to the facility.

B. Prior to initiating the proceeding the regional office shall obtain the approval for the admission by the facility to which, it is proposed, the client will be admitted. The department shall adopt rules establishing procedures and standards to be used by facilities in determining whether to approve such admissions.

C. The regional office shall initiate the proceeding by filing a petition in the District Court. The petition shall allege that the client is mentally retarded; is in need of the treatment, education and habilitation which are proposed to be provided by the facility; and has been approved for admission by the facility. The petition shall be accompanied by the application for admission and such documentation as the court may require.

D. The District Court shall commence the proceeding to certify the client's eligibility for admission, after the court has received the petition, application and accompanying documentation under paragraph C.

E. Upon commencement of the proceeding, the District Court shall cause written notice of the petition and application to be given, personally or by mail, to the client who is the subject of the proceeding.

At the same time, the court shall mail such notice to the client's legal guardian, if known; his spouse, his parent or his adult child; or, if none of these persons exists or if their whereabouts are unknown, to one of his next of kin or a friend.

A docket entry shall be evidence that such notice has been mailed.

F. Upon commencement of the proceeding, the court may cause the client who is the subject of the proceeding to be examined by a professional. This professional shall be chosen by the client or his counsel, provided that the professional shall be reasonably available. The professional shall not be the same professional who performed any part of the evaluation required under 2654 or who participated in the development of a prescriptive program plan for the client.

Upon completion of the examination, the professional shall report to the court his opinion as to whether the client is mentally retarded and as a result thereof requires the treatment, education or habilitation provided by the facility, together with his reasons for each opinion.

G. The client who is the subject of the proceeding may be detained by the facility pending certification under paragraph H, for a period which shall not exceed 48 hours, provided that the purpose of such detention is to observe and evaluate the client.

H. If the District Court Judge specifically finds that

(1) The facility has approved the proposed admission of the client;

(2) There is no less restrictive alternative to the care provided by the facility, consistent with the best interest of the client; and

(3) The client is mentally retarded and is in need of the services provided by the facility

the judge shall, by written order, certify that the client is eligible for admission to the facility.

I. If the judge certifies that the client is eligible for admission to the facility, the client shall be admitted to the facility forthwith, pending the hearing on this certification set forth in subsection 5.

If the judge finds that the client is not eligible for admission to the facility, the interdisciplinary team shall revise the prescriptive program plan for the client and shall seek alternative care and services for the client, to be provided in accordance with the procedures set forth in sections 2655 and 2656.

J. Certification of a client's eligibility for admission under paragraph H shall not be construed as a judicial commitment of the client, but shall empower the regional office to admit the client to the facility for treatment, education or habilitation and shall empower the facility to accept the client as a resident, provided that the parent or legal guardian agrees to such admission.

5. Procedures for the hearing on the judicial certification. Whenever a judge of the District Court has certified that a client is eligible for admission to a facility pursuant to subsection 4, paragraph H, a hearing on this order shall be held, subject to the following provisions.

A. The District Court shall hold a hearing on the application for the client's admission to the facility, not later than 20 days from the date of the court's order certifying eligibility for admission.

If the hearing is not held within the time specified or a continuance thereof, the court's order certifying eligibility for admission shall be void and the client shall be discharged forthwith.

Notice of the hearing shall be sent to the persons and in the manner specified under subsection 4, paragraph E, upon the court's order certifying eligibility for admission, but not less than 10 days prior to the hearing.

In computing the time periods set forth in this paragraph, the District Court Rules of Civil Procedure shall apply.

B. An opportunity to be represented by counsel during the hearing shall be afforded to every client. If the client does not retain counsel, the court shall appoint counsel.

As soon as practicable after receiving notice of retention or appointment of counsel, the clerk of the District Court shall furnish counsel with copies of the application for the client's admission to the facility and accompanying documentation.

C. The hearing shall be conducted in an informal manner, consistent with orderly procedure.

D. The court shall receive all relevant and material evidence which may

be offered in accordance with the Maine Rules of Evidence.

E. The regional office shall have the burden of proof, by clear and convincing evidence, that

- (1) The client is mentally retarded and is in need of the type of services provided by the facility;
- (2) The needed services are available at the facility named in the application; and
- (3) There is no less restrictive alternative to the care provided by the facility, consistent with the best interests of the client

as may be demonstrated by evidence submitted to the court describing the services and the manner proposed for the provision of the services.

F. If the court finds, by clear and convincing evidence, that the regional office has met the burden set forth in paragraph E, the court may order the continuation of the certification, under subsection 4, paragraph H, of the client's eligibility for admission to the facility. Such certification shall remain in effect for a period of not more than 2 years from the date of the order issued by the court under subsection 4, paragraph H.

G. The District Court shall be responsible for any expenses incurred under subsections 4 and 5, including fees of appointed counsel, witness fees and the expenses resulting from the comprehensive evaluation of the client under subsection 4, paragraph F, and the testimony thereon.

6. Client's right to leave facility.

A. Any client who is admitted to a facility pursuant to subsections 3 through 5 shall have the right to leave the facility after his admission.

B. This right shall be subject only to the following limitations.

(1) When a client has been admitted to the facility as a result of judicial certification, as specified in subsections 4 and 5, the client shall have the right to leave the facility, only upon the consent of his parent or legal guardian, or, if neither exists, upon the consent of a next of kin or friend.

(2) When a client has consented to his admission to the facility and has been admitted in accordance with subsection 3, paragraphs A and C, the superintendent may prevent such client from leaving the facility, only if the superintendent has determined that if the client leaves, there is a substantial likelihood of serious harm due to mental retardation. For the purposes of this paragraph, "likelihood of serious harm" shall have the meaning specified in section 2251, subsection 7. Such detention shall be followed by a report to the department and within 24 hours an application to the District Court for involuntary commitment to the facility pursuant to the procedures referred to in section 2659. The superintendent may detain the client pending completion of these procedures.

C. The superintendent of the facility or his designee shall inform each

client and his parent or legal guardian, at the time of admission to the facility, of the client's right to leave the facility and of the limitations to this right.

7. Provision of care and treatment.

A. In addition to the contents of the service agreement required in section 2656, subsection 3, an initial service agreement for services to be received in the facility shall include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement. The purpose of this meeting shall be to assess and, if necessary, refine the client's prescriptive program plan.

B. While residing in the facility, the client shall receive care, treatment and services only according to the procedures set forth in this section and in sections 2655 and 2656.

8. Preparation for discharge. Whenever an interdisciplinary team finds that the client may be ready for discharge and determines that temporary placement of the client in the community is required to assist in its evaluation of the client, the team may recommend such placement and shall develop a prescriptive program plan and service agreement which shall include provisions to ensure:

A. That the client's money shall be adequately managed;

B. That the client has a legal representative, if such person is required;

C. That the client shall receive needed services in the community; and

D. That the client's parent or legal guardian, if such person is available, shall continue to be involved with the client.

The superintendent may release the client pursuant to such recommendation for temporary community placement through the regional office.

9. Role of regional office. The regional office which will have responsibility for the client shall be included in the preparation of the prescriptive program plan and service agreement specified in subsection 8. The regional office shall also be responsible for implementing the client's release. The regional office shall, along with the other members of the interdisciplinary team, evaluate the success of the client's reintegration into the community and shall assist in obtaining the client's discharge when assured that the provisions of the prescriptive program plan and service agreement have been met.

10. Discharge. If the provisions in subsection 8 have been met and if the regional office and the interdisciplinary team so recommend, the superintendent shall discharge the client. In no case shall discharge take place later than 6 months after the recommendation by the interdisciplinary team under subsection 8.

Temporary care may be provided to any client by a facility without full compliance with the procedures set forth in sections 2653 through 2657. The purpose of such temporary care shall be evaluation, diagnosis or other clearly stated and defined therapeutic reasons. Temporary care may be provided upon application to the regional office of the bureau by the client, legal guardian or parent, for a period not to exceed 21 days at a time and not more than 60 days during any 12-month period. Continuing placement in the facility, if indicated, shall be accomplished only upon full compliance with procedures described by this Part.

§ 2659. Involuntary commitment

A person who is or who is believed to be mentally retarded may be admitted to a facility on an involuntary basis after the facility has received an application and certificate pursuant to the provisions for emergency admission of mentally ill persons to hospitals under section 2333 and may be committed to a facility pursuant to the provisions for committing mentally ill persons to hospitals under section 2334, subject for the purposes of this section, to the following modifications:

1. Superintendent. The words "head of the hospital" shall mean superintendent of the facility;
2. Facility. The word "hospital" or "mental hospital" shall mean facility;
3. Plan. The words "individual treatment plan" shall mean prescriptive program plan;
4. Voluntary admission. The words "informally admitted patient" shall mean a client admitted to a facility pursuant to section 2657, subsections 3 to 5;
5. Residency. The words "inpatient hospitalization" shall mean residency of a client in a facility.
6. Confinement. The words "involuntary hospitalization" shall mean confinement in a facility.
7. Retardation. The words "mental illness" shall mean mental retardation.
8. Retarded. The words "mentally ill" shall mean mentally retarded.
9. Client. The word "patient" shall mean client.

Sec. 5. Procedures for current residents and other clients of the Pineland Center and the Levinson Center.

1. Residents. The following procedures shall be followed with respect to each mentally retarded person who is a resident of the Pineland Center and the Elizabeth Levinson Center on the effective date of this Act and who has not been committed on an involuntary basis by a court to the particular facility in which he resides.

- A. Within 30 days of the effective date of this Act, the superintendent of

each facility shall conduct a review to determine whether each resident is capable of understanding the nature and purpose of his residency at the facility and whether such residency should be continued on a voluntary basis.

B. Within 30 days of the effective date of this Act, the superintendent of each facility shall inform each resident who has been determined to understand the nature and purpose of his residency and his parent or legal guardian of the resident's right to leave the facility.

C. When either superintendent has determined that a resident understands both the nature and purpose of his residency at the facility and his right to leave and terminate his residency at the facility, the superintendent shall, with the consent of the resident, permit the resident to remain at the facility, as if he has been admitted on a voluntary basis pursuant to Title 34, section 2657, subsection 3, paragraphs A and C, as enacted by this Act. Whenever any such resident consents to remain at the facility, the superintendent shall cause to be completed, within 120 days of the effective date of this Act, a comprehensive evaluation of and a prescriptive program plan for the resident, carried out in accordance with the applicable provisions set forth in Title 34, sections 2654, 2655 and 2656, as enacted by this Act.

Notwithstanding the previous paragraph, the superintendent is not required to permit such a resident to remain at the facility if, after completion of the comprehensive evaluation and development of the prescriptive program plan, he finds that the resident is not in need of the services provided at the facility or that there is a less restrictive alternative to the care provided by the facility, consistent with the best interests of the resident. If the superintendent refuses to permit such a resident to remain at the facility and has made a finding of either of the above, he shall, within 150 days of the effective date of this Act, have completed the steps required to prepare the resident for discharge, as specified under Title 34, section 2657, subsections 8 and 9. The superintendent shall discharge each such resident pursuant to Title 34, section 2657, subsection 10, but in no case later than 330 days after the effective date of this Act.

D. When either superintendent determines that a resident does not understand either the nature and purpose of his residency or his right to leave and terminate his residency at the facility, the superintendent shall, within one year of the effective date of this Act, cause to be completed a comprehensive evaluation of and a prescriptive program plan for each such resident, in accordance with the applicable provisions set forth in Title 34, sections 2654, 2655 and 2656.

If the superintendent finds, as a result of the comprehensive evaluation and the development of the prescriptive program plan, that the resident is mentally retarded and needs the services, that the services are available at the facility and that there is no less restrictive alternative to the care provided by the facility, consistent with the best interests of the resident, he shall petition the District Court, within one year of the effective date of this Act, for certification of the resident's eligibility for admission to a facility as set forth in Title 34, section 2657, subsections 4 and 5.

The District Court shall have one year plus 90 days from the effective date of this Act to hear and decide all such petitions for certification of eligibility for admission pursuant to this subsection.

If the superintendent finds, as a result of the comprehensive evaluation and development of the prescriptive program plan that the resident is not in need of the services provided at the facility or that there are less restrictive alternatives to the care at the facility, consistent with the best interests of the resident, the superintendent shall, within 90 days of the completion of the evaluation and plan, have completed the steps required to prepare the resident for discharge, as specified under Title 34, section 2657, subsections 8 and 9.

The superintendent shall discharge each such resident, pursuant to Title 34, section 2657, subsection 10 but in no case later than 270 days after the completion of the evaluation or plan.

2. **Clients in community placements.** Notwithstanding the provisions of Title 34, section 2657, subsection 10, each mentally retarded person who is a client of either the Pineland Center or the Levinson Center, but who is residing in the community for the purpose of preparation for discharge on the effective date of this Act shall be discharged from the particular facility from which he has been placed into the community, within one year of the effective date of this Act.

Sec. 6. Appropriation. There is appropriated from the General Fund the sum of \$30,000 to the Department of the Attorney General for fiscal years 1977-78 and 1978-79 and the sum of \$182,000 to the District Court for the State of Maine for fiscal years 1977-78 and 1978-79. The breakdown shall be as follows:

	1977-78	1978-79
ATTORNEY GENERAL, DEPARTMENT OF		
(Unallocated)	\$ 15,000	\$ 15,000
DISTRICT COURT FOR THE STATE OF MAINE		
(Unallocated)	130,000	52,000
Total	\$145,000	\$ 67,000

This appropriation shall be used to pay for legal representation for mentally retarded residents of Pineland, the Levinson Center and for the professionals appointed by the District Court to evaluate these residents, in accordance with the provision of Section 5 of this Act. Any balance of these appropriations for fiscal year 1977-78 shall not lapse but shall carry forward into fiscal year 1978-79 to be expended for the same purposes.

Effective October 24, 1977

CHAPTER 503

AN ACT to Revise the Fish and Game Laws.