

MENTAL HEALTH COMMITMENT LAW

(Involuntary hospitalization)

February 21, 2012

The statutes governing involuntary commitment
are available at the following web address:

<http://janus.state.me.us/legis/statutes/34-B/title34-Bsec3801.html>

DISCLAIMER

This slide show outlines some elements of statutes and case law concerning involuntary admissions and commitments to psychiatric hospitals. It addresses protective custody only tangentially. It does not touch at all on the Progressive Treatment Program, nor on options that exist in Maine law for seeking an order for involuntary treatment with a psychiatric commitment.

DEFINITIONS

MENTALLY ILL PERSON

- a person having a psychiatric or other disease that substantially impairs his mental health
- including persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol
- excluding mentally retarded or sociopathic persons.

34-B M.R.S.A. §3801(5)

MEDICAL PRACTITIONER

- Licensed physician
- Registered physician assistant
- Certified psychiatric clinical nurse specialist
- Certified nurse practitioner
- Licensed psychologist

34-B M.R.S.A. §3801(4-B)

PSYCHIATRIC HOSPITAL

- Riverview Psychiatric Center
- Dorothea Dix Psychiatric Center
- A non-state facility that is equipped to provide inpatient care and treatment for the mentally ill

34-B M.R.S.A. §3801(1-A), (6), (7-B), (9)

NON-STATE PSYCHIATRIC HOSPITALS

- Togus VA Hospital
- Acadia Hospital
- Spring Harbor Hospital
- MaineGeneral Medical Center
- Maine Medical Center
- Mid Coast Hospital
- Penobscot Bay Medical Center
- Southern Maine Medical Center
- St. Mary's Regional Medical Center

LIKELIHOOD OF SERIOUS HARM: HARM TO SELF

- substantial risk of physical harm
- to the person
- shown by
 - recent threats of suicide or serious bodily harm to self or
 - recent attempts at suicide or serious bodily harm to self

34-B M.R.S.A. §3801(4-A)(A)

LIKELIHOOD OF SERIOUS HARM: HARM TO OTHERS

- substantial risk of physical harm
- to other persons
- shown by
 - recent homicidal or other violent behavior or
 - recent conduct placing others in reasonable fear of serious physical harm

34-B M.R.S.A. §3801(4-A)(B)

LIKELIHOOD OF SERIOUS HARM: “INABILITY TO CARE FOR SELF”

- reasonable certainty that severe physical or mental impairment or injury will result
- to the person
- shown by recent behavior demonstrating person’s inability to avoid risk or to protect himself or herself adequately from impairment or injury

34-B M.R.S.A. §3801(4-A)(C)

APPLICATION FOR
EMERGENCY
INVOLUNTARY
ADMISSION
TO A MENTAL HOSPITAL
("BLUE PAPER")

BLUE PAPER CONTENTS – SECTION 1

Any person may apply to admit a person to a psychiatric hospital stating:

- his or her belief that the person is mentally ill and, because of his illness, poses a likelihood of serious harm; and
- the grounds for this belief.

34-B M.R.S.A. §3863(1)

BLUE PAPER CONTENTS – SECTION 2

- Medical practitioner must certify that he or she
 - examined the person that day;
 - believes that the person is mentally ill, and because of that illness poses a likelihood of serious harm (must include grounds for that opinion);
 - believes that adequate community resources are unavailable to care and treat the illness
- Grounds for the opinions may be personal observation or other reliable sources

34-B M.R.S.A. §3863(2)

BLUE PAPER CONTENTS – SECTION 2 (CONT.)

Transportation to the psychiatric hospital must be the least restrictive form that meets clinical needs.

34-B M.R.S.A. §3863(4)(A)

The certifying examination must be completed no more than 2 days before the date of admission.

34-B M.R.S.A. §3861(1)

BLUE PAPER CONTENTS – SECTION 2 (CONT.)

If the medical practitioner's opinion does not allow completion of the certification, the person must be released. 34-B M.R.S.A. §3863(3)(B)

If the person is released, and if the person was transported to the hospital by a law enforcement officer who has left, the hospital must notify the law enforcement officer or agency of the person's release. 34-B M.R.S.A. §3863(6-A)

BLUE PAPER CONTENTS – SECTION 3

- A judicial officer (specifically, Justice of the Superior Court, Judge of the District Court, Judge of Probate or justice of the peace) must review sections 1 and 2.
- If sections 1 and 2 are “regular and in accordance with the law,” judicial endorsement occurs.
- The endorsement authorizes transportation of the person to the designated hospital by the means stated.

34-B M.R.S.A. §3863(3)

BLUE PAPER CONTENTS – SECTION 3 (CONT.)

- The judicial officer may review a fax.
- A faxed judicial endorsement is acceptable.

34-B M.R.S.A. §3863(3)

NOTICE OF HOSPITALIZATION

As soon as possible after admission, the hospital must notify the person's:

- A. Guardian, if known;
- B. Spouse;
- C. Parent;
- D. Adult child; or
- E. Either next of kin or a friend, if other listed persons cannot be located.

34-B M.R.S.A. §3863(6)

NOTICE OF HOSPITALIZATION (CONT.)

- The notice must occur following consultation with the patient.
- If the chief administrative officer believes that notice to an individual would pose a risk of harm for the patient, notice may not be given to that individual.

34-B M.R.S.A. §3863(6)

24-HOUR CERTIFICATE

- Every patient involuntarily admitted must be examined as soon as practicable
 - within 24 hours of involuntary admission
 - by a staff physician or licensed clinical psychologist, but not the blue paper examiner.
- The examiner must certify that the person is mentally ill and due to mental illness poses a likelihood of serious harm, and that community resources are unavailable for care and treatment of the individual.
- If no timely certificate, discharge immediately.

34-B M.R.S.A. §3863(7)

COURT APPLICATION
("WHITE PAPER")
AND
PRE-HEARING PROCEDURES

COURT APPLICATION PROCESS

- Hospital's first question: discharge, voluntary stay, or continued involuntary admission?
- If involuntary, hospital (or possibly Commissioner if hospital with DHHS contract)
 - files an application in local District Court
 - within 3 days from date of admission (but if the third day falls on a weekend or holiday, the application must be filed the next business day)
- If no petition is filed, patient must be promptly discharged from involuntary admission.

34-B M.R.S.A. §3863(5-A)

COURT APPLICATION CONTENTS

1. “white paper”
2. “blue paper”
3. 24-hour certificate

COURT APPLICATION CONTENTS (CONT.)

4. hospital certification that
 - a copy of the court application and attachments were given to the patient
 - the patient and guardian or next of kin were given
 - notice of the patient's right to an attorney
 - notice of the patient's right to select an independent examiner
 - information for contacting the District Court
5. copy of the notice and instructions given to the patient

34-B M.R.S.A. § 3864(1)

REAPPLICATION FOR INVOLUNTARY HOSPITALIZATION

- Apply at least 21 days before the court-ordered period of commitment expires.
- Use essentially same process and documentation as for an initial hearing.

34-B M.R.S.A. § 3864(8)

COURT OBLIGATIONS

Mail notice of the application and date of hearing

- to the patient within 2 days of receipt of filing
- to the guardian, if known, and to the spouse, parent or adult child or, if none of these persons can be located, to next of kin or a friend.

(If the hospital believes that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, no notice is required.)

34-B M.R.S.A. § 3864(3)

COURT OBLIGATIONS (CONT.)

Cause the hospitalized person to be examined by a medical practitioner...

at least 3 days after the hospital notified the hospitalized person of the proceedings and of the person's right to retain counsel or to select an examiner.

If patient selects a qualified examiner who is reasonably available, the court gives preference to choosing that examiner.

34-B M.R.S.A. § 3864(4)

COURT OBLIGATIONS (CONT.)

- Hold a hearing on the application not later than 14 days from the date of the application
 - for cause, the court may grant a motion for a continuance not to exceed 21 days.
- Dismiss the application and order the person discharged if the hearing is not held within the time specified.

34-B M.R.S.A. § 3864(5)

EXAMINER'S REPORT

- The examiner must report to the court on whether
 - the person is mentally ill
 - the person poses a likelihood of serious harm
 - community resources are available for care and treatment of the person's illness
 - progressive treatment is an appropriate alternative.
- These opinions may be based on personal observation or other reliable sources.

34-B M.R.S.A. § 3864(4)

PATIENT STATUS PENDING HEARING

Release, discharge or transfer of a patient for whom a pending application for commitment has been filed requires a court order.

(During blue paper period, discharge occurs at the hospital's or commissioner's discretion, and transfer occurs at the court's discretion.)

(After commitment, discharge occurs at the hospital's or commissioner's discretion, and transfer occurs at the commissioner's discretion.)

34-B M.R.S.A. § 3864(2)

RIGHT TO COUNSEL

- The patient must be represented by counsel at all stages of hearing and appeal, and if the patient has none, the court will appoint counsel.

34-B M.R.S.A. § 3964(5)(D); *In re Penelope W.*, 2009 ME 81

- The right to counsel is a right to effective assistance of counsel.

Gasque v. King, No. CV-04-565 (Me. Super. Ct., Cum. Cty., Feb. 1, 2005 and Jun. 6, 2005)

DISTRICT COURT HEARING

HEARING

- recorded
- informal but orderly
- in a physical setting not likely to have harmful effect on the mental health of the person (courthouse? hospital? hospital by videoconference?)
- relevant and material evidence under accepted rules of evidence and accepted judicial dispositions

In re Marcial O., 1999 ME 64, ¶ 22, 728 A.2d 158
(court was within its authority to admit testimony of a third examiner)

- court has subpoena power

34-B M.R.S.A. § 3864(5)

PARTICIPANTS IN THE HEARING

- hospitalized person
- applicant (hospital or commissioner)
- 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”)
- the court in its discretion may receive the testimony of any other person

34-B M.R.S.A. § 3864(5)(C)

APPLICANT'S CASE

1. evidence that person is a mentally ill person
2. evidence of the patient's recent actions and behavior showing that, due to the patient's mental illness, the patient poses a likelihood of serious harm
 - Court can use information about old actions and behaviors to corroborate information about recent actions and behaviors. *In re Monica Pollard, No. AP 00-21 (Me. Super. Ct., Ken. Cty., Nov. 8, 2000)*
 - Statements by the patient are actions and behavior that may be sufficient to support commitment. *In re Marcial O., 1999 ME 64, ¶ 22, 728 A.2d 158*

APPLICANT'S CASE (CONT.)

3. evidence that, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person
4. expert psychiatric testimony indicating the individual treatment plan to be followed by the hospital staff

34-B M.R.S.A. § 3864(5)(E) and (F)

EXPERT PSYCHIATRIC TESTIMONY

Expert testimony may be offered by a person who

- is educated, trained and licensed
- has worked under the supervision of a psychiatrist in a mental health facility
- is experienced in treating psychiatric patients
- is familiar with medications given to patients.

In re Walter R., 2004 ME 77, ¶ 16, 850 A.2d 346
(testimony of a physicians' assistant satisfied the
statutorily requirement for "expert psychiatric
testimony")

CONFIDENTIALITY

- The hearing is confidential.
- Public release of information about the proceedings requires permission of the person or his counsel and approval of the presiding District Court Judge.
- The court may order a public hearing at the request of the person or his counsel.

34-B M.R.S.A. § 3864(5)(H)

CONFIDENTIALITY (CONT.)

Maine confidentiality law allows community service providers and hospital staff to testify without patient permission.

34-B M.R.S.A. § 1207(1)(B)

COURT FINDINGS

- Clear and convincing evidence that the person is mentally ill and that the person's recent actions and behavior demonstrate that the person's illness poses a likelihood of serious harm
- Adequate community resources for care and treatment of the person's mental illness are not available
- Inpatient hospitalization is the best available means for treatment of the patient

34-B M.R.S.A. § 3864(6)

COURT FINDINGS (CONT.)

- It is satisfied with the individual treatment plan offered by the hospital to which the applicant seeks the patient's involuntary commitment
- If the court is dissatisfied with the plan, it may continue the case up to 10 days for plan resubmission.

34-B M.R.S.A. § 3864(6)

COURT FINDINGS (CONT.)

If the court is aware that a patient at a commitment hearing may have been made less able to participate in the hearing because of involuntarily medication, the court should address this issue on the record or in the order. Extent of inquiry and action taken are in court's sound discretion.

In re Christopher H. 2011 ME 13

COURT ORDER

- within 24 hours of hearing completion
- a commitment period not to exceed 4 months in the first instance
- a period not to exceed one year after the first and all subsequent hearings

See In re Walter R., 2004 ME 77, ¶ 10, 850 A.2d 346

34-B M.R.S.A. § 3864(7)

CHALLENGING A COMMITMENT

HABEAS

An involuntary patient who believes he or she is being held in the hospital illegally may seek a review of the circumstances by petitioning the Superior Court for a writ of habeas corpus.

34-B M.R.S.A. § 3804

HABEAS (CONT.)

A writ of habeas corpus

- Is appropriate when due process protections were violated
- May be appropriate to challenge effective assistance of counsel

Even if the patient has already been discharged, the court may still decide to hear the matter (i.e. the habeas proceeding is not necessarily “moot”)

Gasque v. King, No. CV-04-565 (Me. Super. Ct., Cum. Cty., Feb. 1, 2005 and Jun. 6, 2005)

APPEALS

- to Superior Court

In re Walter R. 2004 ME 151, ¶ 4, 863 A.2d 276

- within 30 days of order (M.R.Civ.P. 76D)
- on questions of law only
- facts set aside only if clearly erroneous
- order not stayed during appeal

34-B M.R.S.A. § 3864(11)