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HEALTH AND HUMAN SERVICES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

SECOND REGULAR SESSION

COMMITTEE AMENDMENT “ ” to S.P. 495, L.D. 1360, Bill, “An Act To Allow Law Enforcement and Family Members To Petition the District Court To Initiate Assisted Outpatient Treatment”

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Mental Health Treatment'

Amend the bill by striking out everything after the title and before the summary and inserting the following:

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

Whereas, provisions of law related to progressive treatment programs for certain persons with mental illness will be repealed on July 1, 2010; and

Whereas, it is necessary to extend the progressive treatment programs law and make related amendments to the laws; and

Whereas, that extension and the related changes might not take effect on July 1, 2010 unless enacted an emergency measures; 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:

Sec. 1. 15 MRSA §393, sub-§1, ¶E, as enacted by PL 2007, c. 670, §6, is amended to read:

E. Has been:

- (1) Committed involuntarily to a hospital pursuant to an order of the District Court under Title 34-B, section 3864 because the person was found to present a

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1 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
2 4 ~~4-A~~, paragraphs A to C;

3 (2) Found not criminally responsible by reason of insanity with respect to a
4 criminal charge; or

5 (3) Found not competent to stand trial with respect to a criminal charge.

6 **Sec. 2. 25 MRSA §1541, sub-§3, ¶C**, as enacted by PL 2007, c. 670, §16, is
7 amended to read:

8 C. The commanding officer shall report to the Federal Bureau of Investigation,
9 National Instant Criminal Background Check System a court's finding, upon the
10 commanding officer's receipt of an abstract from a court that a person has been:

11 (1) Committed involuntarily to a hospital pursuant to an order of the District
12 Court under Title 34-B, section 3864 because the person was found to present a
13 likelihood of serious harm, as defined under Title 34-B, section 3801, subsection
14 4 ~~4-A~~, paragraphs A to D;

15 (2) Found not criminally responsible by reason of insanity with respect to a
16 criminal charge; or

17 (3) Found not competent to stand trial with respect to a criminal charge.

18 The commanding officer may adopt rules to implement the requirements of this
19 paragraph. Rules adopted pursuant to this paragraph are routine technical rules, as
20 defined in Title 5, chapter 375, subchapter 2-A.

21 **Sec. 3. 34-B MRSA §3801, sub-§4**, as amended by PL 2005, c. 519, Pt. BBBB,
22 §§1 and 2 and affected by §20, is repealed.

23 **Sec. 4. 34-B MRSA §3801, sub-§4-A** is enacted to read:

24 **4-A. Likelihood of serious harm.** "Likelihood of serious harm" means:

25 A. A substantial risk of physical harm to the person as manifested by recent threats
26 of, or attempts at, suicide or serious self-inflicted harm;

27 B. A substantial risk of physical harm to other persons as manifested by recent
28 homicidal or violent behavior or by recent conduct placing others in reasonable fear
29 of serious physical harm;

30 C. A reasonable certainty that the person will suffer severe physical or mental harm
31 as manifested by recent behavior demonstrating an inability to avoid risk or to protect
32 the person adequately from impairment or injury; or

33 D. For the purposes of section 3873, in view of the person's treatment history,
34 current behavior and inability to make an informed decision, a reasonable likelihood
35 that the person's mental health will deteriorate and that the person will in the
36 foreseeable future pose a likelihood of serious harm as defined in paragraphs A, B or
37 C.

38 **Sec. 5. 34-B MRSA §3801, sub-§4-B** is enacted to read:

1 4-B. Medical practitioner. "Medical practitioner" or "practitioner" means a
2 licensed physician, registered physician assistant, certified psychiatric clinical nurse
3 specialist, certified nurse practitioner or licensed clinical psychologist.

4 **Sec. 6. 34-B MRSA §3801, sub-§5,** as enacted by PL 1983, c. 459, §7, is
5 amended to read:

6 **5. Mentally ill person.** "Mentally ill person" means a person having a psychiatric or
7 other disease ~~which~~ that substantially impairs his that person's mental health, including or
8 creates a substantial risk of suicide. "Mentally ill person" includes persons suffering from
9 the effects of from the use of drugs, narcotics, hallucinogens or intoxicants, including
10 alcohol, but not including mentally retarded or sociopathic persons. A person with
11 developmental disabilities or a person diagnosed as a sociopath is not for those reasons
12 alone a mentally ill person.

13 **Sec. 7. 34-B MRSA §3801, sub-§7,** as amended by PL 2007, c. 319, §2, is
14 further amended to read:

15 **7. Patient.** "Patient" means a person under observation, care or treatment in a
16 psychiatric hospital or residential care facility pursuant to this subchapter, a person
17 receiving services from an assertive community treatment team, a person receiving
18 intensive mental health management services from the department or a person being
19 evaluated for emergency admission under section 3863 in a hospital emergency
20 department.

21 **Sec. 8. 34-B MRSA §3863, sub-§2,** as amended by PL 2007, c. 319, §9, is
22 further amended to read:

23 **2. Certifying examination.** The written application must be accompanied by a
24 dated certificate, signed by a ~~licensed physician, physician's assistant, certified~~
25 ~~psychiatric clinical nurse specialist, nurse~~ medical practitioner or licensed clinical
26 psychologist, stating:

- 27 A. ~~The physician, physician's assistant, certified psychiatric clinical nurse specialist,~~
28 ~~nurse~~ That the practitioner or psychologist has examined the person on the date of the
29 certificate; and
- 30 B. ~~The physician, physician's assistant, certified psychiatric clinical nurse specialist,~~
31 ~~nurse~~ That the practitioner or psychologist is of the opinion that the person is
32 mentally ill and, because of that illness, poses a likelihood of serious harm. The
33 written certificate must include a description of the grounds for that opinion; and
- 34 C. That adequate community resources are unavailable for care and treatment of the
35 person's mental illness.

36 **Sec. 9. 34-B MRSA §3864, sub-§4, ¶E,** as amended by PL 2007, c. 446, §3 and
37 affected by §7, is further amended to read:

- 38 E. The examiners shall report to the court on:
- 39 (1) Whether the person is a mentally ill person within the meaning of section
40 3801, subsection 5;

- 1 (2) When the establishment of a progressive treatment plan under section 3873 is
2 at issue, whether a person is suffering from a severe and persistent mental illness
3 within the meaning of section 3801, subsection 8-A;
- 4 (3) Whether the person poses a likelihood of serious harm within the meaning of
5 section 3801, subsection 4 4-A; ~~and~~
- 6 (4) When involuntary treatment is at issue, whether the need for such treatment
7 meets the criteria of subsection 7-A, paragraphs A and B; ~~and~~
- 8 (5) Whether adequate community resources are available for care and treatment
9 of the person's mental illness.

10 **Sec. 10. 34-B MRSA §3864, sub-§6**, as amended by PL 2007, c. 319, §10, is
11 further amended to read:

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

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

16 (1) Clear and convincing evidence that the person is mentally ill and that the
17 person's recent actions and behavior demonstrate that the person's illness poses a
18 likelihood of serious harm;

19 (1-A) That adequate community resources for care and treatment of the person's
20 mental illness are unavailable;

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

23 (3) That it is satisfied with the individual treatment plan offered by the
24 psychiatric hospital to which the applicant seeks the patient's involuntary
25 commitment.

26 B. If the District Court makes the findings described in paragraph A, subparagraphs
27 ~~1 (1)~~, (1-A) and ~~2 (2)~~, but is not satisfied with the individual treatment plan as
28 offered, it may continue the case for not longer than 10 days, pending reconsideration
29 and resubmission of an individual treatment plan by the psychiatric hospital.

30 **Sec. 11. 34-B MRSA §3873, sub-§2**, as amended by PL 2009, c. 321, §1, is
31 further amended to read:

32 **2. Criteria for participation.** The following criteria apply to participation in the
33 progressive treatment program.

34 A. Participation in the program must be ordered by the District Court in accordance
35 with this paragraph.

36 (1) The superintendent of a state mental health institute may file an application
37 for an order of admission to the progressive treatment program with the District
38 Court.

1 (2) The procedures for commitment under section 3864 apply, except that an
2 order of admission to the progressive treatment program requires the following:

- 3 (a) A finding that the person meets the criteria of paragraph B;
- 4 (b) A finding that an assertive community treatment team is available to
5 provide treatment and care for the person; and
- 6 (c) A provision in the order that requires the person to return to the state
7 mental health institute pursuant to subsection 5 in the event of failure to fully
8 participate and deterioration of the person's mental health so that
9 hospitalization is in the person's best interest and the person poses a
10 likelihood of serious harm as defined in section 3801, subsection 4- ~~4-A~~,
11 paragraph D.

12 B. The person must:

- 13 (1) Be 18 years of age or older;
- 14 (2) Have been clinically determined to be suffering from a severe and persistent
15 mental illness;
- 16 (3) Have been under an order of involuntary commitment to a state mental health
17 institute at the time of filing of the application for progressive treatment; and
- 18 (4) Have been clinically determined to be in need of the progressive treatment
19 program in order to prevent interruptions in treatment, relapse and deterioration
20 of mental health and to enable the person to survive safely in a community setting
21 in the reasonably foreseeable future without posing a likelihood of serious harm
22 as defined in section 3801, subsection 4- ~~4-A~~, paragraph D. A determination
23 under this subparagraph must be based on current behavior, treatment history,
24 documented history of positive responses to treatment while hospitalized, relapse
25 and deterioration of mental health after discharge and inability to make informed
26 decisions regarding treatment.

27 **Sec. 12. 34-B MRSA §3873, sub-§5**, as amended by PL 2009, c. 276, §2, is
28 further amended to read:

29 **5. Termination of participation.** Failure of a person to fully participate in the
30 program and follow the individualized treatment plan may result in termination of
31 participation in the program and rehospitalization under this subsection.

32 A. If the person does not fully participate in the program and follow the
33 individualized treatment plan and if the assertive community treatment team
34 physician, psychologist, certified psychiatric clinical nurse specialist or nurse
35 practitioner determines, based on clinical findings, that as a result of failure to fully
36 participate or follow the individualized treatment plan the person's mental health has
37 deteriorated so that hospitalization is in the person's best interest and the person poses
38 a likelihood of serious harm as defined in section 3801, subsection 4- ~~4-A~~, paragraph
39 D, the assertive community treatment team physician, psychologist, certified
40 psychiatric clinical nurse specialist or nurse practitioner shall complete a certificate
41 stating that the person requires hospitalization and the grounds for that belief. The

1 person may agree to hospitalization or may be subject to an application for
2 readmission under paragraph B.

3 B. A person who participates in the progressive treatment program may be
4 rehospitalized on an emergency basis under the provisions of section 3863 if the
5 judicial officer reviewing the certificate under section 3863, subsection 3 finds that
6 rehospitalization is in the person's best interest and that the person poses a likelihood
7 of serious harm as defined in section 3801, subsection 4- ~~4-A~~, paragraph D. This
8 paragraph does not preclude the use of protective custody by law enforcement
9 officers pursuant to section 3862.

10 C. A person who participates in the progressive treatment program may be
11 committed under section 3864 if the court reviewing the application finds that
12 hospitalization is in the person's best interest and that the person poses a likelihood of
13 serious harm as defined in section 3801, subsection 4- ~~4-A~~, paragraph D.

14 D. If the person has an advance directive or durable power of attorney or a guardian,
15 the advance directive may be admitted into evidence and the attorney in fact or
16 guardian may provide testimony and evidence to the court in any proceeding under
17 this subsection. The court shall consider but is not required to follow any directions
18 within the advance directive or durable power of attorney document or testimony
19 from the attorney or guardian.

20 **Sec. 13. 34-B MRSA §3873, sub-§6**, as enacted by PL 2005, c. 519, Pt. BBBB,
21 §14 and affected by §20, is amended to read:

22 **6. Repeal.** This section is repealed July 1, ~~2010~~ 2014.

23 **Sec. 14. Report.** The Department of Health and Human Services shall conduct a
24 review and analysis of the progressive treatment program established under the Maine
25 Revised Statutes, Title 34-B, section 3873 and shall report to the joint standing committee
26 of the Legislature having jurisdiction over health and human services matters by January
27 1, 2012. The review process must include the collection and analysis of data regarding
28 participants in the progressive treatment program over periods of time prior to, during and
29 after participation in the program. The review process must include work with a broad
30 group of stakeholders to compile a list of resources that would be needed if the State were
31 to implement assisted outpatient mental health treatment for persons who have been
32 ordered by a court to receive mental health treatment outside of a psychiatric hospital.

33 **Emergency clause.** In view of the emergency cited in the preamble, this
34 legislation takes effect when approved.'

35 SUMMARY

36 This amendment is the majority report of the committee. The amendment replaces
37 the bill. The amendment adds an emergency preamble and emergency clause to the bill.
38 It provides a definition for "medical practitioner" in the laws on commitment for mental
39 illness. It redefines "likelihood of serious harm," "mentally ill person" and "patient." It
40 extends the repeal provision on the progressive treatment program under the Maine
41 Revised Statutes, Title 34-B, section 3873 for 4 years and requires a comprehensive
42 report from the Department of Health and Human Services by January 1, 2012.

