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
September 6, 1983 to September 7, 1983
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

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE

FIRST REGULAR SESSION

CONTINUED

and

FIRST SPECIAL SESSION

of the

ONE HUNDRED AND ELEVENTH LEGISLATURE

1983

	1983-84	1984-85
All Other	5,000	
Capital Expenditures	500	
Bureau of Taxation		
All Other	$180,000	
Compensation to municipalities		
Total		$205,500

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 30, 1983.

CHAPTER 557

H.P. 1321 - L.D. 1756

AN ACT Relating to Involuntary Admission.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, under current law, the procedure for involuntary admission of a mentally retarded person requires that he present a likelihood of serious harm due to mental retardation; and

Whereas, psychological examiners have not been able to make a causal link between a person's mental retardation and his likelihood of serious harm, even though they find that the person is mentally retarded and presents a likelihood of serious harm; and

Whereas, the criminal justice system is often inadequate to handle the dangerous mentally retarded person because he is often incompetent to stand trial; and

Whereas, in several recent cases, mentally retarded persons presenting a likelihood of serious harm have been released into Maine's communities because neither the mental retardation laws nor the criminal laws provide alternatives to protect the safety of Maine's citizens; and

Whereas, in the judgment of the Legislature,

these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

34 MRSA §2665, as enacted by PL 1981, c. 645, §7, is amended to read:

§2665. Involuntary admission

Any client recommended for regular admission to a facility pursuant to section 2655 may be admitted as an involuntary ~~patient~~ client. ~~The procedure for involuntary admission to a mental retardation facility for care, training and treatment shall follow those procedures set forth in section 2334 for the involuntary commitment of mentally ill individuals, except that, where a finding of mental illness is required, a finding of mental retardation, as defined by section 2602, shall be substituted.~~ The judicial procedure for involuntary admission is as follows.

1. Application to District Court. If the head of the facility determines that the admission of the client as an informally admitted resident is not suitable, or if the client declines admission as an informally admitted resident, the head of the facility may apply to the District Court having territorial jurisdiction where the facility is located for the issuance of an order for involuntary admission. The head of the facility shall file any such application in the District Court within 5 days from admission of the client under this section, excluding in the computation of that time the date of admission. An application to the District Court filed pursuant to this section shall be accompanied by a copy of:

A. A written application, which shall be made subject to the prohibitions and penalties of section 2259, may be made by any health officer, police officer or any other person who states:

(1) His belief that a person is a mentally retarded individual and poses a likelihood of serious harm, defined as follows:

(a) A substantial risk of physical harm to the person himself as manifested by evidence of recent threats of, or attempts of, suicide or serious bodily harm to himself, and after con-

sideration 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 violent behavior or a substantial and reasonable risk of serious physical harm or serious mental injury to others 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 mentally retarded person as manifested by recent evidence of his actions or behavior which demonstrates his inability to avoid or protect himself from that impairment or injury and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable; and

(2) 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 that:

(1) He has examined the person on the date of the certificate; and

(2) He is of the opinion that the person is a mentally retarded individual and poses a likelihood of serious harm as defined in this section. The date of the examination shall not be more than 3 days prior to the date of admission to the facility; and

C. The written application shall be accompanied by a certificate of the facility's examining physician or psychologist stating that:

(1) He has examined the person; and

(2) It is his opinion that the person is a mentally retarded individual and poses a likelihood of serious harm as defined in this section.

The examiner may not be the certifying examiner under paragraph B. If the examination is not held within 24 hours after the time of admission, or if the facility's physician or clinical psychologist fails or refuses after the examination to certify that in his opinion the person is a mentally retarded individual and poses a likelihood of serious harm as defined in paragraph A, subparagraph 1, the person shall be immediately discharged.

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

A. To be given personally or by mail to the client within a reasonable time prior to hearing, but not less than 3 days prior to hearing; and

B. To be mailed to the client's guardian, if known, and to his spouse, parent or one of his adult children or, if none of these persons exist or if their whereabouts are unknown, to one of his next of kin or an advocate. A docket entry is evidence that the notice has been given.

3. Examination. The District Court shall order examinations 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 client to be examined by 2 examiners, each of whom shall be either a licensed physician or a licensed clinical psychologist and one of whom, if reasonably available, shall be chosen by the client or by his counsel. Neither examiner appointed by the court shall be the certifying examiner under subsection 1, paragraph B or C.

B. The examination shall be held at the facility or any other suitable place not likely to have a harmful effect on the well-being of the client.

C. If the report of the examiner is to the effect that the client is not mentally retarded or does not pose a likelihood of serious harm as defined in this section, the client shall be ordered discharged forthwith. Otherwise, the hearing shall be held on the date or the continued date which the court has set for hearing.

4. Hearing. The District Court shall hold a hearing as follows.

A. The District Court shall hold a hearing on the application not later than 10 days from the date of the application. On a motion of the client or his counsel, the hearing may be continued for cause for a period not to exceed 10 additional days. If the hearing is not held within the time specified or a continuance thereof, the application shall be dismissed and the client shall be ordered discharged forthwith. 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 is consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the well-being of the client.

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. The client, the applicant and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear, testify and cross-examine witnesses at the hearing. The court may receive the testimony of any other person and may subpoena any witnesses.

D. An opportunity to be represented by counsel shall be afforded to every client. If neither client nor others provide counsel, the court shall appoint counsel for the client.

E. In addition to proving that the client is a mentally retarded person, the applicant shall show:

(1) By evidence of the client's action and behavior, that the client poses a likelihood of serious harm as defined in subsection 1, paragraph A, subparagraph (1); and

(2) That, after a full consideration of less restrictive treatment settings and modalities, involuntary admission to the facility is the best means available for the treatment or security of the client.

F. The applicant in each case shall submit to the court at the time of hearing, the testimony indicating the individual treatment plan to be followed by the facility staff in the event of commitment under this section. Any expense for this purpose shall be borne by the applicant.

G. Stenographic or electronic record of the proceedings and all judicial involuntary admission hearings shall be required. These records, together with all notes, exhibits and other evidence shall be confidential and 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. No report of the proceedings may be released to the public or press, except by permission of the client or his counsel and with the approval of the presiding judge. The court may order a public hearing on the request of the client or his counsel.

5. Findings by the court. After completion of the hearing, the District Court shall make findings as follows.

A. If, upon completion of the hearing and consideration of the records, the District Court:

(1) Finds clear and convincing evidence that the client is mentally retarded and that his recent actions and behavior demonstrate that he poses a likelihood of serious harm as defined in subsection 1, paragraph A, subparagraph (1);

(2) Finds that admission to the facility is the best means available for treatment of the client; and

(3) Is satisfied with the individual treatment plan offered by the facility.

The District Court shall state in the record the findings made pursuant to subparagraphs (1), (2) and (3). If the District Court makes the findings described in subparagraphs (1) and (2), but is not satisfied with the individual treatment plan offered, it may continue the case for not longer than 10 days pending reconsideration and resubmission of an individual treatment plan by the facility.

6. Commitment. Upon making the findings described in subsection 5, the court may order commitment of the client as provided in this subsection.

A. The court may order a commitment to a mental retardation facility for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent rehearings.

B. 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.

C. 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 the client shall be ordered discharged forthwith.

7. Continued involuntary admission. If the head of the facility determines that continued involuntary admission is necessary for a client 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 where the facility is located for a hearing to be held pursuant to this section.

8. Transportation to the facility. Unless otherwise directed by the court, it shall be the responsibility of the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place to provide transportation to any facility to which the court has committed the client. With the exception of the expenses incurred by the applicant pursuant to subsection 4, paragraph F, the District Court shall be responsible for any expenses incurred under this section, including fees of appointing counsel, witness and notice fees and expenses of transportation for the client.

9. Appeals. Persons ordered by the District Court to be committed to a facility may appeal from that order to the Superior Court. The appeal shall be on questions of law only. Any findings of fact of the District Court shall not be set aside unless clearly erroneous. The order of the District Court shall remain in effect pending the appeal. The District Court Civil Rules and Maine Rules of Civil Procedure shall apply to the conduct of these appeals, except as otherwise specified in this subsection.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 30, 1983.