

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

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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

CHAPTER 580

H.P. 1336 - L.D. 1776

AN ACT to Amend the Statutes Regarding Mental Health and Mental Retardation.

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

Sec. 1. 5 MRSA §1903, as amended by PL 1975, c. 766, §4, is further amended to read:

§1903. Procedure

The employment of students enrolled in cooperative education programs in approved colleges, universities or institutes in the State of Maine is hereby authorized. Appropriate department, agency or institution heads may employ such students through the use of funds resulting from unfilled positions in their personal services budgets.

~~Only cooperative education programs that require full-time employment for a period of not less than 10 weeks shall be included.~~

Each student must be approved by the institution he attends and the agency, department or institution head.

Appropriate department, agency or institution heads may request the employment of cooperative education students on a form provided by the Department of Personnel. Approval by the State Personnel Commissioner and the State Budget Officer will constitute approval for a student to be employed. Only cooperative education programs that require full-time employment for a period of not less than 10 weeks shall be included. Cooperative education students will be classified as project employees and will be governed by all policies and entitled to all rights and privileges afforded such employees, except that they shall be paid at the prevailing minimum wage.

The restrictions regarding full-time employment and payment at minimum wage shall not apply to the cooperative education support program between the Department of Mental Health and Mental Retardation and the University of Maine for the training of psychologists.

Sec. 2. 15 MRSA §101, first ¶, as amended by PL

1981, c. 493, §2, is further amended to read:

The District Court or the Superior Court having jurisdiction in any criminal case for cause shown may order the defendant examined to determine his mental condition with reference to the issues of criminal responsibility and competence to stand trial. The examination may be conducted at the Augusta Mental Health Institute, Bangor Mental Health Institute, Pineland Center or at a mental health clinic of, or recommended by, the Department of Mental Health and Mental Retardation, and when conducted at any such facility shall be the responsibility of a psychiatrist or of a licensed clinical psychologist, who may join with him in such examination other psychiatrists or licensed clinical psychologists, as in his opinion are required. The examination may be conducted by a psychiatrist or licensed clinical psychologist independent from any such facility, employed for such purpose by the court. The court in selecting the examination site shall consider proximity to the court, availability of an examiner or examiners, and the necessity for security precautions. No person shall may be presented for examination under this paragraph without arrangements therefor, with the head of the institution or clinic or with the individual examiner being first made by the court, clerk of courts or sheriff. The opinion of the examiner or examiners relative to the mental condition of the respondent shall be reported forthwith to the court following examination.

Sec. 3. 15 MRSA §101, 2nd ¶, as amended by PL 1981, c. 493, §2, is amended to read:

If it is made to appear to the court by the report of any such examiner that the defendant suffers or suffered from a mental disease or mental defect affecting his criminal responsibility or his competence to stand trial or that further observation is indicated, the court may shall order the defendant to be further examined by a psychiatrist and a licensed clinical psychologist designated by the Commissioner of Mental Health and Mental Retardation with such assistance as the designated examiners may deem necessary who shall determine the mental condition of the defendant. The court may order that observations, interviews and investigative reports regarding the behavior of the defendant made by law enforcement officials be made available to the designated psychiatrist and licensed clinical psychologist for the limited purpose of this examination. If the examination by such designees can be completed without admission, a report of the results of such completed examination shall be forwarded to the court forthwith. If the designated examiners of the Commis-

sioner of Mental Health and Mental Retardation determine that admission to an appropriate institution for the mentally ill or mentally retarded is necessary for complete examination, the examiners shall so notify the court which may order the defendant committed to the custody of the Commissioner of Mental Health and Mental Retardation to be placed in an appropriate institution for the mentally ill or the mentally retarded, to be there detained and observed by the superintendent, or his delegate, and professional staff for a period of time not to exceed 60 days, for the purpose of ascertaining the mental condition of the defendant. When further detention for observation is deemed no longer necessary, the commissioner shall report such fact to the court. The court shall then order the person returned to the appropriate court for disposition; ~~however~~, if the court ordering commitment for observation has provided for remand to the county jail following completion of the observation in the commitment order, the sheriff or any one or more of his deputies shall execute the remand order upon advice from the commissioner of completion of the observation. A report of the results of the observation shall be forwarded promptly to the court by the commissioner.

Sec. 4. 34-B MRSA §1207, sub-§1, ¶B, as enacted by PL 1983, c. 459, §7, is amended to read:

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, or the purposes of Title 18-A, section 5-601, subsection (b), where the Department of Human Services is nominated to act as public guardian;

Sec. 5. 34-B MRSA §1409, sub-§1, ¶C is enacted to read:

C. "State institution," for purposes of this section and this section only, includes the Freeport Towne Square.

Sec. 6. 34-B MRSA §3004 is enacted to read:

§3004. Office of Community Support Systems

1. Definition. As used in this section, unless the context otherwise indicates, the term "community support system" means the entire complex of mental health, rehabilitative, residential and other support services in the community to ensure community inte-

gration and the maintenance of a decent quality of life for persons with chronic mental illness.

2. Establishment. There is created within the Bureau of Mental Health an Office of Community Support Systems to:

A. Promote and support the development and implementation of comprehensive community support systems to ensure community integration and the maintenance of a decent quality of life for persons with chronic mental illness in each of the mental health service areas in the State; and

B. Strengthen the capacity of families, natural networks, self-help groups and other community resources in order to improve the support for persons with chronic mental illness.

3. Duties. The Office of Community Support Systems shall:

A. Provide technical assistance for program development, promote effective coordination with health and other human services and develop new resources in order to improve the availability and accessibility of comprehensive community support services to persons with chronic mental illness;

B. Assess service needs, monitor service delivery related to these needs and evaluate the outcome of programs designed to meet these needs in order to enhance the quality and effectiveness of community support services; and

C. Prepare a report which describes the system of community support services in each of the mental health service regions and statewide.

(1) The report shall include both existing service resources and deficiencies in the system of services.

(2) The report shall include an assessment of the roles and responsibilities of mental health agencies, human services agencies, health agencies and involved state departments and shall suggest ways in which these agencies and departments can better cooperate to improve the service system for people with chronic mental illness.

(3) The report shall be prepared biennially and shall be submitted to the joint standing committee of the Legislature having juris-

dition over health and institutional services by January 15th of every even-numbered year.

(4) The committee shall review the report and make recommendations with respect to administrative and funding improvements in the system of community support services to persons with chronic mental illness.

Sec. 7. 34-B MRSA §3601, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

§3601. Definitions

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

1. Agency. "Agency" means a person, firm, association or corporation, but does not include the individual or corporate professional practice of one or more psychologists or psychiatrists.

2. Mental health services. "Mental health services" means out-patient counseling, other psychological, psychiatric, diagnostic or therapeutic services and other allied services.

Sec. 8. 34-B MRSA §3604, sub-§3, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

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, which applies for the funds, to be used in the conduct of its mental health services.

A. The programs administered by the person or entity shall provide for adequate standards of professional services in accordance with state statutes.

B. The commissioner may require the person or entity applying for funds to produce evidence that appropriate local, governmental and other funding sources have been sought to assist in the financing of its mental health services.

C. After negotiation with the person or entity applying for funds, the commissioner may execute a contract or agreement for the provision of mental health services which reflects the commit-

ment by the person or entity of local, governmental and other funds to assist in the financing of its mental health services.

D. Beyond the commissioner's assuring through program monitoring and auditing activities that an equitable distribution of the funds committed by contract or agreement to assist in the financing of mental health services are actually provided, it shall be the prerogative of the person or entity providing services to apportion other nonstate funds in an appropriate manner in accordance with its priorities, service contracts and applicable provisions of law.

Sec. 9. 34-B MRSA §3606, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

§3606. Licenses

Licenses to operate, conduct or maintain a facility for the provision of mental health services are governed as follows.

1. Full license. Full licenses are governed as follows.

A. The commissioner shall issue a full license to an applicant agency or facility, which:

(1) Has complied with all applicable laws and rules; and

(2) Has complied with all conditions imposed by the commissioner at the time of issuance of a conditional license, refusal to issue or renew a full license or revocation of a full license.

B. A full license shall be issued for a specified period of time, appropriate to the type of agency or facility, but not to exceed 2 years.

C. When a full licensee fails to comply with applicable laws and rules, the commissioner may:

(1) File a complaint with the Administrative Court to have the license revoked, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375; or

(2) Modify the full license to a conditional license in accordance with subsection 2.

2. Conditional license. Conditional licenses are governed as follows.

A. The commissioner may issue a conditional license to an agency or facility reapplying for a full license, if:

(1) The applicant fails to comply with applicable laws and rules; and

(2) In the judgment of the commissioner, the best interests of the public would be served by issuance of a conditional license.

B. The commissioner may modify an existing full license to a conditional license, after affording the full licensee an opportunity for hearing in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, if:

(1) The applicant fails to comply with applicable laws and rules; and

(2) In the judgment of the commissioner, the best interests of the public would be so served.

C. A conditional license shall be issued for a specified period of time, not to exceed one year, or the remaining period of the previous full license, whichever the commissioner determines appropriate based on the nature of the violation of laws or rules.

D. A conditional license shall specify the conditions imposed by the commissioner and shall specify when those conditions shall be complied with during the term of the conditional license.

E. During the period of the conditional license, the licensee shall comply with all conditions imposed by the commissioner.

F. If the conditional licensee fails to comply with conditions imposed by the commissioner, the commissioner may initiate proceedings to revoke, suspend or refuse to renew the conditional license in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

3. Provisional license. Provisional licenses are governed as follows.

A. The commissioner may issue a provisional license to an agency or facility, which:

(1) Has not been previously licensed for the type of service for which application is made;

(2) Is temporarily unable to comply with all applicable laws and rules; and

(3) Is in compliance with specific laws and rules determined by the commissioner as essential for the protection of the residents or clients of the agency or facility.

B. In order to obtain a provisional license, an applicant shall demonstrate the ability to comply with all applicable laws and rules by the end of the term of the provisional license.

C. A provisional license shall be issued for a specified period of time, which is at least 3 months but is no longer than 12 months, as determined appropriate by the commissioner.

4. Fees. The fee for all types of licenses is \$25, except for those facilities defined in Title 22, section 8101, subsection 4 and licensed in accordance with Title 22, section 8104.

5. Monitoring for compliance. Regardless of the term of the license, the commissioner shall monitor the licensee, at least once a year, for continued compliance with applicable laws and rules.

6. Appeals. Any person aggrieved by a final action of the commissioner under this section may obtain judicial review in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

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

A. An agency is guilty of unlicensed operation of a mental health service facility, if it operates, conducts or maintains such a facility, not otherwise licensed as a hospital or medical care 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..

Sec. 10. 34-B MRSA §3832, as enacted by PL 1983, c. 459, §7, is amended to read:

§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 without undue delay following examination by a licensed physician or a licensed clinical psychologist, 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.

Sec. 11. 34-B MRSA §5461, sub-§7-A is enacted to read:

7-A. 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 of, 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 violent behavior or recent evidence that others are placed in reasonable fear of serious physical or emotional 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 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.

Sec. 12. 34-B MRSA §5461, sub-§10, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

10. Professional. "Professional" means:

A. A person possessing appropriate licensure, certification or registration to practice his discipline in the community; or

B. Where licensure, certification or registration is not required, a person possessing a master's degree in the appropriate discipline or a person possessing a bachelor's degree in the appropriate discipline and 3 years' experience in treating mentally retarded persons or 3 years' experience in a related human services field.

Sec. 13. 34-B MRSA §5461, sub-§10-A is enacted to read:

10-A. Service plan. "Service plan" means an annual written plan for the delivery and coordination of specific services to a client when the following conditions exist:

A. The client or guardian has waived the prescriptive program plan process;

B. The prescriptive program plan process unnecessarily restricts the client's own ability to make decisions;

C. Another type of formal written program plan exists; or

D. The client has either a single service need or routine service coordination needs.

Sec. 14. 34-B MRSA §5461, sub-§12, as enacted by PL 1983, c. 459, §7, is repealed.

Sec. 15. 34-B MRSA §5462, sub-§1, ¶B, as enacted by PL 1983, c. 459, §7, is amended to read:

B. The development of a prescriptive program of services for the person; plan for the delivery and coordination of services to the person through a:

(1) Prescriptive program plan;

(2) Service plan; or

(3) Both.

Sec. 16. 34-B MRSA §5466, as enacted by PL 1983,

c. 459, §7, is amended to read:

§5466. Advocate

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

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

Sec. 17. 34-B MRSA §5467, as enacted by PL 1983, c. 459, §7, is amended to read:

§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 or the Infant Development Center.

2. Preliminary procedures. Within 5 10 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 access to an advocate throughout the process of mental retardation services under sections 5467 to 5474, ~~unless the client refuses that representation.~~

Sec. 18. 34-B MRSA §5468, sub-§2, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

2. Comprehensive evaluation. The comprehensive evaluation shall be conducted by a person who is a licensed physician, licensed clinical psychologist or licensed psychological examiner and who has had training and experience in the diagnosis and treatment of mentally retarded persons.

Sec. 19. 34-B MRSA §5468, sub-§3 is enacted to read:

3. Evaluation of child. If the client is a

child, aged 0 to 5 years, the conclusion of the evaluation, unless otherwise indicated, shall state that the child is developmentally delayed or at risk of delay.

Nothing in this chapter may be construed as preventing licensed physicians, licensed clinical psychologists or licensed psychological examiners from diagnosing children below the age of 6 years as being mentally retarded, when in their professional judgment that is the appropriate diagnosis. Individuals below the age of 6 years with a diagnosis of developmental delay shall be eligible for services from the Bureau of Mental Retardation.

Sec. 20. 34-B MRSA §5469, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

§5469. Report

Within 30 days of the day of the application made under section 5467, the department shall obtain a report of the comprehensive evaluation, which shall state specifically in the report whether or not the client is mentally retarded.

1. Client not mentally retarded. If the comprehensive evaluation 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 comprehensive evaluation concludes that the client is mentally retarded and is in need of services:

A. The department, through the regional office, shall develop a prescriptive program plan or service plan, or both; and

B. If a prescriptive program plan is to be developed, the department, through the interdisciplinary team, shall develop and begin to implement a prescriptive program plan for the client within 60 days of the application made under section 5467.

3. Preschool child. If the report of the comprehensive evaluation concludes that a child, aged 0 to 5 years, is developmentally delayed and is in need of infant development services or other early intervention services:

A. The department, through the regional office

or the Infant Development Center, shall develop a prescriptive program plan or service plan, or both; and

B. If a prescriptive program plan is to be developed, the department, through the interdisciplinary team, shall develop and begin to implement a prescriptive program plan for the client within 60 days of the application made under section 5467.

Sec. 21. 34-B MRSA §5470, sub-§2, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

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

A. Define the projection of client growth and needs without regard to service availability;

B. Define habilitation goals and objectives for the client with regard to service availability;

C. Define necessary services to meet the client's habilitation goals and objectives;

D. Recommend the optimal course of action; and

E. Include plans for the active and continued exploration of suitable program alternatives based on client need.

Sec. 22. 34-B MRSA §5475, sub-§2, ¶C, as enacted by PL 1983, c. 459, §7, is amended to read:

C. Unless waived by a parent or guardian client and his counsel, 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;

Sec. 23. 34-B MRSA §5476, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

§5476. Judicial commitment

Any client recommended for admission to a mental retardation facility pursuant to section 5470 may be admitted by judicial commitment according to the following procedures.

1. Application to the District Court. If the chief administrative officer of the facility determines that the admission of the client pursuant to section 5473, subsection 2, is not suitable, or if the client declines admission pursuant to section 5473, subsection 2, the chief administrative officer may apply to the District Court having territorial jurisdiction over the facility for the issuance of an order of judicial commitment.

2. Time of application. The chief administrative officer shall file the application within 5 days from the day of admission of the client under this section, excluding Saturdays, Sundays and legal holidays.

3. Accompanying documents. The application shall be accompanied by:

A. A written application, made subject to the prohibitions and penalties of section 3805 and made by any health officer, law enforcement officer or other person, stating:

(1) His belief that the client is mentally retarded and poses a likelihood of serious harm; and

(2) The grounds for this belief;

B. A dated certificate, signed by a private licensed physician or a private licensed clinical psychologist, stating that:

(1) He has examined the client 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 client is mentally retarded and poses a likelihood of serious harm; and

C. A certificate of the facility's examining physician or psychologist, stating that he has

examined the client and it is his opinion that the client is mentally retarded and poses a likelihood of serious harm:

(1) The examiner may not be the certifying examiner under paragraph B; and

(2) If the examination is not held within 24 hours after the time of admission or if the facility's examining physician or psychologist fails or refuses to make the required certification, the client shall be immediately discharged.

4. 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 this section, the court shall cause written notice of the application:

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

(2) To be mailed to the client'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 an advocate.

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

5. 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 this section, the court shall forthwith cause the client to be examined by 2 examiners.

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

(2) One of the examiners shall be a physician or psychologist chosen by the client 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 subsec-

tion 3, paragraph B or C.

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

C. If the unanimous reports of the examiners are to the effect that the client is not mentally retarded or does not pose a likelihood of serious harm, the application shall be dismissed and the client shall be ordered discharged forthwith.

D. If the report of either or both of the examiners is to the effect that the client is mentally retarded and 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.

6. 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 client discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the District Court Rules of Civil Procedure 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 a harmful effect on the well-being 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 client, 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.

(2) The client and the applicant shall be afforded the opportunity to cross-examine witnesses.

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

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

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

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

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

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 facility's staff, if the client is committed under this section, and shall bear any expense for this purpose.

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

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

(2) The record, 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. No report of the proceedings may be released to the public or press, except by permission of the client, 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 client or his counsel.

7. 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 client is mentally retarded and that his recent actions and behavior demonstrate that he poses a likelihood of serious harm;

(2) That judicial commitment to the facility is the best available means for treatment of the client; and

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

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 offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the facility.

8. Commitment. Upon making the findings described in subsection 7, the court may order commitment of the client to the 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 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 shall order the person discharged forthwith.

9. Continued judicial commitment. If the chief administrative officer of the facility determines that continued judicial commitment 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 facility for a hearing to be held under this section.

10. 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 facility to which the court has committed the person.

11. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 6, 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.

12. Appeals. A person ordered by the District Court to be committed to the facility may appeal from that order to the Superior Court.

A. The appeal shall be 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 Rules of Civil Procedure and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

13. Rules. If necessary, the commissioner shall promulgate rules for the effective implementation of this section.

Sec. 24. 34-B MRSA §5477, sub-§1, as enacted by PL 1983, c. 459, §7, is amended to read:

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.

Sec. 25. 34-B MRSA §5477, sub-§4, ¶F, as enacted by PL 1983, c. 459, §7, is amended to read:

F. Under this subsection, a facility may admit the client for no longer than 5 days, but if a petition for judicial certification or judicial commitment is filed, the facility may admit the client for an additional period not to exceed 25 days from the date of application.

Sec. 26. 34-B MRSA §5478, as enacted by PL 1983, c. 459, §7, is repealed and the following enacted in its place:

§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 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. Appointment of counsel. The District Court shall appoint counsel for any indigent client not already represented.

3. Waiver of judicial certification. A petition to waive judicial certification under section 5475 may be filed in District Court by the client's counsel, who may waive judicial certification under the following conditions:

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.

Sec. 27. 34-B MRSA §5480, sub-§3, as enacted by PL 1983, c. 459, §7, is amended to read:

3. Parent or guardian. A parent or guardian having legal custody over the person of the client, except a client judicially committed under section 5476, may, at any time, obtain discharge of his child or ward.

Sec. 28. Effective date. This Act takes effect January 16, 1984.

Effective January 16, 1984.
