

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE

FIRST SPECIAL SESSION
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Chapters 583-588

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

J.S. McCarthy Co., Inc.
Augusta, Maine
1983

**[DUE TO ITS SIZE, THIS LAW HAS BEEN DIVIDED INTO TWO
ELECTRONIC FILES. THIS IS THE SECOND FILE.]**

6. Report. The commissioner shall annually, prior to February 1st, present a report to the joint standing committee of the Legislature having jurisdiction over health and institutional services describing any actions taken under the provisions of the compact during the previous year.

SUBCHAPTER IV

INTERSTATE COMPACT ON DETAINERS

ARTICLE I

AGREEMENT

§9601. Purpose and policy--Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from other jurisdictions, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

§9602. Definitions--Article II

As used in this agreement, unless the context clearly requires otherwise, the following terms shall have the following meanings.

1. Receiving state. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV.

2. Sending state. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III or at the time that a request for custody or availability is initiated pursuant to Article IV.

3. State. "State" shall mean a state of the

United States, the United States of America, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§9603. Request for final disposition--Article III

1. Trial pending. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint, provided that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

2. Request for final disposition. The written notice and request for final disposition referred to in subsection 1 shall be given or sent by the prisoner to the warden, Commissioner of Corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

3. Notification. The warden, Commissioner of Corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

4. Application. Any request for final disposition made by a prisoner pursuant to subsection 1 shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged

against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, Commissioner of Corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

5. Waiver of extradition. Any request for final disposition made by a prisoner pursuant to subsection 1 shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection 1 and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with this agreement. Nothing in this subsection shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

6. Escape. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection 1 shall void the request.

§9604. Temporary custody--Article IV

1. Request. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V, subsection 1, upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated, provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and

transmitted the request, and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

2. Certificate. Upon receipt of the officer's written request as provided in subsection 1, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

3. Time of trial. In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

4. Legality of delivery. Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection 1, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

5. Order dismissing. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V, subsection 5, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

§9605. Delivery--Article V

1. Request. In response to a request made under Article III or Article IV, the appropriate authority in a sending state shall offer to deliver temporary

custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

2. Identification; copy of indictment. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

A. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given; and

B. A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

3. Dismissed. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

4. Purpose. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

5. Return. At the earliest practicable time consonant with the purposes of this agreement, the

prisoner shall be returned to the sending state.

6. Time on sentence. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

7. Escape. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

8. Responsibility; costs. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing in this subsection shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

§9606. Time periods tolled--Article VI

In determining the duration and expiration dates of the time periods provided in Articles III and IV, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

§9607. Rules and regulations--Article VII

Each state party to this agreement shall design-

nate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

§9608. Effective date--Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

§9609. Construction--Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE II

PROVISIONS RELATING TO AGREEMENT

§9631. Designation of courts

The phrase "appropriate court" as used in Article I, with reference to the courts of this State, shall mean the District Court or the Superior Court, as applicable.

§9632. Enforcement and cooperation by courts and agencies

All courts, departments, agencies, officers and employees of this State and its political subdivisions shall enforce the agreement on detainees con-

tained within Article I and cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

§9633. Escape

Any person, who escapes or attempts to escape from custody while in another state pursuant to Article I, shall be subject to the penalties provided in Title 17-A, section 755, for escape or attempt to escape from the Maine State Prison.

§9634. Chief administrative officer to give over the person of inmate

The chief administrative officer of a correctional facility in Maine shall give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

§9635. Commissioner of Corrections to make rules and regulations

The Commissioner of Corrections is designated as the officer provided for in section 9607.

SUBCHAPTER V

UNIFORM ACT FOR OUT-OF-STATE PAROLEE

SUPERVISION

ARTICLE I

COMPACT

§9801. Conditions for residence in another state--Article I

It shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, herein called "receiving state," while on probation or paroled, if:

1. Resident. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there; and

2. Consent. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this chapter, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

§9802. Duties of receiving state--Article II

Each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

§9803. Retaking--Article III

Duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose, no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of the states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

§9804. Transportation of retaken persons--Article IV

The duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states party to this compact, without interference.

§9805. Rules and regulations--Article V

The governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall

promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact. The officer so designated by the Governor shall have the authorization to appoint such deputy compact administrators as he deems necessary to carry out the mandates of this section.

§9806. Entry into force--Article VI

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

§9807. Renunciation--Article VII

This compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

ARTICLE II

PROVISIONS RELATING TO COMPACT

§9831. Action by Governor

The Governor of this State is authorized and directed to execute a compact on behalf of the State with any of the states of the United States legally joining therein in the form substantially provided in this subchapter.

§9832. State defined

The word "state" in this subchapter shall mean any state, territory or possession of the United States and the District of Columbia.

§9833. Short title

This subchapter may be cited as the "Uniform Act for Out-of-State Parolee Supervision."

ARTICLE III

PRELIMINARY

HEARING IN INTERSTATE PROBATION

AND PAROLE VIOLATION CASES

§9861. Preliminary hearing required, detention

Where supervision of a parolee or probationer is being administered pursuant to Articles I and II, the appropriate judicial or administrative authorities in this State shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this chapter, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

§9862. Persons authorized to conduct preliminary hearing

Any hearing pursuant to this chapter may be before the compact administrator under Article I or his authorized designee, except that no hearing officer shall be the person making the allegation of violation.

§9863. Procedure at preliminary hearing

With respect to any hearing pursuant to this chapter, the parolee or probationer:

1. Notice. Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a

revocation of parole or probation;

2. Advise. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;

3. Confrontation. Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons; and

4. Contentions. May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

§9864. Reciprocal provisions

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Uniform Act for Out-of-State Parolee Supervision, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

Sec. 7. 34-B MRSA is enacted to read:

TITLE 34-B

MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER I

DEFINITIONS

§1001. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the follow-

ing meanings.

1. Chief administrative officer. "Chief administrative officer" means the head of a state institution or the head of any other institution which provides services which fall under the jurisdiction of the department.

2. Client. "Client" means a person receiving services from the department, from the Bureau of Mental Health, from the Bureau of Mental Retardation, from any state institution or from any agency licensed or funded to provide services falling under the jurisdiction of the department.

3. Commissioner. "Commissioner" means the Commissioner of Mental Health and Mental Retardation or his designee, except that when the term "commissioner and only the commissioner" is used, the term applies only to the person appointed Commissioner of Mental Health and Mental Retardation and not to any designee.

4. Department. "Department" means the Department of Mental Health and Mental Retardation.

5. Parking area. "Parking area" means land maintained by the State at the state institutions under the jurisdiction of the department, which may be designated as parking areas by the heads of the state institutions.

6. Public way. "Public way" means a road or driveway on land maintained by the State at the state institutions under the jurisdiction of the department.

7. Resident. "Resident" means a person residing in a state institution or in any other institution which provides services which fall under the jurisdiction of the department.

8. State institution. "State institution" means:

- A. The Augusta Mental Health Institute;
- B. The Bangor Mental Health Institute;
- C. The Pineland Center;
- D. The Elizabeth Levinson Center;
- E. The Aroostook Residential Center; or
- F. The Military and Naval Children's Home.

9. Written political material. "Written political material" means flyers, handbills or other nonperiodical publications which are subject to the restrictions of Title 21, chapter 35.

SUBCHAPTER II

DEPARTMENT

§1201. Establishment

There is established a Department of Mental Health and Mental Retardation.

1. Cabinet level. The department is a cabinet-level department.

2. Commissioner. The department is under the control and supervision of the Commissioner of Mental Health and Mental Retardation.

§1202. Office of the commissioner

1. Appointment. The Governor shall appoint the Commissioner of Mental Health and Mental Retardation subject to review by the joint standing committee of the Legislature having jurisdiction over health and institutional services and to confirmation by the Senate, to serve at the pleasure of the Governor.

2. Vacancy. Vacancies in the office of the commissioner shall be filled as follows.

A. Any vacancy in the office of commissioner shall be filled by appointment under subsection 1.

B. If the office of the commissioner is vacant or if the commissioner is absent or disabled, the associate commissioner for programs shall perform the duties and have the powers provided by law for the commissioner.

C. If the offices of the commissioner and the associate commissioner for programs are vacant or if both officials are absent or disabled, the associate commissioner for administration shall perform the duties and have the powers provided by law for the commissioner.

3. Qualifications. To qualify for appointment as commissioner, a person must have training and experience in human services' administration or satisfactory experience in the direction of work of a comparable nature.

§1203. Duties of the commissioner

In addition to other duties set out in this Title, the commissioner has the following duties.

1. General. The commissioner shall have general supervision, management and control of the research and planning, grounds, buildings, property, officers, employees and clients of all state institutions.

2. Enforcement of laws. The commissioner shall enforce all laws concerning the institutions within the department, unless specific law enforcement duties are given by law to other persons.

3. Rules. Rules shall be established as follows.

A. The commissioner shall establish such rules, regulations, procedures and practices as he may determine appropriate or necessary for the care and management of the property of all state institutions, for the production and distribution of the products of the institutions, for guiding the institutions in determining whether to approve admissions and for the execution of the statutory purposes and functions of the institutions.

B. The central principle underlying all rules relating to residents of the institutions within the department is that the residents shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law.

4. Grievance procedures. The commissioner shall establish procedures for hearing grievances of clients.

5. Residential child care facilities. The commissioner shall approve all programs for the provision of mental health services to residential child care facilities, as defined in Title 22, section 8101, subsection 4, and shall participate in licensure of these programs in accordance with Title 22, section 8104.

6. Sliding fee scale. The commissioner shall provide and establish a sliding fee scale for the provision of center-based developmental day care services for preschool children with developmental disabilities according to the following requirements.

A. Services provided under this subsection shall be made available to all eligible preschool chil-

dren, regardless of their family income.

B. Services to eligible children of individuals and families whose adjusted gross income is at or below 80% of the median personal income for residents of this State shall be made available at no cost to the individual or family.

C. A sliding fee scale no higher than the applicable scale under Title 22, section 9, subsection 3, shall be applied to eligible children of individuals and families whose adjusted gross income is between 80% and 115% of the median personal income for residents of this State.

D. A sliding fee scale that is proportionately related to the applicable scale under Title 22, section 9, subsection 3, shall be developed and applied to eligible children of individuals and families whose adjusted gross income is over 115% of the median personal income for residents of this State.

E. The commissioner shall coordinate these services with other state agencies in order to insure that no unnecessary duplication of services will occur.

§1204. Powers of the commissioner

In addition to other powers granted in this Title, the commissioner has the following powers.

1. General powers. The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of the residents of state institutions or may purchase residential services when the department does not provide the appropriate institutional services for the client.

2. Appointments of associate commissioners and other employees. The commissioner's powers to appoint associate commissioners and other employees are as follows.

A. The commissioner may appoint, subject to the Personnel Law and except as otherwise provided, any employees who may be necessary.

B. The commissioner may appoint and set the salaries for an associate commissioner for programs and an associate commissioner for administration to assist in carrying out the responsibilities of the department.

(1) Each appointment shall be for an inde-

terminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

(2) To be eligible for appointment as associate commissioner for programs, a person shall have training and experience in the planning and administration of human services.

(3) To be eligible for appointment as associate commissioner for administration, a person shall have training and experience in general management.

3. Delegation. The commissioner's delegation powers are as follows.

A. The commissioner may delegate powers and duties given under this Title to the associate commissioners, bureau directors and chief administrative officers of state institutions.

B. The commissioner may empower the associate commissioners, bureau directors and chief administrative officers of state institutions to further delegate powers and duties delegated to them by the commissioner.

4. Funding sources. The commissioner may apply for and accept from any other agency of government, person, group or corporation any funds which may be available in carrying out this Title.

5. Lease of unused buildings. The commissioner may, with the approval of the Director of Public Improvements, lease unused buildings at the state institutions for the purposes of providing services to departmental clients.

A. The leases shall be for a period not to exceed one year.

B. The commissioner shall submit a plan of the proposed leases and their impact on the institutions and departmental clients to the joint standing committee having jurisdiction over health and institutional services no later than January 31st of each year.

6. Nurse training. The commissioner may provide for the training of nurses.

§1205. Office of Advocacy

1. Establishment. The Office of Advocacy is

established within the department to investigate the claims and grievances of clients of the department and to advocate for compliance by any institution, other facility or agency administered by the department with all laws, administrative rules and institutional and other policies relating to the rights and dignity of clients.

2. Chief advocate. A chief advocate shall direct and coordinate the program of the office.

A. The chief advocate shall report only to the commissioner.

B. The chief advocate shall, with the approval of the commissioner, select other advocates needed to carry out the intent of this section, who shall report only to the chief advocate.

C. Both the chief advocate and all other advocates shall be classified state employees.

3. Duties. The Office of Advocacy, through the chief advocate and the other advocates, shall:

A. Receive or refer complaints made by clients of the department;

B. Intercede on behalf of these clients with officials of the institutions, facilities and agencies administered by the department or assist these clients in the initiation of grievance proceedings established by the commissioner under section 1203, subsection 4, except that the Office of Advocacy may refuse to take action on any complaint which it deems to be trivial or moot or for which there is clearly another remedy available;

C. As an information source regarding the rights of all clients, keep itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of the clients and about relevant legal decisions and other developments related to the field of mental health and mental retardation, both in this State and in other parts of the country; and

D. Make and publish reports necessary to the performance of the duties described in this section, except that only the chief advocate may report any findings of the office to groups outside the department, such as legislative bodies, advisory committees to the Governor, boards of visitors, law enforcement agencies and the press.

4. Access to files and records. The Office of Advocacy, through the chief advocate and the other advocates, has access, limited only by the law, to the files, records and personnel of any institution, facility or agency administered by the department.

5. Confidentiality. Requests for action shall be treated confidentially as follows.

A. Any client request for action by the office and all written records or accounts related to the request shall be confidential as to the identity of the client.

B. The records and accounts may be released only as provided by law.

§1206. Office of Children's Services

1. Establishment. There is established within the department the Office of Children's Services.

2. Duties. The duties of the Office of Children's Services are as follows.

A. The office shall assist in the planning, coordination and development of mental health services for children of the ages of 0 to 20 years.

B. The office shall work closely with the Bureau of Mental Health and the Bureau of Mental Retardation to help coordinate services to children who are mentally ill or mentally retarded.

3. Powers. The office may contract for services with attention paid to ensuring that services are provided in the least restrictive setting appropriate to the child's needs, with emphasis on maintaining each child in his natural home or in a substitute care placement within the community whenever possible.

§1207. Confidentiality of information

1. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person, except that:

A. A client, his legal guardian, if any, or, if he is a minor, his parent or legal guardian may give his informed written consent to the disclosure of information, if he has been given the opportunity to review the information sought to

be disclosed;

B. Information may be disclosed if necessary to carry out any of the statutory functions of the department, the hospitalization provisions of chapter 3, subchapter IV or the purposes of Title 22, section 3554, dealing with the investigatory function of the Protection and Advocacy Agency of the Developmentally Disabled in Maine;

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to his spouse or next of kin;

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; and

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed.

2. Statistical compilations and research. Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

(1) The access is approved by the chief administrative officer of the mental health facility or his designee;

(2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or his designee, where the person engaged in research or statistical compilation is to have access to communications and records; and

(3) The records are not removed from the mental health facility which prepared them, except that data which do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility.

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data which refer to the client by name, number or combination of characteristics which together could lead to his identification.

3. Use by the commissioner. Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. Any facility licensed by the department under section 3606 or a facility which receives funds from the department or has received or is receiving funds under the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, United States Code, Title 42, Section 6001, et seq., as amended, shall send information and records to the commissioner, if requested by the commissioner pursuant to his obligation to maintain the overall responsibility for the care and treatment of the mentally ill.

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law.

4. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person is guilty of unlawful disclosure of information if he disseminates, releases or discloses information in violation of this section.

B. Unlawful disclosure of information is a Class D crime.

§1208. Agreements with community agencies

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

A. "Agreement" means a legally binding document between 2 parties, including documents commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement, purchase of service or state aid.

B. "Community agency" means a person, a public or private nonprofit organization or a firm, partnership or business corporation operated for profit, which operates a human service program at the community level.

C. "Funds" means any and all general funds, dedicated funds, fees, special revenue funds, 3rd party reimbursements, vendor payments or other funds available for expenditure by the department in support of the provision of a human service.

D. "Human service" means any alcoholism, children's community action, corrections, criminal

justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, mental retardation, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure by the department.

E. "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood, community, region or the State.

F. "Public" means municipal, county and other governmental bodies which are political subdivisions within the State.

2. Commissioner's powers. The commissioner may disburse funds to a community agency for the purpose of financially supporting a human service, only if the disbursement is covered by a written agreement between the department and the agency, specifying at least the following:

A. The human service to be provided by the community agency;

B. The method of payment by the department to the community agency; and

C. The criteria for monitoring and evaluating the performance of the community agency in the provision of the human service.

3. Commissioner's duties. The commissioner's duties are as follows.

A. The commissioner shall promulgate rules consistent with and necessary for the effective administration of this section.

B. When making agreements with community agencies for the provision of a human service, the commissioner shall use agreement forms and shall develop uniform procedures.

C. When disbursing funds pursuant to an agreement, the commissioner shall require uniform ac-

counts payable forms or uniform supporting documentation and information.

D. When accounting for funds disbursed under an agreement, the commissioner shall use uniform accounting principles, policies and procedures.

§1209. Mental Health Advisory Council

1. Establishment. The Governor, with the advice of the commissioner, shall establish a Mental Health Advisory Council and appoint its membership.

2. Membership. Membership on the Mental Health Advisory Council is determined as follows.

A. The membership of the council shall consist of 30 persons, including:

(1) Representatives of consumers of mental health services, including clients and their families;

(2) Providers of mental health services;

(3) Persons who are concerned with the planning, operation or use of mental health services or facilities and who are representatives of nongovernmental organizations or groups; and

(4) Representatives of agencies of State Government.

B. A majority, but no more than 60%, of the members of the council shall be neither direct nor indirect providers of mental health services.

(1) Consumers who are identified as nonprovider members of community mental health center boards may be considered as nonproviders for the purpose of serving on the council.

(2) The nonprovider consumer class of membership shall include, where possible, but not be limited to, persons who have been beneficiaries of the services of a public mental hospital or community mental health center, representatives of patient organizations and representatives of patient advocacy groups.

C. No less than 40% of the members of the council shall be direct or indirect providers of

mental health services and the provider group shall include persons from both governmental and nongovernmental mental health service agencies.

D. Both provider and consumer members shall be representative of the social, economic, linguistic and racial groups residing in the State and of the geographic areas of the State.

3. Term. The Governor shall appoint members of the council for terms of 3 years, except that:

A. Of the members first appointed, 1/3 shall be appointed for terms of 3 years, 1/3 shall be appointed for terms of 2 years and 1/3 shall be appointed for terms of one year, as designated by the Governor at the time of appointment; and

B. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of the term.

4. Vacancy. Vacancies in the council are governed as follows.

A. A vacancy in the council shall be filled in the same manner by which the original appointment was made.

B. A vacancy in the council does not affect the council's powers.

5. Chairman. The membership of the council shall elect a chairman.

6. Meetings. The council shall meet at least quarterly.

7. Duties. The council shall act in an advisory capacity to the commissioner in the development of the state mental health plan and in the appointment of a Director of the Bureau of Mental Health.

§1210. Maine Committee on the Problems of the Mentally Retarded

There is established the Maine Committee on the Problems of the Mentally Retarded.

1. Composition. The committee shall consist of 11 members to be appointed as follows:

A. One member from the House of Representatives appointed by the Speaker of the House of Representatives;

B. One member from the Senate appointed by the President of the Senate; and

C. Nine representative citizens appointed by the Governor.

2. Chairman. The Governor shall designate the chairman of the committee.

3. Duration of appointments. The duration of appointments shall be as follows.

A. Gubernatorial appointments shall be for terms of 3 years, plus the time period until a successor is appointed.

B. Legislative appointments shall be for the legislative term of office of the person appointed.

4. Compensation. Members of the committee shall serve without pay, but shall be reimbursed for expenses on the same basis as state employees.

5. Duties. The committee shall act in an advisory capacity to the commissioner and to the Director of the Bureau of Mental Retardation in assessing present programs, planning future programs and developing means to meet the needs of the mentally retarded in Maine.

§1211. State Planning and Advisory Council on Developmental Disabilities

1. Establishment. The Governor shall establish a State Planning and Advisory Council on Developmental Disabilities.

2. Appointments. Appointments to the council are governed as follows.

A. The Governor shall appoint appropriate representatives to the council as are required as a condition of eligibility for benefits under the "Amendments to the Developmental Disabilities Services and Facilities Construction Act of 1978," Public Law 93-288, United States Code, Title 42, Section 6000 et seq.

B. The Governor shall ensure that there is at least one representative from each of the regions established by the department, except that regional representatives may not be in addition to those required by the United States Code, Public Law 93-288.

3. Duties. The council shall consult with and coordinate with the commissioner in carrying out the purposes of the program established under the federal act specified in subsection 2.

4. Departmental role. The department's role under this section is as follows.

A. Except where a single state agency is otherwise designated or established in accordance with any other state law, the department is designated to be the sole agency of the State:

(1) To develop jointly with the council the statewide plan required by the federal act specified in subsection 2; and

(2) To be the sole administering agency for that plan, which plan is now or may later be required as a condition to the eligibility for benefits under the federal act specified in subsection 2.

B. The department may receive, administer and expend any funds that may be available under the federal act specified in subsection 2 or from any other sources, public or private, for those purposes.

SUBCHAPTER III

INSTITUTIONS GENERALLY

ARTICLE I

ADMINISTRATIVE PROVISIONS

§1401. Chief administrative officers

1. Appointment. The commissioner may appoint chief administrative officers of state institutions as necessary for the proper performance of the functions of the department.

A. To be eligible for appointment as a chief administrative officer of a state institution, a person shall be experienced in the management of the particular type of institution to which he is to be assigned.

B. Chief administrative officers of state institutions shall report directly to the commissioner.

2. Acting chief administrative officer. Notwithstanding any other provision of law, the

commissioner may delegate any employee of the department to serve as the acting chief administrative officer of any state institution, if the office of the chief administrative officer of any state institution is vacant.

A. The acting chief administrative officer shall serve for a period not to exceed 180 days.

B. Service as the acting chief administrative officer of a state institution is considered a temporary additional duty for the person so delegated.

§1402. Bureaus for community service

1. Commissioner's duty. In every state institution to which a mentally ill or mentally retarded person may be committed, the commissioner shall organize and administer under his direction a bureau for community service in the district served by the institution.

2. Bureau's duties. Each bureau for community service shall:

A. Supervise clients who have left the institution with a view to their safe care at home, suitable employment and self-support under good working and living conditions, and with a view to prevention of their relapse and return to public dependency;

B. Provide for informing and advising any indigent person, his relatives or friends and the representatives of any charitable agency as to:

(1) The mental condition of the indigent person;

(2) The prevention and treatment of the condition;

(3) The available institutions or other means of caring for the afflicted person; and

(4) Any other matter relative to the welfare of the person; and

C. Acquire and disseminate knowledge of mental disease, mental retardation and allied conditions with a view to promoting a better understanding and the most enlightened public sentiment and policy in these matters, and in this work the bureau may cooperate with local authorities,

schools and social agencies.

§1403. Boards of visitors

1. Appointment. The Governor shall appoint a board of 5 visitors for each state institution under the department.

A. The term of the visitors is for one year.

B. Members of boards of visitors are eligible for reappointment at the expiration of their terms.

C. No member of the Legislature may serve on any board of visitors.

D. Members of boards of visitors are not entitled to compensation.

2. Powers. Each board of visitors may inspect the institution to which it is assigned and may make recommendations on the management of the institution to the commissioner.

3. Duties. Boards of visitors have the following duties.

A. Boards of visitors shall send copies of all recommendations to the members of the joint standing committee of the Legislature having jurisdiction over health and institutional services.

B. Each board of visitors shall appear before the joint standing committee of the Legislature having jurisdiction over health and institutional services upon request.

§1404. Legal actions

1. Contract actions. Actions founded on any contract made with the State Purchasing Agent, or with any official of the department under the authority granted by the State Purchasing Agent, on behalf of any of the state institutions, may be brought by the official making the contract or his successor in office.

2. Actions for injuries to property. Actions for injuries to the real or personal property of the State, used by any state institution and under the management of the chief administrative officer of the institution, may be prosecuted in the name of the officer or his successor in office.

§1405. Emergencies

When emergency situations are certified by the chief administrative officer of a state institution to exist at the institution, the commissioner may, with the approval of the Governor, assign departmental personnel as may be necessary to assist in controlling the emergency situation.

1. Temporary assignment. The assignment of personnel shall be only for the period during which the emergency exists.

2. Compensation. Any personnel transferred are entitled to receive compensation as required by the Personnel Law, rules and contract terms.

§1406. Improper conduct of institutional officers

The commissioner may inquire into any improper conduct imputed to state institutional officers in relation to the concerns of their institutions, and for that purpose may:

1. Subpoenas. Issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal;

2. Examination of witnesses. Examine witnesses under oath; and

3. Adjudication. Adjudicate cases of alleged improper conduct in a manner similar to and with similar effect as cases of arbitration.

§1407. Appointment of physician

In every state institution to which a mentally ill or mentally retarded person may be committed, the commissioner shall appoint a physician experienced in the care and treatment of such persons and the necessary assistants to the physician.

§1408. Cooperation with state departments

Whenever it is deemed advisable, the chief administrative officer of any institution for the mentally ill or mentally retarded may cooperate with state departments to examine upon request and recommend suitable treatment and supervision for:

1. Mental illness or mental retardation. Persons thought to be mentally ill or mentally retarded; and

2. Juvenile Court. Children brought before any Juvenile Court.

§1409. Payment for care and treatment of residents

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

A. "Care and treatment" includes all goods and services provided, or caused to be provided, to a resident by the State.

B. "Liable person" means a person liable for the care and treatment of a resident under subsection 3.

2. Charges. Charges under this section are governed as follows.

A. The commissioner shall establish charges for the care and treatment of residents at any state institution.

B. Charges made under this section are a debt of the resident, or any person legally liable for the resident's care and treatment under this section, and are recoverable in any court of competent jurisdiction in a civil action brought in the name of the State.

3. Liable persons. Each resident, his spouse, his adult child and his parent are jointly and severally liable for the care and treatment of the resident, whether the resident was committed or otherwise legally admitted, from the date of the resident's admission to a state institution, except that:

A. A parent is not liable for a child resident's care and treatment, unless the child resident was wholly or partially dependent for support upon the parent at the time of admission;

B. A child is not liable for a parent resident's care and treatment, if:

(1) The parent resident willfully failed to support the child prior to the child's 18th birthday; and

(2) The child provides the department with clear and convincing evidence substantiating such a claim; and

C. The department may not charge any parent for the care and treatment of a child resident beyond

the child's 18th birthday, or beyond 6 months from the date of the child's admission, whichever occurs later.

4. Financial statement forms. Financial statement forms are governed as follows.

A. The commissioner shall prescribe financial statement forms which shall be completed by:

(1) The resident;

(2) Any person liable for the resident's care and treatment under this section; or

(3) Any fiduciary acting on behalf of the resident or person liable for the resident.

B. The form in each case shall be witnessed.

5. Determination of ability to pay. After a resident is admitted into any state institution, the department shall:

A. Investigate to determine what property, real and personal, the resident has, and, in determining ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents; and

B. Investigate to determine whether there exist any persons liable under subsection 3 for the payment of charges for the resident's care and treatment.

(1) The department shall ascertain the financial condition of the persons, if any, and shall determine whether each person is financially able to pay the charges.

(2) In determining the person's ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents.

6. Obtaining information. The obtaining of information under this section is governed as follows.

A. Every agency and department of the State shall render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of this section.

B. To carry out the purposes of this section,

the commissioner may administer oaths, take testimony, subpoena and compel the attendance of witnesses, and subpoena and compel the production of books, papers, records and documents deemed material or pertinent in connection with the commissioner's duty of securing payments for care and treatment as provided in this section.

(1) Any person failing to obey a subpoena may, upon petition of the commissioner to any Justice of the Superior Court, be ordered by the justice to appear and show cause for his disobedience of the subpoena.

(2) The justice, after hearing, may order that the subpoena be obeyed or, if it is made to appear to the justice that the subpoena was for any reason inappropriately issued, may dismiss the petition.

C. Upon request of the commissioner, banking organizations, insurance companies, brokers or fiduciaries shall furnish to the commissioner full information concerning the earnings of, income of, funds deposited to the credit of or funds owing to any resident, or any person liable under subsection 3 for the resident.

(1) The information shall be provided in writing and shall be duly certified.

(2) The certified statement is admissible in evidence in any action or proceeding to compel payment for the care and treatment of the resident.

(3) The certified statement is prima facie evidence of the facts stated in the statement.

7. Inability to pay. When it is determined that any resident or liable person is unable to pay all or part of the charges for care and treatment, the commissioner may cancel, suspend or reduce charges in accordance with the resident's or liable person's ability to pay.

8. Postponement of billing. The commissioner may enter into an agreement with any resident or liable person to postpone billing for care and treatment for any period of time.

9. Benefit payments. The chief administrative officer of any state institution may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like bene-

fits paid on behalf of any resident.

A. The chief administrative officer shall apply the benefits toward the care and treatment of the resident in accordance with charges made by the department.

B. Any surplus from the payments shall be held in a personal account at the hospital in the name of the resident and shall be available for the resident's personal needs.

10. Claims against estates. The State has a claim against the estate of any resident, and the estate of any liable person, for any amount due to the State at the date of death of the resident or the liable person, including any claim arising under an agreement entered into under this section, enforceable in the Probate Court.

A. The state's claim has priority over all unsecured claims against the estate, except:

(1) Administrative expenses, including probate fees and taxes;

(2) Expenses of the last sickness; and

(3) Funeral expenses, not exceeding \$400, exclusive of the honorarium of the clergy and cemetery expenses.

B. The Attorney General shall collect any claim which the State may have against the estate.

C. The State may not enforce a claim against any real estate while it is occupied as a home by the surviving spouse of the resident or liable person and while the surviving spouse remains unmarried.

11. Reimbursement of providers. Notwithstanding any other law, if part of the care and treatment of a resident under this section is provided by a party other than the State, the commissioner shall pay to the other party, from the fee collected by the department for the care and treatment of the resident, the portion of those costs borne by the other party in the same ratio as the fee collected to the total charge made, except that:

A. This subsection may not be construed as a limitation on compensation for providers of resident care and treatment; and

B. This subsection may not be construed as a limitation on contractual arrangements between

the providers and the State.

12. Prohibited acts. A person is guilty of contempt if he fails to obey a subpoena when ordered to do so by a Justice of the Superior Court under subsection 6, upon application by the commissioner to the Superior Court for an order of contempt.

§1410. Posting of political material

The chief administrative officer of each state institution shall provide in at least one accessible area in each institution an appropriate space for the posting of written political material sent for that purpose to the chief administrative officer by candidates for state office or federal office in this State.

1. One item limit. Not more than one item of written political material may be posted in one place on behalf of any one candidate.

2. Removal. Written political material shall be removed after the elections for which it is intended for use.

3. Voting place. If there is a voting place within the institution, the posting place may not be located within 250 feet of the entrance to the voting place.

4. Violation. The posting of written political material under this section is not a violation of Title 21, section 1575-A or section 1579, subsection 7.

§1411. Public ways and parking areas

1. Rules. The chief administrative officers of state institutions may promulgate and enforce rules, subject to the approval of the commissioner, governing the use of public ways and parking areas maintained by the State at the state institutions.

A. The rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

B. The Secretary of State shall forward a copy of the rules, attested under the Great Seal of the State, to the District Court in the area of jurisdiction.

2. Special police officers. The chief administrative officers of state institutions may appoint and employ, subject to the Personnel Law, special

police officers for the purpose of enforcing rules promulgated under subsection 1.

A. The special police officers shall:

(1) Patrol all the public ways and parking areas subject to this section;

(2) Enforce rules promulgated under this section; and

(3) Arrest and prosecute violators of the rules.

B. The State Police, sheriffs, deputy sheriffs, police officers and constables who have jurisdiction over the areas in which the institutions are located shall, insofar as possible, cooperate with the special police officers in the enforcement of the rules promulgated under subsection 1.

3. Court procedure. The District Court in the areas in which the institutions are located has jurisdiction in all proceedings brought under this section.

A. The District Court shall take judicial notice of all rules promulgated under subsection 1.

B. In any prosecution for a violation of the rules, the complaint may allege the offense as in prosecutions under a general statute and need not recite the rule.

4. Prohibited acts; fines. Prohibited acts and fines under this section are governed as follows.

A. A person is guilty of a public way or parking violation if he violates any rule promulgated pursuant to this section.

B. Upon conviction of a public way or parking violation, a person shall pay a fine as follows:

(1) For the first offense in any calendar year, a fine of \$1;

(2) For the 2nd offense in any calendar year, a fine of \$2; and

(3) For each offense in excess of 2 in any calendar year, a fine of \$5.

C. Notwithstanding any other law, the fines and costs of court paid under this section shall inure to the municipality in which the proceed-

ings take place.

D. Offenses not covered by the rules promulgated under subsection 1 shall be dealt with as otherwise provided by law.

§1412. Military and Naval Children's Home

1. Departmental control. The department shall have charge of the operations of the Military and Naval Children's Home.

2. Chief administrative officer. The chief administrative officer of the Military and Naval Children's Home is called the superintendent.

3. Purpose. The purpose of the Military and Naval Children's Home is the shelter and care of children of this State who are in need of shelter and care for one or more of the following reasons:

A. Lack of appropriate alternative shelter and care;

B. Potential or actual abuse and neglect; or

C. Family crisis and upheaval.

4. Veterans' preference. Preference in admission to the Military and Naval Children's Home shall be given to the children of veterans of Maine who have served in the various wars in which the United States has been engaged.

5. Educational or vocational training programs. Any child in residence at the Military and Naval Children's Home, who at the expiration of his minority is a participant in an educational or vocational training program, the interruption or cessation of which will be caused by discharge from the home, may, with the approval of the superintendent, voluntarily elect to remain in residence at the home until completion of all or part of the educational or vocational training program.

6. Board of visitors. There is established a Board of Visitors for the Military and Naval Children's Home which shall provide advice and direction to the commissioner concerning the changes necessary to ensure maximum utilization of the facility.

A. The board shall consist of 9 members and shall include:

(1) The Associate Commissioner of Programs of the department;

(2) A representative from the Bath community;

(3) The Bath Elementary School principal or a similar school official;

(4) A representative from an alcohol treatment center;

(5) A social worker assigned to the home;

(6) A designee of a veterans' organization;

(7) Two citizens from outside the Bath area; and

(8) One member appointed from the Department of Human Services, Division of Child and Family Services.

B. The commissioner, with the advice and consent of the joint standing committee of the Legislature having jurisdiction over audit and program review, shall appoint the members of the board, except that the Commissioner of Human Services shall appoint the member from the Division of Child and Family Services.

C. Members shall be appointed for terms not to exceed 3 years.

D. Members' terms shall be staggered so that no more than 3 expire in any one year.

E. The board shall be responsible for:

(1) Assisting in the development of policy and program changes regarding the use of the home;

(2) Monitoring the progress made toward the objectives outlined and presented during the home's current transition; and

(3) Providing continuing oversight of the home, its programs and its policies.

F. By the first day of each January and July in the years 1984 and 1985, the department shall report to the joint standing committee of the Legislature having jurisdiction over audit and program review on its efforts to improve the operation of the home, and the committee shall work with the department and board in ensuring that efficient use is made of the home.

ARTICLE II

CLIENTS GENERALLY

§1430. Rights

Any resident of a state institution has a right to nutritious food in adequate quantities, adequate professional medical care, an acceptable level of sanitation, ventilation and light, a reasonable amount of space per person in any sleeping area, a reasonable opportunity for physical exercise and recreational activities, protection against any physical or psychological abuse and a reasonably secure area for the maintenance of permitted personal effects.

§1431. Indefinite convalescent status

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

A. "Living conditions" includes, but is not limited to, the physical conditions of a residential facility, the individual treatment plan provided for each outpatient client and the programs for treatment available to and appropriate for each outpatient client.

B. "Residential facility" means a boarding home, nursing home, foster home, group home or halfway house licensed by the Department of Human Services or used by the Department of Mental Health and Mental Retardation.

2. Requirements. The chief administrative officer of any state institution, or a person designated by him, may place any person who has been hospitalized as mentally ill or mentally retarded, except residents described in chapter 3, subchapter IV, Article II, on indefinite convalescence status, if the officer or his designee determines that the residential facility in which the person will be residing is at least equivalent in the quality of living conditions to the state institution in which the person is hospitalized.

3. Standards. The commissioner shall establish standards for assessing whether or not living conditions in residential facilities are equivalent to the existing living conditions in state institutions.

§1432. Administration of medication

The administration of medication in state insti-

tutions shall be in accordance with rules established by the State Board of Nursing.

1. Maine Administrative Procedure Act. The State Board of Nursing shall establish rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Considerations. In establishing rules for each type of state institution, the State Board of Nursing shall consider, among other factors:

A. The general health of the persons likely to receive medication;

B. The number of persons served by the institution; and

C. The number of persons employed at the institution.

§1433. Aliens

1. Notification of immigration officer. When a person is admitted or committed to a state, county, city or private institution which is supported wholly or in part by public funds, the chief administrative officer of the institution shall inquire at once into the nationality of the person and, if it appears that the person is an alien, the chief administrative officer shall notify immediately the United States immigration officer in charge of the district in which the institution is located, of:

A. The date of and the reason for the alien's admission or commitment;

B. The length of time for which the alien is admitted or committed;

C. The country of which the alien is a citizen; and

D. The date on which and the port at which the alien last entered the United States.

2. Copy of record to immigration officer. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien to a state, county, city or private institution which is supported wholly or in part by public funds, the clerk of the court shall furnish without charge a certified copy of any record pertaining to the alien's case.

§1434. Resident's abandoned property

Any property abandoned or unclaimed by a resident of a state institution shall be disposed of according to Title 33, chapter 27.

§1435. Unnatural death of resident

When the death of any resident in a state institution is not clearly the result of natural causes, an examination and inquest shall be held as in other cases, and the commissioner or the chief administrative officer of the institution shall cause a medical examiner to be immediately notified for that purpose.

CHAPTER 3

MENTAL HEALTH

SUBCHAPTER I

BUREAU OF MENTAL HEALTH

§3001. Establishment

There is established, within the Department of Mental Health and Mental Retardation, the Bureau of Mental Health, which is responsible for the direction of the mental health programs in the state institutions and for the promotion and guidance of mental health programs within the several communities of the State.

§3002. Director

1. Appointment. The commissioner shall, with the advice of the Mental Health Advisory Council, appoint and set the salary for the Director of the Bureau of Mental Health.

A. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve, for a period not to exceed 180 days, as the acting director, if the office of the director is vacant.

B. Service as the acting director is considered a temporary additional duty for the person so delegated.

2. Qualifications. To be eligible for appointment as director, a person shall have training and experience in mental health program administration or satisfactory experience in the direction of work of a comparable nature.

3. Term. The appointment of the director shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

4. Duties. In addition to other duties set out in this Title, the director shall:

A. Report directly to the commissioner; and

B. Carry out the purpose of the bureau.

§3003. Rules

1. Promulgation. The director shall promulgate rules, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, for the enhancement and protection of the rights of clients receiving services from the department, from any hospital pursuant to subchapter IV or from any program or facility administered or licensed by the department under section 3606.

2. Requirements. The rules shall include, but are not limited to:

A. Establishment of the right to provision of treatment and related services in the least restrictive appropriate setting;

B. Establishment of the right to an individualized treatment or service plan, to be developed with the participation of the client;

C. Standards for informed consent to treatment and guidelines for exceptions to informed consent as permitted under applicable law or in emergency situations;

D. Standards for participation in experimentation and research;

E. Standards pertaining to the use of seclusion and restraint;

F. Establishment of the right to appropriate privacy and to a humane treatment environment;

G. Establishment of the right to confidentiality of records and procedures pertaining to a person's right to access to his mental health care records;

H. Establishment of the right to receive visitors and to communicate by telephone and mail;

I. Procedures to ensure that clients are notified of their rights;

J. The right to assistance in protecting a right or advocacy service in the exercise or protection of a right; and

K. Provisions for a fair, timely and impartial grievance procedure for the purpose of ensuring appropriate administrative resolution of grievances with respect to infringement of rights.

3. Public hearing. The director shall hold a public hearing before adopting these rules and shall give notice of the public hearing pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

4. Legislative review. When a rule is proposed or adopted under this section, a copy of the proposed or adopted rule shall be sent to the legislative committee having jurisdiction over health and institutional services.

A. The committee may review the rule and, if it determines that an adopted rule should be stricken or amended, the committee may prepare legislation to accomplish that purpose and submit the legislation to the full Legislature in accordance with legislative rules.

B. The adopted rule shall remain in effect unless the full Legislature acts to strike or amend it, or it is repealed or amended by the director in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER II

STATE MENTAL HEALTH INSTITUTES

§3201. Maintenance

The commissioner shall maintain 2 state mental health institutes for the mentally ill, one at Bangor called the Bangor Mental Health Institute and the other at Augusta called the Augusta Mental Health Institute.

§3202. Superintendent

1. Chief administrative officer. The chief administrative officer of each state mental health institute is called the superintendent.

2. Qualifications. To be eligible to be

appointed superintendent, a person shall be a qualified psychiatrist, qualified hospital administrator, qualified psychologist or a person with a master's degree in social work, public administration or public health.

3. Appointment. The commissioner shall, with the advice of the Advisory Committee on Mental Health, appoint and set the salaries for the superintendent of each state mental health institute.

A. The commissioner and the advisory committee shall give due consideration to the appointee's qualifications and experience in administration and to his qualifications and experience in health matters.

B. The appointments are at the pleasure of the commissioner.

4. Duties. The superintendent shall:

A. Have general superintendence of the state mental health institute and grounds under the direction of the commissioner; and

B. Receive all persons legally sent to the state mental health institute who are in need of special care and treatment, if accommodations permit, subject to the rules of the department.

SUBCHAPTER III

COMMUNITY MENTAL HEALTH SERVICES

§3601. Definition

As used in the subchapter, unless the context otherwise indicates, "mental health services" means out-patient counselling, other psychological, psychiatric, diagnostic or therapeutic services and other allied services.

§3602. Purpose

The purpose of this subchapter is to expand community mental health services, encourage participation in a program of community mental health services by persons in local communities, obtain better understanding of the need for those services and secure aid for programs of community mental health services by state aid and local financial support.

§3603. Commissioner's duties

The commissioner shall promulgate rules, accord-

ing to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this subchapter and to licensing under this subchapter.

§3604. Commissioner's powers

1. Provision of services. The commissioner may provide mental health services throughout the State and for that purpose may cooperate with other state agencies, municipalities, persons, unincorporated associations and nonstock corporations.

2. Funding sources. The commissioner may receive and use for the purpose of this subchapter money appropriated by the State, grants by the Federal Government, gifts from individuals and gifts from any other sources.

3. Grants. The commissioner may make grants of funds to any state or local governmental unit, or branch of a governmental unit, or to a person, unincorporated association or nonstock corporation to be used in the conduct of its mental health services if:

A. The entity or person applies for the funds; and

B. The programs administered by the entity or person provide for adequate standards of professional services.

§3605. Governmental agencies

Any state department, municipality or other governmental unit, or any branch or composite of a state department, municipality or other governmental unit may, through its authorized representative or governing body approved by the commissioner, adopt and conduct a program of mental health services established or approved by the commissioner.

§3606. Licenses

The commissioner may, in accordance with the rules of the department, issue a license to any person, firm, association or corporation to operate, conduct or maintain a facility for the provision of mental health services.

1. Term. The term of the license is for one year.

2. Fee. The annual fee for the license is \$25.

3. Temporary and conditional licenses. If a

licensee, upon inspection by the department, fails to meet any requirement imposed by this section or by rules promulgated under this section, the commissioner may:

A. Upon payment of a fee of \$10, issue a temporary license for a specified period, not to exceed 90 days, during which time the licensee shall make corrections specified by the department to bring the licensee into compliance with this section and rules promulgated under this section;

B. Upon payment of a fee of \$10, issue a conditional license setting forth conditions and, if the conditions are not met by the licensee to the satisfaction of the department, the commissioner shall immediately void the conditional license by:

(1) Personally serving written notice on the conditional licensee; or

(2) If the licensee cannot be reached for personal service, leaving notice at the licensed premises; or

C. Refuse to issue any temporary or conditional license.

4. New application for regular license. The commissioner may consider a new application for a regular license if:

A. The conditions imposed by the commissioner at the time of issuance of the temporary or conditional license have been met; and

B. Satisfactory evidence of this fact has been given to the department.

5. Suspension or revocation. Suspension or revocation of licenses under this section is governed as follows.

A. A license issued under this section may be suspended or revoked for just cause.

B. When the commissioner believes a license should be suspended or revoked, he shall file a complaint with the Administrative Court under the Maine Administrative Procedure Act, Title 5, chapter 375.

6. Refusal to issue license. A person aggrieved by the refusal of the commissioner to issue a license

may file a complaint with the Administrative Court, under the Maine Administrative Procedure Act, Title 5, chapter 375.

7. Prohibited acts; penalties. Prohibited acts and penalties under this section are governed as follows.

A. Any person, firm, association or corporation, except an individual or corporate professional practice of one or more psychologists or psychiatrists, is guilty of unlicensed operation of a mental health service facility, if he or it operates, conducts or maintains such a facility without a license from the commissioner.

B. Notwithstanding Title 17-A, section 4-A, unlicensed operation of a mental health service facility is punishable by a fine of not more than \$500 or by imprisonment for not more than 60 days.

SUBCHAPTER IV

HOSPITALIZATION

ARTICLE I

GENERAL PROVISIONS

§3801. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Hospital. "Hospital" means:

A. A state mental health institute; or

B. A nonstate mental health institution.

2. Licensed physician. "Licensed physician" means a person licensed under the laws of the State to practice medicine or osteopathy or a medical officer of the Federal Government while in this State in the performance of his official duties.

3. Licensed clinical psychologist. "Licensed clinical psychologist" means a person licensed under the laws of the State as a psychologist and who practices clinical psychology.

4. Likelihood of serious harm. "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person himself as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm to himself and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable;

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable.

5. Mentally ill person. "Mentally ill person" means a person having a psychiatric or other disease which substantially impairs his mental health, including persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol, but not including mentally retarded or sociopathic persons.

6. Nonstate mental health institution. "Nonstate mental health institution" means a public institution, a private institution or a mental health center, which is administered by an entity other than the State and which is equipped to provide inpatient care and treatment for the mentally ill.

7. Patient. "Patient" means a person under observation, care or treatment in a hospital or residential care facility pursuant to this subchapter.

8. Residential care facility. "Residential care facility" means a licensed or approved boarding care, nursing care or foster care facility which supplies supportive residential care to individuals due to their mental illness.

9. State mental health institute. "State mental

health institute" means the Augusta Mental Health Institute or the Bangor Mental Health Institute.

§3802. Commissioner's powers

The commissioner may:

1. Rules. Promulgate such rules, not inconsistent with this subchapter, as he may find to be reasonably necessary for proper and efficient hospitalization of the mentally ill;

2. Investigation. Investigate, by personal visit, complaints made by any patient or by any person on behalf of a patient;

3. Visitation. Visit each hospital or residential care facility regularly to review the commitment procedures of all new patients admitted between visits;

4. Reports. Require reports from the chief administrative officer of any hospital or residential care facility relating to the admission, examination, diagnosis, release or discharge of any patient; and

5. Forms. Prescribe the form of applications, records, reports and medical certificates provided for under this subchapter and prescribe the information required to be contained in them.

§3803. Patient's rights

A patient in a hospital or residential care facility under this subchapter has the following rights.

1. Civil rights. Every patient is entitled to exercise all civil rights, including, but not limited to, the right to civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, the right to enter into contractual relationships and the right to manage his property, unless:

A. The chief administrative officer of the hospital or residential care facility determines that it is necessary for the medical welfare of the patient to impose restrictions on the exercise of these rights and, if restrictions are imposed, the restrictions and the reasons for them shall be made a part of the clinical record of the patient;

B. A patient has been adjudicated incompetent

and has not been restored to legal capacity; or

C. The exercise of these rights is specifically restricted by other statute or rule, but not solely because of the fact of admission to a hospital or residential care facility.

2. Humane care and treatment. Every patient is entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

3. Restraints and seclusion. Restraint, including any mechanical means of restricting movement, and seclusion, including isolation by means of doors which cannot be opened by the patient, may not be used on a patient, unless the chief administrative officer of the hospital or residential care facility or his designee determines that either is required by the medical needs of the patient.

A. The chief administrative officer of the hospital or facility shall record and make available for inspection every use of mechanical restraint or seclusion and the reasons for its use.

B. The limitation of the use of seclusion in this section does not apply to maximum security installations.

4. Communication. Patient communication rights are as follows.

A. Every patient is entitled to communicate by sealed envelopes with the department, a member of the clergy of his choice, his attorney and the court which ordered his hospitalization, if any.

B. Every patient is entitled to communicate by mail in accordance with the rules of the hospital.

5. Visitors. Every patient is entitled to receive visitors unless definitely contraindicated by his medical condition, except that he may be visited by a member of the clergy of his choice or his attorney at any reasonable time.

6. Sterilization. A patient may not be sterilized except in accordance with chapter 7.

§3804. Habeas corpus

Any person detained pursuant to this subchapter

is entitled to the writ of habeas corpus, upon proper petition by himself or by a friend to any justice generally empowered to issue the writ of habeas corpus in the county in which the person is detained.

§3805. Prohibited acts; penalty

1. Unwarranted hospitalization. A person is guilty of causing unwarranted hospitalization, if he willfully causes the unwarranted hospitalization of any person under this subchapter.

2. Denial of rights. A person is guilty of causing a denial of rights if he willfully causes the denial to any person of any of the rights accorded to him by this subchapter.

3. Penalty. Causing unwarranted hospitalization or causing a denial of rights is a Class C crime.

ARTICLE II

VOLUNTARY HOSPITALIZATION

§3831. Admission

Any person desiring admission to a hospital for the mentally ill for care and treatment of a mental illness may be admitted without making a formal application under the following conditions.

1. Availability of accommodations. Except in cases of medical emergency, voluntary admission is subject to the availability of suitable accommodations.

2. Standard hospital information. Standard hospital information may be elicited from the person if, after examination, the chief administrative officer of the hospital deems the person suitable for admission, care and treatment.

3. Persons under 18 years of age. Any person under 18 years of age must have the consent of his parent or guardian.

4. State mental health institute. Any person under 18 years of age must have the consent of the commissioner for admission to a state mental health institute.

§3832. Freedom to leave

1. Patient's right. A patient admitted under section 3831 is free to leave the hospital at any time after admission, except that admission of the

person under section 3863 is not precluded, if at any time such an admission is considered necessary in the interest of the person and of the community.

2. Notice. The chief administrative officer of the hospital shall cause every patient admitted under section 3831 to be informed, at the time of admission, of:

A. His status as an informally admitted patient; and

B. His freedom to leave the hospital at any time under this section.

ARTICLE III

INVOLUNTARY HOSPITALIZATION

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter.

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3831 or 3863; and

B. Shall receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3864 or is ordered by a court.

§3862. Protective custody

1. Law enforcement officer's power. If a law enforcement officer has reasonable grounds to believe, based upon his personal observation, that a person may be mentally ill and that due to his condition he presents a threat of imminent and substantial physical harm to himself or to other persons, he:

A. May take the person into protective custody; and

B. If the officer does take the person into protective custody, shall deliver the person forth-

with for examination by an available licensed physician or licensed clinical psychologist, as provided in section 3863.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, the officer shall:

A. Release the person from protective custody and, with his permission, return him forthwith to his place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with his permission, return him forthwith to the place where he was taken into protective custody; or

C. If the person is also under arrest for a violation of law, retain him in custody until he is released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a reasonable period of time, not to exceed 18 hours, pending that endorsement.

4. Transportation costs. The costs of transportation under this section shall be paid in the manner provided under section 3863.

§3863. Emergency procedure

A person may be admitted to a mental hospital on an emergency basis according to the following procedures.

1. Application. Any health officer, law enforcement officer or other person may make a written application to admit a person to a mental hospital, subject to the prohibitions and penalties of section 3805, stating:

A. His belief that the person is mentally ill and, because of his illness, poses a likelihood of serious harm; and

B. The grounds for this belief.

2. Certifying examination. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical

psychologist, stating:

A. He has examined the person on the date of the certificate, which date may not be more than 3 days before the date of admission to the hospital; and

B. He is of the opinion that the person is mentally ill and, because of his illness, poses a likelihood of serious harm.

3. Judicial review. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a complaint justice.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

B. No person may be held against his will in the hospital under this section, whether informally admitted under section 3831 or sought to be involuntarily admitted under this section, unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 18 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the hospital undertakes to secure the endorsement forthwith upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons transporting him to the hospital undertake to secure the endorsement forthwith upon execution of the certificate by the examiner.

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, any health officer, law enforcement officer or other person designated by the judge or justice may take the person into custody and transport him to the hospital designated in the application.

B. The county in which the person is found is responsible for any expenses of transportation under this section, including return from the hospital if admission is declined.

5. Continuation of hospitalization. If the chief administrative officer of the hospital recommends further hospitalization of the person, he shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient, as described in section 3831.

A. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is suitable, he shall admit the person on this basis, if the person so desires.

B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may file an application for the issuance of an order for hospitalization under section 3864.

(1) The application shall be made to the District Court having territorial jurisdiction over the hospital.

(2) The application shall be filed within 5 days from the admission of the patient under this section, excluding the day of admission and any Saturday, Sunday or legal holiday.

C. If neither readmission nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital shall discharge the person forthwith.

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the hospital shall mail notice of the fact of admission to:

A. His guardian, if known;

B. His spouse;

C. His parent;

D. His adult child; or

E. One of next of kin or a friend, if none of the listed persons exists.

7. Post-admission examination. Every patient admitted to a hospital shall be examined as soon as practicable after his admission.

A. The chief administrative officer of the hospital shall arrange for examination by a staff physician or licensed clinical psychologist of every patient hospitalized under this section.

B. The examiner may not be the certifying examiner under this section or under section 3864.

C. If the post-admission examination is not held within 24 hours after the time of admission, or if a staff physician or licensed clinical psychologist fails or refuses after the examination to certify that, in his opinion, the person is mentally ill and due to his mental illness poses a likelihood of serious harm, the person shall be immediately discharged.

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a mental hospital, filed under section 3863, subsection 5, paragraph B, shall be accompanied by:

A. The emergency application under section 3863, subsection 1;

B. The accompanying certificate of the physician or psychologist under section 3863, subsection 2; and

C. The certificate of the physician or psychologist under section 3863, subsection 7, that:

(1) He has examined the patient; and

(2) It is his opinion that the patient is a mentally ill person and, because of his illness, poses a likelihood of serious harm.

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, no person, with respect to whom proceedings for judicial hospitalization have been commenced, may be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the application of the patient, his guardian, parent, spouse or next of kin;

B. The District Court orders release or dis-

charge upon the report of the chief administrative officer of the hospital that the person may be discharged with safety; or

C. A court orders release or discharge upon a writ of habeas corpus under section 3804.

3. Notice of receipt of application. The giving of notice of receipt of application under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application:

(1) To be given personally or by mail to the person within a reasonable time before the hearing, but not less than 3 days before the hearing; and

(2) To be mailed to the person's guardian, if known, and to his spouse, his parent or one of his adult children or, if none of these persons exist or if none of them can be located, to one of his next of kin or a friend.

B. A docket entry is sufficient evidence that notice under this subsection has been given.

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1, the court shall forthwith cause the person to be examined by 2 examiners.

(1) Each examiner must be either a licensed physician or a licensed clinical psychologist.

(2) One of the examiners shall be a physician or psychologist chosen by the person or by his counsel, if the chosen physician or psychologist is reasonably available.

(3) Neither examiner appointed by the court may be the certifying examiner under section 3863, subsection 2 or 7.

B. The examination shall be held at the hospital or at any other suitable place not likely to have

a harmful effect on the mental health of the person.

C. If the report of the examiners is to the effect that the person is not mentally ill or does not pose a likelihood of serious harm, the application shall be ordered discharged forthwith.

D. If the report of the examiners is to the effect that the person is mentally ill or poses a likelihood of serious harm, the hearing shall be held on the date, or on the continued date, which the court has set for the hearing.

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 15 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the District Court Civil Rules shall apply.

B. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person.

C. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

D. The person shall be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person.

E. In addition to proving that the patient is a mentally ill individual, the applicant shall show:

(1) By evidence of the patient's actions and behavior, that the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person.

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony indicating the individual treatment plan to be followed by the hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose.

G. A stenographic or electronic record shall be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence shall be confidential.

(2) The record and all notes, exhibits and other evidence shall be retained as part of the District Court records for a period of 2 years from the date of the hearing.

H. The hearing shall be confidential and no report of the proceedings may be released to the public or press, except by permission of the person or his counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or his counsel.

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that his recent

actions and behavior demonstrate that his illness poses a likelihood of serious harm;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the hospital.

B. If the District Court makes the findings described in paragraph A, subparagraphs 1 and 2, but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the hospital.

7. Commitment. Upon making the findings described in subsection 6, the court may order commitment to a mental hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing.

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged forthwith.

8. Continued involuntary hospitalization. If the chief administrative officer of the hospital determines that continued involuntary hospitalization is necessary for a person who has been ordered by the District Court to be committed, he shall, not later than 30 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court which has territorial jurisdiction over the hospital for a hearing to be held under this section.

9. Transportation. Unless otherwise directed by the court, the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place shall provide transportation to any hospital to which the court has committed the person.

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court shall be responsible

for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

11. Appeals. A person ordered by the District Court to be committed to a hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only.

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

C. The order of the District Court shall remain in effect pending the appeal.

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

§3865. Hospitalization by federal agency

If a person ordered to be hospitalized under section 3864 is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of a certificate from the agency showing that facilities are available and that the person is eligible for care or treatment in the facilities, may order him to be placed in the custody of the agency for hospitalization.

1. Rules and rights. A person admitted under this section to any hospital or institution operated by any agency of the United States, inside or outside the State, is subject to the rules of the agency, but retains all rights to release and periodic court review granted by this subchapter.

2. Powers of chief administrative officer. The chief administrative officer of any hospital or institution operated by a federal agency in which the person is hospitalized has, with respect to the person, the same powers as the chief administrative officer of hospitals or the commissioner within this State with respect to detention, custody, transfer, conditional release or discharge of patients.

3. Court jurisdiction. Every order of hospitalization issued under this section is conditioned on the retention of jurisdiction in the courts of this State to, at any time:

A. Inquire into the mental condition of a person hospitalized; and

B. Determine the necessity for continuance of his hospitalization.

§3866. Members of the Armed Forces

1. Admission to hospital. Any member of the Armed Forces of the United States who was a resident of the State at the time of his induction into the service and who is determined by a federal board of medical officers to have a mental disease not incurred in line of duty shall be received, at the discretion of the commissioner and without formal commitment, at either of the state hospitals for the mentally ill, upon delivery at the hospital designated by the commissioner of:

A. The member of the Armed Forces; and

B. The findings of the board of medical officers that he is mentally ill.

2. Status. After delivery of the member of the Armed Forces at the hospital designated by the commissioner, his status shall be the same as if he had been committed to the hospital under section 3864.

§3867. Transfer from out-of-state institutions

1. Commissioner's authority. The commissioner may, upon request of a competent authority of the District of Columbia or of a state which is not a member of the Interstate Compact on Mental Health, authorize the transfer of a mentally ill patient directly to a state mental health institute in Maine, if:

A. The patient has resided in this State for a consecutive period of one year during the 3-year period immediately preceding commitment in the other state or the District of Columbia;

B. The patient is currently confined in a recognized institution for the care of the mentally ill as the result of proceedings considered legal by that state or by the District of Columbia;

C. A duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied;

D. The commissioner, after investigation, deems the transfer justifiable; and

E. All expenses of the transfer are borne by the agency requesting it.

2. Receipt of patient. When the commissioner has authorized a transfer under this section, the superintendent of the state mental health institute designated by the commissioner shall receive the patient as having been regularly committed to the mental health institute under section 3864.

§3868. Transfer to other institutions

1. To other hospitals. The commissioner may transfer, or authorize the transfer of, a patient from one hospital to another, either inside or outside the State, if the commissioner determines that it would be consistent with the medical needs of the patient to do so.

A. Whenever a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, his parents or spouse or, if none of these persons exists or can be located, to his next of kin or friend.

B. In making all such transfers, the commissioner shall give due consideration to the relationship of the patient to his family, guardian or friends, in order to maintain relationships and encourage visits beneficial to the patient.

2. To federal agency. Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any involuntarily hospitalized person and that the person is eligible for care and treatment in a hospital or institution of the agency, the chief administrative officer of the hospital may cause his transfer to the agency of the United States for hospitalization.

A. Upon making such a transfer, the chief administrator of the hospital shall notify the court which ordered hospitalization and the persons specified in subsection 1, paragraph A.

B. No person may be transferred to an agency of the United States if he is confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness, unless before the transfer the court originally ordering confinement of the person enters an order for transfer after appropriate motion and hearing.

C. Any person transferred under this section to an agency of the United States is deemed to be hospitalized by the agency pursuant to the original order of hospitalization.

§3869. Return from unauthorized absence

If any patient committed under section 3864 leaves the grounds of the hospital without authorization of the chief administrative officer of the hospital or his designee, or refuses to return to the hospital from a community pass when requested to do so by the chief administrative officer or his designee, law enforcement personnel of the State or of any of its subdivisions may, upon request of the chief administrative officer or his designee, assist in the return of the patient to the hospital.

§3870. Convalescent status

1. Authority. The chief administrative officer of a state mental health institute may release an improved patient on convalescent status when he believes that the release is in the best interest of the patient.

A. Release on convalescent status may include provisions for continuing responsibility to and by the state mental health institute, including a plan of treatment on an outpatient or nonhospital basis.

B. Before release on convalescent status under this section, the chief administrative officer of a state mental health institute shall make a good faith attempt to notify, by telephone, personal communication or letter, of the intent to release the patient on convalescent status and of the plan of treatment, if any:

(1) The parent or guardian of a minor patient;

(2) The legal guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given.

C. The state mental health institute is not liable when good faith attempts to notify parents, spouse or guardian have failed.

2. Reexamination. Before a patient has spent a year on convalescent status, and at least once a year thereafter, the chief administrative officer of the state mental health institute shall reexamine the facts relating to the hospitalization of the patient on convalescent status.

3. Discharge. Discharge from convalescent status is governed as follows.

A. If the chief administrative officer of the state mental health institute determines that, in view of the condition of the patient, convalescent status is no longer necessary, he shall discharge the patient and make a report of the discharge to the commissioner.

B. The chief administrative officer shall terminate the convalescent status of a voluntary patient within 10 days after the day he receives from the patient a request for discharge from convalescent status.

4. Rehospitalization. Rehospitalization of patients under this section is governed as follows.

A. If, prior to discharge, there is reason to believe that it is in the best interest of an involuntarily committed patient on convalescent status to be rehospitalized, the commissioner or the chief administrative officer of the state mental health institute may issue an order for the immediate rehospitalization of the patient.

B. If the order is not voluntarily complied with, and if the order is endorsed by a District Court Judge or complaint justice in the county in which the patient has his legal residence or is present, any health officer or police officer may take the patient into custody and transport him to:

(1) The state mental health institute, if the order is issued by the chief administrative officer of the state mental health institute; or

(2) A hospital designated by the commissioner, if the order is issued by the commissioner.

5. Notice of change of status. Notice of the change of convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a state mental health institute is to be changed, either because of a decision of the chief administrative officer of the state mental health institute or because of a request made by a voluntary patient, the chief administrative officer of the state mental health institute shall immediately make a good faith attempt to notify,

by telephone, personal communication or letter,
of the contemplated change:

(1) The parent or guardian of a minor
patient;

(2) The guardian of an adult incompetent
patient, if any is known; or

(3) The spouse or adult next of kin of an
adult competent patient, unless the patient
requests in writing that the notice not be
given.

B. If the change in convalescent status is due
to the request of a voluntary patient, the chief
administrative officer of the state mental health
institute shall give the required notice within
10 days after the day he receives the request.

C. The state mental health institute is not lia-
ble when good faith attempts to notify parents,
spouse or guardian have failed.

§3871. Discharge

1. Examination. The chief administrative offi-
cer of a state mental health institute shall, as
often as practicable, but no less often than every 12
months, examine or cause to be examined every patient
to determine his mental status and need for continu-
ing hospitalization.

2. Conditions for discharge. The chief adminis-
trative officer of a state mental health institute
shall discharge, or cause to be discharged, any
patient when:

A. Conditions justifying hospitalization no
longer obtain;

B. The patient is transferred to another hospi-
tal for treatment for his mental or physical con-
dition;

C. The patient is absent from the state mental
health institute unlawfully for a period of 90
days;

D. Notice is received that the patient has been
admitted to another hospital, inside or outside
the State, for treatment for his mental or physi-
cal condition; or

E. Although lawfully absent from the state
mental health institute, the patient is admitted

to another hospital, inside or outside the State, for treatment of his mental or physical condition, except that, if the patient is directly admitted to another hospital and it is the opinion of the chief administrative officer of the state mental health institute that the patient will directly reenter the state mental health institute within the foreseeable future, the patient need not be discharged.

3. Discharge against medical advice. The chief administrative officer of a state mental health institute may discharge, or cause to be discharged, any patient even though the patient is mentally ill and appropriately hospitalized in the state mental health institute, if:

A. The patient and either the guardian, spouse or adult next of kin of the patient request his discharge; and

B. In the opinion of the chief administrative officer of the hospital, the patient does not pose a likelihood of serious harm due to his mental illness.

4. Reports. The chief administrative officer of a state mental health institute shall send a report of the discharge of any patient to the commissioner.

5. Notice. Notice of discharge is governed as follows.

A. When a patient is discharged under this section, the chief administrative officer of the state mental health institute shall immediately make a good faith attempt to notify, by telephone, personal communication or letter, that the discharge has taken or will take place:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given or unless the patient was transferred from or will be returned to a state correctional facility.

B. The state mental health institute is not liable when good faith attempts to notify parents, spouse or guardian have failed.

CHAPTER 5
MENTAL RETARDATION
SUBCHAPTER I
GENERAL PROVISIONS

§5001. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

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

2. Incapacitated person. "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.

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

4. Protective services. "Protective services" means services which will separate incapacitated adults from danger, including, but not limited to:

A. Social, medical and psychiatric services necessary to preserve the incapacitated adult's rights and resources and to maintain the incapacitated adult's physical and mental well-being; and

B. Seeking guardianship or a protective order under Title 18-A, Article 5.

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

6. Supportive services. "Supportive services" means services to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible, including but not limited to:

A. Counseling;

- B. Transportation;
- C. Assistance in obtaining adequate housing;
- D. Medical and psychiatric care; and
- E. Nutritional services.

7. Ward. "Ward" means a person for whom the bureau has been duly appointed guardian under Title 18-A, Article V, Part 6.

§5002. Policy

1. Services. It is the policy of the State to provide education, training and habilitative services to mentally retarded persons who need those services, except that nothing in this chapter may replace or limit the right of any mentally retarded person to treatment by spiritual means alone, through prayer, if that treatment is requested by the person or by his next of kin or guardian.

2. Setting. It is the policy of the State that the setting for the services described in subsection 1 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.

§5003. System of care for mentally retarded clients

1. System of care. The Legislature declares that the system of care, through which the State provides services to and programs for mentally retarded persons, shall be designed not only to protect the integrity of the legal and human rights of these persons, but also to meet the needs of these persons.

2. Responsibilities of the department. To facilitate the development of a system which meets the needs of mentally retarded persons, the commissioner, through the bureau, shall:

- A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to mentally retarded persons, including an habilitation program for every client served by the bureau;
- B. Divert mentally retarded persons from institutional care, whenever professional diagnosis and evaluation, the personal preference of the

client or his legal guardian, and the availability of appropriate services indicate that these persons should be placed in community environments and programs;

C. Provide programs, so far as resources permit, for the proper habilitation and treatment of mentally retarded persons, which shall include, but need not be limited to, comprehensive medical care, education, recreation, physical therapy, training, social services and habilitation and rehabilitation services suited to the needs of the individual regardless of age, degree of retardation, handicapping condition or ability to pay;

D. Work toward effectuating the normalization principle through the establishment of community services for the mentally retarded person as a viable and practical alternative to institutional care at each stage of individual life development, but, if care in an institutional facility becomes necessary, it should be in the least restrictive setting, consistent with the proper care of the mentally retarded person;

E. Eliminate its own duplicative and unnecessary administrative procedures and practices in the system of care for mentally retarded persons, encourage other departments to do the same, and clearly define areas of responsibility in order to utilize present resources economically;

F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment which is beneficial to the mentally retarded clients; and

G. Encourage other departments to provide to mentally retarded persons those services which are required by law, and in particular:

(1) The commissioner shall work actively to ensure that mentally retarded clients, as provided for in Title 20-A, chapter 303, shall receive educational and training services beginning at age 6 years regardless of the degree of retardation, or accompanying disabilities or handicaps;

(2) The commissioner shall advise the Department of Human Services about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licens-

ing procedures and other areas which affect mentally retarded persons residing in facilities licensed by the Department of Human Services; and

(3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over health and institutional services about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to mentally retarded persons.

3. Plan. The commissioner, through the bureau, shall prepare a plan, subject to the following provisions.

A. The plan shall indicate the most effective and efficient manner in which to implement services and programs for mentally retarded persons, while safeguarding and respecting the legal and human rights of these persons.

B. The plan shall be prepared once every 2 years and shall be submitted to the joint standing committee of the Legislature having jurisdiction over health and institutional services by no later than January 15th of every odd-numbered year.

C. The committee shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to mentally retarded persons.

SUBCHAPTER II

BUREAU OF MENTAL RETARDATION

§5201. Establishment

There is established, within the Department of Mental Health and Mental Retardation, the Bureau of Mental Retardation, which is responsible for:

1. Institutional programs. The supervision of mental retardation programs in the state institutions;

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

3. Liaison. Serving as liaison, coordinator and consultant to the several state departments in order

to develop the statewide system of mental retardation services;

4. 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, insofar as possible, with, residential accommodations and access to habilitation services appropriate to their needs; and

5. Protective and supportive services. Providing protective and supportive services, in accordance with section 5203, to incapacitated persons who, with some assistance, are capable of living and functioning in society.

§5202. Director

1. Appointment. 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.

A. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve, for a period not to exceed 180 days, as the acting director, if the office of the director is vacant.

B. Service as the acting director is considered a temporary additional duty for the person so delegated.

2. Qualifications. To be eligible for appointment as director, a person must have training and experience in mental retardation program administration or satisfactory experience in the direction of work of a comparable nature.

3. Term. The director shall serve at the pleasure of the commissioner.

4. Duties. In addition to other duties set out in this Title, the director shall:

A. Report directly to the commissioner; and

B. Carry out the purposes of the bureau.

§5203. Protective and supportive services

1. Bureau authority. The bureau may provide protective or supportive services in response to com-

plaints concerning, and requests for assistance from or on behalf of, all incapacitated persons, under the following conditions.

A. Except for seeking the appointment of a guardian, protective or supportive services may be initiated only:

(1) With the acquiescence of the incapacitated person; and

(2) After consultation, insofar as possible, with the family or the guardian of the incapacitated person.

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

2. Payment for services. Payment for services under this section is governed as follows.

A. 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.

B. 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.

C. The department, through the bureau and its other agents, may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like benefits paid on behalf of any incapacitated person, and shall apply those benefits toward the care and treatment of the incapacitated person.

3. Rules. Promulgation, amendment and appeal of rules under this section are governed as follows.

A. The bureau shall promulgate, and may amend or repeal, rules governing the administration of this section, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

B. The bureau shall hold a public hearing before promulgating, amending or repealing the rules, and shall give notice of the public hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER IIISERVICES FOR MENTALLY RETARDED PERSONSARTICLE ISTATE-OPERATED FACILITIESFOR MENTALLY RETARDED PERSONS§5401. Maintenance of facilities

The department shall maintain the following 3 residential facilities for the care and treatment of mentally retarded persons:

1. Pineland Center;
2. Aroostook Residential Center; and
3. Elizabeth Levinson Center.

§5402. Pineland Center

1. Establishment. There is established the Pineland Center at New Gloucester in Cumberland County, which:

A. Shall be maintained for the training, education, treatment and care of persons who are mentally retarded; and

B. May be maintained for the training, education, treatment and care of persons between the ages of 3 and 16 who are mentally ill.

2. Applicable laws. The provisions of Article III shall, in all relevant aspects, apply to the mentally ill persons described in subsection 1, paragraph B.

3. Superintendent. The chief administrative officer of the Pineland Center is called the superintendent.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the superintendent.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In making the appointment, the commissioner and the committee shall give due consideration to

the appointee's qualifications and experience in mental retardation matters.

D. In order to qualify for appointment as superintendent, a person shall have sufficient training and experience to deal with the problems of mentally retarded persons, and shall be either a psychiatrist, hospital administrator, psychologist or a person with a master's degree in education, social work, public administration, public health or rehabilitation.

4. Duties of the 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, section 101 or 103; and

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

§5403. Aroostook Residential Center

1. Establishment. There is established the Aroostook Residential Center at Presque Isle in Aroostook County, which:

A. Shall be maintained for the training, education, treatment and care of persons who are mentally retarded; and

B. May provide living accommodations for mentally retarded persons in order that they may attend educational and training programs.

2. Director. The chief administrative officer of the Aroostook Residential Center is called the director.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the director.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In order to qualify for appointment as the

director, a person shall have sufficient education and experience to administer a facility providing services to the mentally retarded.

3. Duties 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 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, property, officers and employees of the Aroostook Residential Center, subject to the approval of the commissioner.

§5404. Elizabeth Levinson Center

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

2. Director. The chief administrative officer of the Elizabeth Levinson Center is called the director.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the director.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In order to qualify for appointment as the director, a person shall have sufficient education and experience to administer a facility providing services to the mentally retarded.

3. Duties 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 the Elizabeth Levinson Center;

and

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

ARTICLE II

COMMUNITY-BASED SERVICES

§5431. Purpose

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

§5432. Commissioner's duties

The commissioner shall:

1. Community participation. Encourage persons in local communities to participate in the provision of supportive services for mentally retarded persons, so that persons in the community may have a better understanding of the need for those services;

2. Financial assistance. When offering assistance to community-based programs, follow the procedures set forth in this Article; and

3. Rules. Through the Director of the Bureau of Mental Retardation, promulgate rules, according to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this Article.

§5433. Commissioner's powers

The commissioner may:

1. Financial aid. Allocate money for the development of group homes, capital construction, purchase of buildings, supportive services and for other activities, but only those applicants for funds whose programs provide for adequate standards of professional service qualify for funds from the department;

2. Services and programs. Provide and help finance mental retardation services and programs throughout the State for mentally retarded persons residing in the community and residing in privately-owned residential care facilities;

3. Cooperation. Cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance services and programs for mentally retarded persons; and

4. Available funds. Receive and use for the purpose of this Article money appropriated by the State, grants by the Federal Government, gifts from individuals and money from any other sources.

§5434. Municipalities and other governmental units

1. Authorization. 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 commissioner, may adopt and carry out a program of mental retardation services established or approved by the commissioner and appropriate money for that purpose.

2. Joint ventures. A municipality or other governmental unit may join with another municipality or governmental unit to carry out such a program.

3. Grants. Upon application to the department by a municipality or other governmental unit, the commissioner may grant to the applicant money to be used for carrying out its mental retardation services, including any necessary capital expenditures or purchase of buildings.

§5435. Nongovernmental units

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

2. Bureau grants. The Bureau of Mental Retardation may make grants to nonprofit corporations for amounts which are reasonable relative to the quantity and quality of services to be provided by the grantee.

A. The bureau may request a display of effort on the part of the grantee that appropriate local governmental and other funding sources have been sought to assist in the financing of the services for which the bureau is making the grant.

B. The bureau shall give consideration 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.

C. In making grants to unincorporated associations or nonstock corporations, the bureau shall take into account all income and resources.

§5436. Fees

1. Authority. Fees may be charged for services provided directly to individuals by any program authorized by the department, if the individual is financially able to pay.

2. Use. Fees received by a municipality, governmental unit, unincorporated association or nonstock corporation shall be used by each entity in carrying out its programs approved under this Article.

ARTICLE III

PROCEDURES

§5461. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Advocate. "Advocate" means a person:

A. Who is familiar with the procedures involved both in admitting mentally retarded persons to a facility and in providing services to those persons; and

B. Who is capable of advocating solely on behalf of a mentally retarded person.

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

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

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

A. Results in the distinguishing of mental

retardation from other conditions;

B. Determines the severity of disability resulting from mental retardation and other conditions; and

C. Estimates the degree to which mental retardation and other conditions can be ameliorated.

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

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

A. Enable him to cope more effectively with the demands of his own person and of the environment;

B. Raise the level of his physical, mental and social efficiency; and

C. Upgrade his sense of well-being.

7. Interdisciplinary team. "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.

8. Person in need of institutional services. "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 protect himself from severe physical or psychological impairment, and who needs habilitation in an institutional setting designed to improve his ability to care for and protect himself.

9. Prescriptive program plan. "Prescriptive program plan" means a detailed written plan, formulated by an appropriately constituted interdisciplinary team, 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.

10. Professional. "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.

11. Service agreement. "Service agreement" means a written form in which the persons designated in section 5471 agree to the type of services and programs for and the manner of providing services to the client.

12. Voluntary admission. "Voluntary admission" means the reception into a facility of a mentally retarded client who understands 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 the admission, or a mentally retarded client whose eligibility for admission to the facility has been certified by the District Court under section 5475.

§5462. Procedure policies

1. Steps. It is the policy of the State that, in order to ensure that mentally retarded persons receive needed services, to the extent possible, the following steps shall be taken for each person found by the department to be mentally retarded and in need of services:

A. An assessment of the person's needs;

B. The development of a prescriptive program 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 2nd 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 the policy of the State that:

A. To the extent possible, the mentally retarded person and his guardian or next of kin be involved with the steps specified in subsection 1; and

B. An advocate be available to the mentally retarded person throughout the steps specified in subsection 1.

§5463. Notice

The commissioner shall provide the client, if he is competent, the client's next of kin or guardian, if any exists, and the client's advocate 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.

§5464. Correspondence and reports

The commissioner shall provide the client, if he is competent, the client's next of kin or legal guardian, if any exists, and the client's advocate with access to copies of correspondence and reports concerning the client, in accordance with section 1206.

§5465. Rules

1. Duty. The commissioner shall promulgate rules for the effective implementation of this Article.

2. Requirements. The rules shall include, but need not be limited to, information on:

A. The membership, functions and procedures of the interdisciplinary teams;

B. The procedures to be used in developing prescriptive programs and service agreements;

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

D. The rights and procedures for administrative review if there is dissatisfaction with any step of the process of receiving services specified in this Article or if there is 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.

3. Review. The joint standing committee of the Legislature having jurisdiction over health and institutional services shall review all rules promulgated by the department pursuant to this Article by no later than March of each year.

4. Public hearing and notice. The commissioner shall hold at least one public hearing before promulgating these rules and notice of any public hearing shall be given pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

5. Amendment or repeal. The commissioner may amend or repeal rules at any time after giving notice and holding a hearing, as prescribed in subsection 4, with respect to the rules amended or repealed.

§5466. Advocate

1. Entitlement. Each client who receives services under sections 5467 to 5474 is entitled to representation by an advocate.

2. List. The commissioner shall develop a list of advocates, including attorneys, for each region of the Bureau of Mental Retardation.

§5467. Application and preliminary procedures

1. Application. An application for mental retardation services, on a form provided by the commissioner, shall be initiated at or referred to a regional office of the Bureau of Mental Retardation.

2. Preliminary procedures. Within 5 work days from the day of application, 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 under sections 5467 to 5474, unless the client refuses that representation.

§5468. Evaluation

After completing the tasks specified in section 5467, subsection 2, the commissioner shall forthwith cause a comprehensive evaluation of the client, including a consideration of physical, emotional, social and cognitive factors, to be conducted.

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

2. Interdisciplinary team. The comprehensive evaluation shall be conducted by an interdisciplinary team.

§5469. Report

Within 30 days of the day of the application made under section 5467, the interdisciplinary team shall give a report of its findings to the department, and the professional on the team shall state specifically

in the report whether or not the client is mentally retarded.

1. Client not mentally retarded. 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.

2. Client mentally retarded. 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 day of application made under section 5467.

3. Preschool child. If the report of the interdisciplinary team concludes that a preschool child, aged 0 to 5 years, is developmentally delayed and is in need of infant development center 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 day of application made under section 5467.

§5470. 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 parts of a prescriptive program plan shall occur at the earliest possible time and shall be governed by section 5471, subsection 4.

4. Agreement. All parts 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 that 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.

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

A. A written report prepared by the interdisciplinary team supporting the following conclusions:

(1) The client is mentally retarded;

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

(3) The client can benefit from programs at the facility; and

(4) 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. Plans for preparing the client for admission, including, unless specifically contraindicated, a preadmission visit to the facility; and

C. Plans to facilitate, at the earliest possible time, the client's return to the community.

7. Major changes. Any major changes in a client's prescriptive program plan may be made only in accordance with section 5471, subsection 6.

§5471. 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 guardian or next of kin, if that person exists and is available;
- C. A client advocate, if the client has no guardian;
- D. The individual program plan coordinator of the interdisciplinary team which developed the individual program plan for the client;
- E. The chief administrative officer of the appropriate regional office, if a client is being admitted to or discharged from a facility or if a client is under the supervision of the regional office;
- F. The chief administrative officer of the facility or his agent, if a client is being admitted to, treated in or discharged from a facility; and
- G. The chief administrative officer, 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 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 part of the prescriptive program plan.
- C. It shall specify the date on which the review required in subsection 5 shall occur.

4. Implementation of prescriptive program plan. Implementation of a prescriptive program plan is governed as follows.

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

B. Any existing prescriptive program plan is considered to be in effect until all persons required to sign under subsection 2 have signed the new service agreement.

C. No prescriptive program plan may be in effect longer than one year and 2 weeks from the day 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 to assess the present prescriptive program plan and, if further services are recommended, to prepare a new plan.

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

§5472. Preadmission visit

Any client may be detained by a facility up to 48 hours, if the purpose of the detention is a preadmission visit solely to observe and evaluate the client.

§5473. Voluntary admissions

1. Respite care. Respite care may be provided to any client by a facility without full compliance with the procedures for admission by judicial certification under section 5475, if it is recommended by an interdisciplinary team and a service agreement has been completed.

A. The purpose of the respite care is for evaluation, diagnosis or other clearly stated and broadly defined therapeutic purposes of the client or his family.

B. Respite care may be provided, upon application to the regional office of the bureau by the client, guardian or parent, for not more than 21 days at a time and not more than 60 days during any 12-month period.

C. Continuing placement in the facility beyond the time periods stated in paragraph B, if indicated, may be accomplished only upon full compliance with procedures described by this chapter.

2. Regular admission. A client may be admitted for extended treatment and care if the following steps have been complied with.

- A. An application for admission has been made by the client, a representative of his choice, the client's guardian, the client's next of kin or any other responsible person.
 - B. The director of a regional office or his designee has certified that he believes that the compelling needs of the client are not being met and has stated the factual basis of that belief.
 - C. An initial prescriptive program plan has been developed according to section 5470.
 - D. The requirements of informed consent under subsection 3 or of judicial certification under section 5475 have been met.
3. Admission by informed consent. The client may be admitted to a facility by informed consent if the chief administrative officer of the facility or his designee has determined that:

- A. The client has been informed of and understands both the nature, purpose and proposed duration of the admission, and the provisions of section 5480 regarding the client's right to leave and the limitations on that right; and
 - B. The client voluntarily consents to the proposed admission.
4. Medical admission to the Benda Hospital at Pineland Center. Any mentally retarded person requiring medical or dental treatment, including post-operative care, may be admitted to the Benda Hospital only if, and as long as, a signed consent to admission is given and remains unrevoked by the client, a parent or a legal guardian.

- A. The consent is consent to admission only.
- B. The consent may not be construed as a substitute for informed consent under subsection 3.

§5474. Involuntary admissions

1. Short-term evaluation. When considered necessary by the interdisciplinary team and with the consent of the director, persons may be admitted to the Elizabeth Levinson Center short-term evaluation program for a period of 40 program days, excluding weekends, without certification.

2. Admission by judicial certification or judicial commitment. If the chief administrative officer of a facility or his designee has determined that the

client is not capable of giving informed consent to admission, a client may be admitted for extended care and treatment only after judicial certification under section 5475 or after judicial commitment under section 5476.

3. Emergency admission. When immediate detention of a person believed to be mentally retarded is necessary, the person may be temporarily restrained in accordance with section 5477.

§5475. Judicial certification procedures

If the chief administrative officer of a facility or his designee has determined that a client is not capable of giving informed consent to admission, the client may be admitted for extended care and treatment only after judicial certification pursuant to the following procedures.

1. Petition. A petition to admit a client by judicial certification may be filed in the District Court with jurisdiction over the place where the client is residing.

A. Only a chief administrative officer of a regional office or facility may file the petition.

B. The petition may not be filed by the chief administrative officer of a regional office until he has obtained approval for the admission by the chief administrative officer of the facility under rules promulgated by the commissioner under section 1203, subsection 3.

C. Any party may file a motion with the court where the petition is filed alleging that a court in another location would be more convenient, and the court may order a change in venue if justice so requires.

2. Prehearing duties of the court. Upon receipt by the District Court of the petition, the court shall:

A. Schedule a certification hearing to be held as soon as practicable, except that if the client is being detained under section 5477, subsection 4, the hearing shall be held no later than 15 days from the day the petition was filed, unless the court, for cause shown, grants a continuance of not more than 10 additional days;

B. Cause written notice of the petition and hearing to be given personally or by mail to the

client who is the subject of the proceeding and to the client's guardian, spouse, parent or adult child, if any is known.

(1) If none of these persons is known or if none can be located, the notice shall be given to one of the client's next of kin or to a next friend.

(2) A docket entry is sufficient evidence that the notice has been given;

C. Unless waived by a parent or guardian, cause the client who is the subject of the proceeding to be examined by a professional.

(1) The client or his counsel may choose the professional, if the professional he chooses is reasonably available.

(2) The professional may not be the same one who performed any part of the evaluation required under section 5468 or who participated in the development of the prescriptive program plan.

(3) Upon completion of the examination, the professional shall report to the court his opinion whether the client is mentally retarded and therefore requires treatment, stating his reasons for his opinion;

D. Appoint counsel for any indigent client not already represented;

E. Furnish counsel with copies of the petition and the reports of the court-appointed examiner; and

F. Cancel the certification hearing if a parent or guardian having legal custody of the person of the client so requests.

3. Certification hearing. The certification hearing shall be governed as follows.

A. The certification hearing shall be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

B. The certification hearing shall be confidential and shall be electronically or stenographically recorded.

C. No report of the certification hearing pro-

ceedings may be released to the public or press, except by permission of the client or his counsel and with the approval of the court.

D. The court may order a public hearing at the request of the client or his counsel.

4. Certification. The court shall certify the client's eligibility for admission only if the petitioner proves, by clear and convincing evidence, that:

A. The client is a person in need of institutionalized services;

B. The needed services are available at the facility named in the application; and

C. There is no less restrictive alternative to the care provided by the facility, consistent with the best interest of the client.

5. Effect of certification. The certification of a client's eligibility for admission may not be construed as a judicial commitment of the client, but only empowers the chief administrative officer of the facility to admit the client as a resident for treatment, education or habilitation, subject to the provisions for discharge of section 5480.

6. Period of certification. The court shall order the certification to remain in effect for a period of not more than 2 years from the day the certification order was issued.

7. Expenses. The District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness fees and the expenses resulting from a court-appointed examiner.

8. Appeals. A client certified under this section may appeal the certification order to the Superior Court.

A. The appeal is limited to questions of law.

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

C. The order of the District Court shall remain in effect pending the appeal.

D. The District Court Rules of Civil Procedure and the Maine Civil Rules shall apply to the conduct of the appeals, except as otherwise specified in this subsection.

9. Exceptions. This section does not apply to the Aroostook Residential Center.

§5476. Judicial commitment

Judicial commitment of clients is governed as follows.

1. Eligibility. Any client recommended for regular admission to a facility pursuant to section 5470 may be admitted by judicial commitment.

2. Procedure. The procedure for judicial commitment to a mental retardation facility for care, training and treatment shall follow the procedures set forth in section 3864 for the involuntary commitment of mentally ill persons, except that, where a finding of mental illness is required, a finding of mental retardation as defined by section 5001, subsection 3, shall be substituted.

§5477. Emergency procedures

1. Protective custody. If a law enforcement officer has reasonable grounds to believe, based upon his personal observation, that a person may be mentally retarded, that due to his condition he presents a threat of imminent and substantial physical harm to himself or to other persons and that an emergency exists requiring immediate residential placement:

A. The officer may take the person into protective custody; and

B. If the officer does take the person into protective custody, the officer shall deliver the person forthwith, within 18 hours, for examination by an available licensed physician or licensed psychologist as provided in subsection 4.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under subsection 4, the officer shall:

A. Release the person from protective custody and, with his permission, return him forthwith to his place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with his permission, return him to the place where he was taken into protective custody; or

C. If the person is also under arrest for violation of law, retain him in custody until he is

released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under subsection 4, the officer shall undertake forthwith, within 18 hours, to obtain the endorsement by a judicial officer under subsection 4 and may detain the person for as long as necessary to obtain the endorsement.

4. Admission. A person may be admitted to a facility after the facility has received an application and certificate according to the following procedures.

A. Any health officer, law enforcement officer or other person may make a written application to admit a person to a facility, subject to the prohibitions and penalties of section 3805, stating:

(1) His belief that the person is in need of institutional services;

(2) That an emergency exists requiring immediate placement in a facility; and

(3) The grounds for this belief.

B. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical psychologist, stating:

(1) He has examined the person on the date of the certificate, which date may not be more than 3 days before the date of admission to the facility; and

(2) He is of the opinion that the person is a mentally retarded person in need of institutional services.

C. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, a Judge of the District Court, a Judge of Probate or a complaint justice.

(1) If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

(2) No person may be held against his will in the facility under this subsection unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed

the certificate provided for under this subsection may be detained in a facility for as long as is necessary to obtain the endorsement by a judge or justice, if the person or persons transporting the person to the facility undertake to secure the endorsement forthwith upon execution of the certificate by the examiner.

D. Upon endorsement by the judge or justice of the application and certificate, any health officer, police officer or other person designated by the judge or justice may take the person into custody and transport him to the facility designated in the application.

E. The county in which the person is found is responsible for any expenses of transportation for the person under this subsection, including return from the facility if admission is declined.

F. Under this subsection, a facility may admit the client for no longer than 5 days, but if a petition for judicial certification is filed, the facility may admit the client for an additional period not to exceed 25 days from the date of application.

§5478. Continuation of treatment in a facility

1. Authority to continue treatment. A client who has been admitted to a facility by judicial certification, or who has been retained in a facility pursuant to this section, may continue extended care and treatment in that facility for an additional period, not to exceed 2 years, only after judicial certification under section 5475 or after waiver of that process by the District Court as provided in this section, except that waiver of the judicial certification process is not permitted for any mentally retarded person under public guardianship.

2. Waiver of judicial certification. A petition to waive judicial certification under section 5475 may be filed in District Court by the facility where the client is residing. The court may waive judicial certification upon a finding that:

A. A prescriptive program plan, as provided in section 5470, has been agreed to by the superintendent of the facility and the guardian;

B. The guardian has been informed of and understands the nature, purpose and proposed duration of the admission and the provisions of section

5480 regarding the client's right to leave and the limitations on that right;

C. The guardian has consented to the continued extended care and treatment of the client in the facility; and

D. Continued care and treatment is necessary and there is no less restrictive alternative to the care and treatment provided by the facility, consistent with the best interest of the client.

§5479. Post-admission responsibilities of the department

1. Provision of care and treatment. Post-admission care and treatment in a facility is governed as follows.

A. An initial service agreement for services to be received in the facility shall be executed within 5 days of admission and 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 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 5470 and 5471.

2. Preparation for discharge. Preparation for a client's discharge from a facility is governed as follows.

A. When 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 that placement and shall develop a prescriptive program plan and service agreement which shall include provisions to ensure that:

(1) The client's money is adequately managed;

(2) The client has a legal representative, if required;

(3) The client receives needed services in the community; and

(4) The client's parent or guardian, if available, continues to be involved with the

client.

B. The chief administrative officer of the facility may release the client pursuant to such a recommendation for community placement through the regional office.

3. Role of the regional office. The role of the regional office under this section is as follows.

A. 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 2.

B. The regional office shall be responsible for implementing the client's release.

C. 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.

§5480. Client's right to leave facility

1. Client's request. Any client admitted by informed consent may leave the facility at his own request, subject only to section 5477, subsection 4.

2. Discharge. When a judicially certified client is prepared for discharge, under section 5479, subsection 2, he shall be discharged if the regional office and the interdisciplinary team so recommend.

3. Parent or guardian. A parent or guardian having legal custody over the person of the client may, at any time, obtain discharge of his child or ward.

SUBCHAPTER IV

RIGHTS OF MENTALLY RETARDED PERSONS

§5601. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Client. "Client" means any mentally retarded person receiving services from the bureau or from an agency or facility licensed or funded to provide services to mentally retarded persons, except those

presently serving sentences for crime.

2. Day facility. "Day facility" means any non-residential facility owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

3. Express and informed consent. "Express and informed consent" means consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

4. Habilitation. "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable him to cope with the demands of his own person and environment, to raise the level of his physical, mental and social efficiency and to upgrade his sense of well-being, including, but not limited to, programs of formal, structured education and treatment.

5. Normalization principle. "Normalization principle" means the principle of letting the mentally retarded person obtain an existence as close to normal as possible and making available to him patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society.

6. Residential facility. "Residential facility" means a facility providing 24-hour residential care for mentally retarded persons which is owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

7. Seclusion. "Seclusion" means the placement of a client alone in a locked room for a period in excess of one hour.

8. Treatment. "Treatment" means the prevention, amelioration or cure of a client's physical and mental disabilities or illness.

§5602. Purpose

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of mentally retarded persons and to articulate rights of mentally retarded persons, so that these rights may be exercised and protected.

§5603. Entitlement

Each mentally retarded person is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been suspended as the result of court guardianship proceedings.

§5604. Protection

The Legislature finds and declares that the rights of mentally retarded persons can be protected best under a system of care which operates according to the principles of normalization and that the state's system of care shall operate according to these principles with the goals of:

1. Community-based services. Continuing the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client; and

2. Independence and productivity. Providing habilitation, education and other training to mentally retarded persons which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

§5605. Rights and basic protections of mentally retarded clients

Mentally retarded clients are entitled to the following rights and basic protections.

1. Humane care. Clients are entitled to dignity, privacy and humane care.

2. Practice of religion. Clients are entitled to religious freedom and practice without any restriction or forced infringement on a client's right to religious preference and practice.

3. Communication. Clients are entitled to private communications.

A. Each client is entitled to receive, send and mail sealed, unopened correspondence. No person who owns or is employed by a day facility or a residential facility may delay, hold or censor any incoming or outgoing correspondence of any client, nor may he open any such correspondence without the consent of the client or his legal guardian.

B. Clients in residential facilities are entitled to reasonable opportunities for telephone communication.

C. Clients are entitled to an unrestricted right to visitations during reasonable hours, except that nothing in this provision may be construed to permit infringement upon other clients' rights to privacy.

4. Work. Clients engaged in work programs which require compliance with state and federal wage and hour laws are entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

5. Vote. No client may be denied the right to vote for reasons of mental illness, as provided in the Constitution of Maine, Article II, Section 1, unless under guardianship.

6. Personal property. Each client is entitled to the possession and use of his own clothing, personal effects and money, except that, when necessary to protect the client or others from imminent injury, the chief administrator of a day facility or a residential facility may take temporary custody of clothing or personal effects which he shall immediately return when the emergency ends.

7. Nutrition. Each client in a residential facility is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

8. Medical care. Each client is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment shall be consistent with the accepted standards of medical practice in the community, unless the religion of the client so prohibits.

A. Medication may be administered only at the written order of a physician.

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

C. Daily notation of medication received by each client in a residential facility shall be kept in the client's records.

D. Periodically, but no less frequently than

every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice.

E. All prescriptions shall have a termination date.

F. Pharmacy services at each residential facility operated by the department shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of Title 32, chapter 41.

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent shall be obtained from the client, unless the client has been found to be legally incompetent, in which case the client's guardian may consent.

(1) Before making a treatment or surgical decision, the client shall be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The client or, if legally incompetent, his guardian may withdraw his express and informed consent at any time, with or without cause, before treatment or surgery.

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any client who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the client.

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any client who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the client.

9. Sterilization. A client may not be sterilized, except in accordance with chapter 7.

10. Social activity. Each client is entitled to suitable opportunities for behavioral and leisure

time activities which include social interaction.

11. Physical exercise. Each client is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

12. Discipline. Discipline of clients is governed as follows.

A. The chief administrative officer of each facility shall prepare a written statement of policies and procedures for the control and discipline of clients, which is directed to the goal of maximizing the growth and development of the clients.

(1) Clients are entitled to participate, as appropriate, in the formulation of the policies and procedures.

(2) Copies of the statement of policies and procedures shall be given to each client and, if the client has been adjudged incompetent, to his parent or legal guardian.

(3) Copies of the statement of policies and procedures shall be posted in each residential and day facility.

B. Corporal punishment or any form of inhumane discipline is not permitted.

C. Seclusion is not permitted.

D. The placement of a resident alone in a locked room for less than an hour is permitted, but:

(1) Is only permitted in emergencies to protect the client or others from imminent injury; and

(2) A staff person shall visually check a client so placed at 10-minute intervals throughout the duration of the placement.

13. Behavior modification. Behavior modification of clients is governed as follows.

A. No client may be subjected to a treatment program to eliminate bizarre or unusual behavior without first being examined by a physician to rule out the possibility that such behaviors are organically caused.

B. Treatment programs involving the use of nox-

ious or painful stimuli may be used only to correct behavior more harmful to the client than the treatment program:

(1) On the recommendation of a physician or psychologist; and

(2) With the approval, following a case-by-case review, of the chief administrative officer of the residential facility and a client advocate of the department.

14. Physical restraints. Clients are entitled to be free from physical restraints, which include totally enclosed cribs and barred enclosures, but physical restraints may be employed only in emergencies to protect the client from imminent injury to himself or others.

A. Physical restraints may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services.

B. Physical restraints may impose only the least possible restrictions consistent with their purpose and shall be removed when the emergency ends.

C. Physical restraints may not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

D. Mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints, but mechanical supports shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation and allowance for change of position.

E. Daily reports on the use of restraints shall be made to the appropriate chief administrative officer of the facility.

(1) The reports shall summarize all cases involving the use of restraints, the type of restraints used, the duration of usage and the reasons for the usage.

(2) A monthly summary of the reports shall be relayed to the Office of Advocacy.

15. Records. All client records shall remain confidential as provided in section 1206.

A. The client or, if the client is incompetent, his parent or guardian is entitled to have access to the records upon request.

B. The commissioner is entitled to have access to the records of a day facility or a residential facility if necessary to carry out the statutory functions of his office.

§5606. Violations

1. Report and investigation. Any alleged violation of a client's rights shall be reported immediately to the Office of Advocacy of the department and to the Attorney General's office.

A. The Office of Advocacy shall conduct an investigation of each alleged violation pursuant to section 1205.

B. The Office of Advocacy shall submit a written report of the findings and results of the investigation to the chief administrative officer of the facility in which the client's rights were allegedly violated and to the commissioner within 2 working days after the day of the occurrence or discovery of the alleged incident.

2. Civil liability. Any person who violates or abuses any rights or privileges of clients granted by this subchapter is liable for damages as determined by law.

A. Civil damages may be awarded for negligent or intentional violations of this subchapter.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client is a defense to a civil action under this subchapter.

3. Prohibited acts; penalty; defense. A person is guilty of violation of the rights of a mentally retarded client if he intentionally violates or abuses any rights or privileges of clients granted by this subchapter.

A. Violation of the rights of a mentally retarded client is a Class E crime.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client is a defense to prosecution under this subchapter.

§5607. Notice of rights

The commissioner shall provide a written copy of this subchapter and of section 1206 to each client and, if the client has been adjudged incompetent, to the parent or guardian of the client.

1. Prompt notification. Each client shall be promptly informed in clear language of the legal rights of mentally retarded persons.

2. Posting requirement. A copy of this subchapter shall be posted in each residential and day facility.

§5608. Client government

Upon request of a client, the chief administrative officer of a residential facility shall initiate and develop a program of client government to hear the views and represent the interests of all clients served by the facility.

1. Composition. The client government shall be composed of residents elected by other residents and staff advisors skilled in the administration of community organizations.

2. Duties. The client government shall work closely with the bureau and the Office of Advocacy to promote the interests and welfare of all residents in the facility.

CHAPTER 7DUE PROCESS IN STERILIZATION ACT OF 1982§7001. Short title

This chapter may be cited as the "Due Process in Sterilization Act of 1982."

§7002. Legislative intent

The Legislature finds and declares that sterilization procedures are generally irreversible and represent potentially permanent and highly significant consequences for the patient involved. The Legislature recognizes that certain legal safeguards are necessary to prevent indiscriminate and unnecessary sterilization and to assure equal access to desired medical procedures for all Maine citizens.

§7003. Definitions

As used in this chapter, unless the context indi-

cates otherwise, the following terms have the following meanings.

1. Custodian. "Custodian" means the person having care and custody over the individual seeking sterilization or the individual for whom sterilization is sought.

2. Disinterested expert. "Disinterested expert" means an appropriately licensed or certified professional not associated with an institution serving the person for whom sterilization is being sought and not personally related to the petitioner.

3. Guardian. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

4. Informed consent. "Informed consent" means consent that is:

A. Based upon an actual understanding by the person to be sterilized of the nature of sterilization, its potentially permanent consequences, all alternative methods of contraception and all reasonably foreseeable risks and benefits of sterilization; and

B. Wholly voluntary and free from express or implied coercion.

5. Parent. "Parent" means a natural or adoptive mother or father of a person.

6. Physician. "Physician" means any person licensed to practice medicine under Title 32, chapter 48, subchapter II, or under Title 32, chapter 36, subchapters II and IV.

7. Psychiatrist. "Psychiatrist" means a physician licensed to practice medicine under Title 32, chapter 48, subchapter II, who specializes in the diagnosis and treatment of mental disorders.

8. Psychologist. "Psychologist" means any person licensed to practice psychology under Title 32, chapter 56, subchapter III.

9. Sterilization. "Sterilization" means a medical or surgical procedure, the purpose of which is to render an individual permanently incapable of procreation. Sterilization does not refer to procedures which must be performed for distinct and urgent medical reasons and which have the unavoidable secondary effect of rendering the individual

infertile.

§7004. Informed consent required for sterilization

1. Informed consent required. Except as provided in this chapter, prior to initiating sterilization procedures on any individual, a physician shall obtain and record the informed consent of that individual.

2. Hearing required to determine ability to give informed consent for sterilization. A hearing to determine ability to give informed consent for sterilization is required when sterilization is sought for:

A. Persons under age 18 years and not married or otherwise emancipated;

B. Persons presently under public or private guardianship or conservatorship;

C. Persons residing in a state institution providing care, treatment or security, or otherwise in state custody; or

D. Persons from whom a physician could not obtain informed consent.

§7005. Sterilization authorized by court

1. Court order required. A District Court order authorizing sterilization is required before the sterilization of any person described in section 7004, subsection 2.

2. Determination prior to issuance of order. Before an order may be issued, the court shall determine whether the person seeking sterilization or for whom sterilization is sought is able to give informed consent for sterilization and, if so, whether he has given informed consent for sterilization.

§7006. Contents of petition for determination of ability to give informed consent for sterilization

The petition for determination of ability to give informed consent for sterilization shall be executed under oath and shall set forth:

1. Person seeking sterilization or for whom sterilization is sought. Name, age and residence of the person seeking sterilization or for whom sterilization is sought;

2. Parent, guardian or spouse. Names and residences of any parents, spouse or guardian of the person seeking sterilization or for whom sterilization is sought;

3. Basis of petition. A statement of the factors, including any listed in section 7004, subsection 2, and mental condition, when appropriate, which necessitate a determination of the ability of the person seeking sterilization or for whom sterilization is sought to give informed consent for sterilization;

4. Reasons for sterilization. A statement of the reasons for which sterilization is sought; and

5. Person initiating petition. The name, address, position and statement of interest of the person initiating the petition or any person assisting with a self-initiated petition.

§7007. Submitting petition to determine informed consent; notice of hearing

1. Petition submission. The petition for a determination of ability to give informed consent shall be submitted to the District Court in the division of residence of the person seeking sterilization or for whom sterilization is sought.

2. Notice of hearing. Upon the receipt of a petition to determine informed consent, the District Court shall assign a time, not later than 30 days thereafter, and a place for hearing the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom if it would facilitate the presence of the person seeking sterilization or for whom sterilization is sought.

3. Service of notice. The court shall cause a copy of the petition and notice of hearing to be served on the person seeking sterilization or for whom sterilization is sought and his guardian or custodian, if any, at least 7 days prior to the hearing date. If a guardian or custodian of the person seeking sterilization or for whom sterilization is sought is not a resident of this State, notice may be served by registered mail. If the residence of a guardian or custodian is unknown, an affidavit so stating shall be filed in lieu of service.

§7008. Hearing upon a petition to determine informed consent for sterilization

1. Counsel. If the person seeking sterilization

or for whom sterilization is sought requests counsel and cannot afford counsel, the court shall appoint counsel to represent that person at public expense. If the person is not represented by counsel and appears to the court unable to request counsel, the court shall order that counsel be retained or shall appoint counsel to represent the person at public expense if the person cannot afford counsel. A reasonable fee shall be set for appointed counsel by the District Court. Counsel, or the person seeking sterilization or for whom sterilization is sought, may present evidence, call witnesses and cross-examine witnesses who testify or present evidence at any hearing on the petition.

2. Appointment of disinterested experts. For the purpose of determining a person's ability to give informed consent, the court shall appoint not less than 2 disinterested experts experienced in the field of developmental disabilities or mental health, including at least one psychologist or psychiatrist, to examine the person, to report on that examination and to testify at the hearing as to his competency. Other evidence regarding the person's capabilities may be introduced at the hearing by any party.

3. Preference of person seeking sterilization or for whom sterilization is sought. If the person seeking sterilization or for whom sterilization is sought has any preference as to a disinterested expert by whom he would prefer to be examined, the court shall make a reasonable effort to accommodate that preference.

4. Person's presence at hearing. The person seeking sterilization or for whom sterilization is sought shall be present at any hearing regarding his ability to give informed consent for sterilization, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The court shall inquire at the time of the hearing as to the types and effects of any medications being administered to or taken by the person.

5. Determination that person is able to give informed consent for sterilization. If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization and that the person does consent to sterilization, it shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization, the physician and hospital involved shall also obtain the written consent of the person for sterilization.

If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization, but determines that the person does not consent to sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless that person later makes a different choice and only after a rehearing under this section.

6. Determination that person is not able to give informed consent for sterilization. If the court determines that the person is not able to give informed consent for sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless a determination is made under section 7013 that sterilization is in the best interest of the person.

§7009. Limitations

1. Consent not to be a condition for exercise of any right, privilege or freedom. Consent to sterilization may not be made a condition for release from or confinement in any institution nor shall it be made a condition for the exercise of any right, privilege or freedom, nor shall it be made a condition for receiving any form of public assistance, nor as a prerequisite for any other service. The consent shall be free from express or implied inducements or constraints.

2. Guarantees and limitations to be given to person to be sterilized. The guarantees and limitations provided in this section shall be communicated to the person seeking sterilization or for whom sterilization is sought by the court prior to issuing an order under section 7008. These guarantees and limitations shall also appear prominently at the top of the consent document used by a physician or hospital to obtain written consent for sterilization.

§7010. Determination of the best interests of a person unable to give informed consent for sterilization

The parent, spouse, guardian or custodian of any person found unable to give informed consent for sterilization may petition the District Court, in the county of residence of the person being considered for sterilization, to determine if sterilization is in the best interest of that person. The court shall have sole jurisdiction and authority to order that a sterilization procedure may be performed when a person is incapable of giving informed consent, as determined by the hearing required in section 7008.

§7011. Contents of petition for consideration of sterilization of a person based upon a determination of best interest

The petition for determination if sterilization is in the best interest of a person shall be executed under oath and shall set forth:

1. Person being considered for sterilization. The name, age and residence of the person being considered for sterilization;

2. Parents, spouse, custodian or guardian of person being considered for sterilization. The names and residences of any parents, spouse, custodian or guardian of the person being considered for sterilization;

3. Mental condition. The mental condition of and effects of any medications being administered to or taken by the person being considered for sterilization;

4. Reasons sterilization is sought. A statement, in terms of the best interest of the person, of the reasons for which sterilization is sought;

5. Petitioner. The name and relationship of the petitioner to the person being considered for sterilization;

6. Alternatives. Less drastic alternative contraceptive methods which have been tried or the reason those methods are believed to be unworkable or inappropriate for the person being considered for sterilization;

7. Physiological capability to procreate. A medical statement assessing the physiological capability of the person to procreate;

8. Risk to life or health. A medical statement regarding the potential risk to the life or health of the person which could be caused by procreation or child rearing;

9. Person's attitudes or desires regarding sterilization. Any attitudes or desires expressed by the person regarding sterilization; and

10. Informed consent order. The date and contents of the order issued under section 7008 concerning the ability to give informed consent for sterilization of the person being considered for sterilization.

§7012. Notice of hearing upon the petition to determine the best interest of a person being considered for sterilization

Upon the receipt of a petition, the court shall assign a time, not later than 30 days thereafter, and a place for a hearing on the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom, if it would facilitate the presence of the person being considered for sterilization. The court shall cause the petition and notice of the hearing to be served on the person being considered for sterilization and his guardian or custodian at least 20 days prior to the hearing date. The court shall direct that personal service be made upon the person being considered for sterilization and his guardian or custodian. If the guardian or custodian of the person being considered for sterilization is not a resident of this State, notice may be served by registered mail. If the residence of the guardian or custodian of the person being considered for sterilization is unknown, an affidavit so stating shall be filed in lieu of service.

§7013. Hearing upon a petition to determine the best interest of a person being considered for sterilization

1. Ability to give or withhold informed consent. In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 7008, that the person cannot give or withhold informed consent shall be required.

2. Presence of person; counsel; findings. The person being considered for sterilization shall be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The person being considered for sterilization shall be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person cannot afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee shall be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in assuring that information and evidence in opposition to sterilization without informed consent is fully represented. All stages of the hearing shall be recorded by a tape recorder or a court reporter,

as the court may direct. In all cases, the court shall issue written findings to support its decision.

3. Disinterested experts; evidence. The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one physician and one licensed psychologist or psychiatrist, to examine the person and to testify at the hearing. The court shall hear and consider evidence on the following:

A. All issues raised by the petition executed under section 7011; and

B. The beneficial or detrimental psychological and physiological effects of sterilization on the person being considered for sterilization.

Any other relevant evidence concerning the mental and physical condition of the person being considered for sterilization may be introduced at the hearing.

4. Burden of proof. The burden of proof by clear and convincing evidence that sterilization is in the best interest of the person being considered for sterilization shall rest with the party seeking to establish that sterilization is the appropriate course of action.

5. Finding that sterilization is in person's best interest. The court shall find that sterilization is in the best interest of the person being considered for sterilization if it is shown by clear and convincing evidence that:

A. Methods of contraception less drastic than sterilization have proven to be unworkable or inappropriate for the person; and

B. Sterilization is necessary to preserve the physical or mental health of the person.

6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the

person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

§7014. Confidentiality; court costs

1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter shall be confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through his attorney, requests that the proceedings be open to the public. Records of the court proceedings shall not be open to inspection by the public, except under section 7017, without the consent, personally or through his attorney, of the person seeking sterilization or for whom sterilization is being considered.

2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

§7015. Penalties

1. Violations. Anyone knowingly or willfully violating section 7009, subsection 1, is guilty of a Class D crime.

2. Falsification of petition; aiding or procuring unlawful sterilization. Anyone knowingly or willfully falsifying a petition under this chapter or otherwise aiding or procuring the performance of a sterilization without a court order in a situation covered by this chapter is guilty of a Class D crime.

§7016. Liability

1. Participation in sterilization. Nothing in this chapter requires any hospital or any person to participate in performing any sterilization procedure, nor may any hospital or any person be civilly or criminally liable for refusing to participate in performing any sterilization procedure.

2. Immunity. A physician, psychiatrist or psy-

chologist acting nonnegligently and in good faith in his professional capacity under this chapter is immune from any civil liability that might otherwise result from his actions. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

§7017. Sterilization procedures review committee

A committee shall be established whose purpose shall be to review annually the authorization of sterilizations under this chapter for the purpose of assessing the need for any changes in the procedures or standards set forth in this chapter. The committee shall consist of not less than 6 members, including representatives of the Maine court system, the medical community, a designee from the Department of Mental Health and Mental Retardation, a designee from the Department of Human Services, a member of the joint standing committee of the Legislature having jurisdiction over health and institutional services, and a member of the joint standing committee of the Legislature having jurisdiction over the judiciary. The representatives of the 2 joint standing legislative committees shall be appointed by the chairmen of those legislative committees. Other members of the review committee shall be appointed annually by the Governor who shall also designate the chairman of the committee.

CHAPTER 9

INTERSTATE COMPACT ON MENTAL HEALTH

§9001. Purpose--Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. The party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient, but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in term of such welfare.

§9002. Definitions--Article II

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

1. Aftercare. "Aftercare" means care, treatment and services provided a patient, as defined, on convalescent status or conditional release.

2. Institution. "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

3. Mental deficiency. "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness.

4. Mental illness. "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare or the welfare of others or of the community.

5. Patient. "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to this compact.

6. Receiving state. "Receiving state" means a party state to which a patient is transported pursuant to the compact or to which it is contemplated that a patient may be so sent.

7. Sending state. "Sending state" means a party state from which a patient is transported pursuant to the compact or from which it is contemplated that a patient may be so sent.

8. State. "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

§9003. Care and treatment--Article III

1. Eligibility. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

2. Transfer. Subsection 1 to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

3. Duties of receiving and sending states. No state shall be obliged to receive any patient pursuant to subsection 2 unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

4. Priorities. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

5. Review and further transfer. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

§9004. Aftercare--Article IV

1. Investigation. Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the

appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

2. Aftercare in receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

3. Standards. In supervising, treating or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

§9005. Escape--Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

§9006. Transportation of patient--Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

§9007. Costs; reciprocal agreements--Article VII

1. Patient at only one institution. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of

any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

2. Costs. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

3. Internal relationships not affected. No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

4. Asserting rights for costs. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible, pursuant to any provision of this compact.

5. Reciprocal agreements not invalidated. Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

§9008. Guardians--Article VIII

1. Supplemental or substitute guardian. Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state

shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

2. Guardian defined. The term "guardian" as used in subsection 1 shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or have responsibility for the person or property of a patient.

§9009. Incarceration in penal or correctional institution--Article IX

1. Application. No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

2. Policy not to jail. To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

§9010. Compact administrators--Article X

1. Duties. Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

2. Rules and regulations. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

§9011. Supplementary agreements--Article XI

The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

§9012. Effective date of compact--Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

§9013. Withdrawal from compact--Article XIII

1. Procedure; effective date; effect. A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. The withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the compact.

2. Costs and supplementary agreements. Withdrawal from any agreement permitted by Article VII, subsection 2, as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

§9014. Constitutionality--Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in

full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Effective date. This Act shall take effect on January 15, 1984.

Effective January 15, 1984.

CHAPTER 460

H.P. 1199 - L.D. 1593

AN ACT to Recodify the State Military Laws.

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

Sec. 1. 22 MRSA §3185, 4th ¶, as enacted by PL 1977, c. 714, §5, is amended to read:

In addition to other payments authorized by this section, the department shall, upon receipt of an accounting as authorized under Title 37-A, section 207-A 37-B, section 183, transfer to the Department of Defense and Veterans' Services a sum not to exceed \$10,000 from money appropriated pursuant to this section as reimbursement for costs of rendering emergency medical services, including, but not limited to, the costs of liability insurance.

Sec. 2. 37-A MRSA, as amended, is repealed.

Sec. 3. 37-B MRSA is enacted to read:

TITLE 37-B

DEPARTMENT OF DEFENSE AND VETERANS' SERVICES

CHAPTER 1

GENERAL PROVISIONS - ORGANIZATION

§1. Purpose

The Department of Defense and Veterans' Services, as previously established and referred to in this Title as the "department," shall coordinate and improve the discharge of the State Government's responsibility for military affairs, veterans' services and civil emergency preparedness matters.