



# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 1214

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H.P. 832

House of Representatives, April 2, 2015

### **An Act To Implement the Recommendations of the Mental Health Working Group**

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Reported by Representative HOBBS of Saco for the Joint Standing Committee on  
Judiciary pursuant to Resolve 2013, chapter 106, section 3.

Reference to the Committee on Judiciary suggested and ordered printed pursuant to Joint  
Rule 218.

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

ROBERT B. HUNT  
Clerk

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

2 **PART A**

3 **Sec. A-1. 34-B MRSA §3861, sub-§4** is enacted to read:

4 **4. Emergency involuntary treatment.** Nothing in this section precludes a medical  
5 practitioner from administering involuntary treatment in accordance with subsection 3 to  
6 a patient who is being held or detained by a hospital against the patient's will under the  
7 provisions of this subchapter if the following conditions are met:

8 A. For purposes of evaluation for emergency involuntary treatment, the medical  
9 practitioner has considered available history and information about the patient from  
10 other sources considered reliable by the examiner including, but not limited to, family  
11 members of the patient;

12 B. As a result of mental illness, the patient poses a serious and immediate risk of  
13 harm to the patient or others;

14 C. The patient lacks the decisional capacity either to provide informed consent for  
15 treatment or to make an informed refusal of treatment;

16 D. A person legally authorized to provide consent for treatment on behalf of the  
17 patient is not reasonably available under the circumstances;

18 E. The treatment being administered is a recognized form of treatment for treating  
19 the patient's mental illness and is the least restrictive form of treatment appropriate in  
20 the circumstances; and

21 F. A reasonable person concerned for the welfare of the patient would conclude that  
22 the benefits of the treatment outweigh the risks and potential side effects of the  
23 treatment and would consent to the treatment under the circumstances.

24 **Sec. A-2. 34-B MRSA §3863, sub-§2,** as amended by PL 2009, c. 651, §14, is  
25 further amended to read:

26 **2. Certifying examination.** The written application must be accompanied by a  
27 dated certificate, signed by a medical practitioner stating:

28 A. That the practitioner has examined the person on the date of the certificate;

29 B. That the medical practitioner is of the opinion that the person is mentally ill and,  
30 because of that illness, poses a likelihood of serious harm. The written certificate  
31 must include a description of the grounds for that opinion. The opinion may be based  
32 on personal observation or on history and information about the patient from other  
33 sources considered reliable by the examiner, including, but not limited to, family  
34 members of the patient; and

35 C. That adequate community resources are unavailable for care and treatment of the  
36 person's mental illness; ~~and.~~

1 ~~D. The grounds for the practitioner's opinion, which may be based on personal~~  
2 ~~observation or on history and information from other sources considered reliable by~~  
3 ~~the examiner.~~

4 **Sec. A-3. 34-B MRSA §3863, sub-§3, ¶¶D and E** are enacted to read:

5 D. A person who has been held against the person's will for no more than 24 hours  
6 pursuant to paragraph B may be held for a reasonable period of time, not to exceed 48  
7 hours, if:

8 (1) The hospital has had an evaluation of the person conducted by an  
9 appropriately designated individual and that evaluation concludes that the person  
10 poses a likelihood of serious harm due to mental illness;

11 (2) The hospital, after undertaking its best efforts, has been unable to locate an  
12 available inpatient bed at a psychiatric hospital or a psychiatric unit of a hospital  
13 or other appropriate alternative; and

14 (3) The hospital has notified the department of the name of the person, the  
15 location of the person, the name of the appropriately designated individual who  
16 conducted the evaluation pursuant to subparagraph (1) and the time the person  
17 first presented to the hospital.

18 E. In the event that a person remains in a hospital for the full 48 hours allowed under  
19 paragraph D, the person may be held for one additional 48-hour period if:

20 (1) The hospital satisfies again the requirements of paragraph D; and

21 (2) The department has notified the hospital that it will provide its best efforts to  
22 find an inpatient bed at a psychiatric hospital or other appropriate alternative.

23 **Sec. A-4. 34-B MRSA §3863, sub-§4, ¶B**, as amended by PL 2007, c. 319, §9,  
24 is further amended to read:

25 B. The Department of Health and Human Services is responsible for any reasonable  
26 transportation expenses under this section, including return from the psychiatric  
27 hospital if admission is declined. The department shall utilize any 3rd-party payment  
28 sources that are available.

29 **Sec. A-5. 34-B MRSA §3864, sub-§2**, as amended by PL 2007, c. 319, §10, is  
30 further amended to read:

31 **2. Detention pending judicial determination.** Notwithstanding any other  
32 provisions of this subchapter, a person, with respect to whom an application for the  
33 issuance of an order for hospitalization has been filed, may not be released or discharged  
34 during the pendency of the proceedings, unless:

35 A. The District Court orders release or discharge upon the request of the patient or  
36 the patient's guardian, parent, spouse or next of kin;

37 B. The District Court orders release or discharge upon the report of the applicant that  
38 the person may be discharged with safety;

1 C. A court orders release or discharge upon a writ of habeas corpus under section  
2 3804; ~~or~~

3 D. Upon request of the commissioner, the District Court orders the transfer of a  
4 patient in need of more specialized treatment to another psychiatric hospital. In the  
5 event of a transfer, the court shall transfer its file to the District Court having  
6 territorial jurisdiction over the receiving psychiatric hospital; ~~or~~

7 E. The person has voluntarily agreed to receive psychiatric services.

8 **Sec. A-6. 34-B MRSA §3868, sub-§1, ¶C** is enacted to read:

9 C. For any patient transferred pursuant to this subsection, the order of involuntary  
10 commitment and the order of involuntary treatment, if any, remain in effect and must  
11 be transferred to the receiving hospital.

12 **Sec. A-7. 34-B MRSA §3874** is enacted to read:

13 **§3874. Medical examinations conducted via telemedicine technologies**

14 Notwithstanding any provision to the contrary in this subchapter, any medical  
15 examination or consultation required or permitted to be conducted under this subchapter  
16 may be conducted utilizing telemedicine or other similar technologies that enable the  
17 medical examination or consultation to be conducted in accordance with applicable  
18 standards of care. As used in this section, "telemedicine" has the same meaning as in  
19 Title 24-A, section 4316, subsection 1.

20 **PART B**

21 **Sec. B-1. 34-B MRSA §1212, sub-§2**, as amended by PL 2009, c. 268, §11, is  
22 further amended to read:

23 **2. Duties.** The State Forensic Service ~~shall have~~ has the following duties:

24 A. To perform examinations of the mental condition of a defendant pursuant to Title  
25 15, section 101-D and to do the evaluations or examinations on behalf of any court of  
26 record, pursuant to agreement between the commissioner and the jurisdiction  
27 requesting that the evaluation be performed;

28 B. To perform examinations of the mental condition of persons committed to the  
29 custody of the commissioner under Title 15, section 103, for the purposes specified in  
30 Title 15, section 104-A;

31 C. To perform examinations of the mental condition of persons pursuant to Title 22,  
32 chapter 250; ~~and~~

33 D. To perform evaluations on behalf of any court of record. The State Forensic  
34 Service may contract with psychologists, psychiatrists and licensed clinical social  
35 workers to perform evaluations. The clinicians under contract are entitled to quasi-  
36 judicial immunity for all acts performed within the scope of their evaluation duties  
37 and in accordance with protocols for evaluations established by the State Forensic  
38 Service; and

1 E. To perform examinations pursuant to section 3864, subsection 4 as directed by the  
2 court. If the application under section 3864, subsection 1 includes a request for an  
3 order for involuntary treatment under section 3864, subsection 7-A, the examiner  
4 must be a medical practitioner who is qualified to prescribe medication relevant to the  
5 patient's care pursuant to section 3864, subsection 4.

6 **Sec. B-2. 34-B MRSA §3864, sub-§4, ¶A,** as amended by PL 2009, c. 651, §21,  
7 is further amended to read:

8 A. Upon receipt by the District Court of the application and the accompanying  
9 documents specified in subsection 1 and at least 3 days after the person who is the  
10 subject of the examination was notified by the psychiatric hospital of the proceedings  
11 and of that person's right to retain counsel or to select an examiner, the court shall  
12 cause the person to be examined by ~~a medical practitioner~~ the State Forensic Service.  
13 If the application includes a request for an order for involuntary treatment under  
14 subsection 7-A, the State Forensic Service medical practitioner must be a medical  
15 practitioner who is qualified to prescribe medication relevant to the patient's care. ~~If~~  
16 ~~the person under examination or the counsel for that person selects a qualified~~  
17 ~~examiner who is reasonably available, the court shall give preference to choosing that~~  
18 ~~examiner.~~

## 19 SUMMARY

20 This bill contains the recommendations of the mental health working group pursuant  
21 to Resolve 2013, chapter 106.

22 Part A amends Maine's involuntary hospitalization statutes by:

23 1. Creating exceptions to the 24-hour hospital emergency hold period to authorize a  
24 hospital to detain on an involuntary basis a mentally ill person meeting criteria for  
25 emergency psychiatric hospitalization for up to 2 additional 48-hour periods;

26 2. Making a nonsubstantive clarification to a section of law;

27 3. Codifying Maine's common law emergency exception to informed consent to  
28 authorize a medical practitioner to administer involuntary treatment to a patient being  
29 involuntarily held or detained if the patient's condition poses a serious, imminent risk of  
30 harm to the patient or others and other conditions are met;

31 4. Limiting to reasonable costs the State's costs related to transporting certain  
32 patients;

33 5. Allowing for the release or discharge of an involuntary patient if the patient  
34 subsequently agrees to voluntary commitment;

35 6. Clarifying that orders of involuntary commitment and involuntary treatment  
36 transfer with a patient who is transferred to a different hospital; and

1           7. Permitting medical examinations and consultations required or permitted under  
2 the State's involuntary hospitalization statutes to be conducted using telemedicine  
3 technologies.

4           Part B expands the duties of the State Forensic Service within the Department of  
5 Health and Human Services to include performing the duties of an independent examiner  
6 at the direction of the District Court in response to applications for involuntary  
7 commitment and involuntary treatment.