



Senator Anne Carney, Chair  
Representative Thom Harnett, Chair  
Joint Standing Committee on Judiciary  
State House, Room 438  
Augusta, Maine 04333

Re: Testimony in Support of LD 785

Senator Carney, Representative Harnett, and Members of the Joint Standing Committee on Judiciary:

LD 785, which would apply a psychiatric deterioration standard to inpatient commitment criteria in Maine, is a good bill that will help people with severe mental illness (SMI). It is a reasonable exercise of the legislature's *parens patriae* authority<sup>1</sup> and would not violate due process. No decision by any federal court, including the United States Supreme Court, indicates that passage of LD 785 would pose a violation of due process. Furthermore, nearly half of the states already have a psychiatric deterioration standard in their criteria for inpatient commitment, some for many years, and several of those have withstood judicial scrutiny.

A psychiatric deterioration standard allows the court to look beyond the snapshot of the person with SMI standing before them at the time of a hearing and consider the person's treatment history, in light of current behavior, and consider whether the person's mental health will deteriorate without psychiatric treatment. This standard already exists in Maine law for outpatient commitment (Progressive Treatment Program) at M.R.S.A Title 34B section 3801(4-A)(D) and LD 785 expands that standard to inpatient commitment.

The Washington State Supreme Court examined a similar law and unanimously found that it did not violate a person's rights, noting that although, "[the patient's] condition was in the process of stabilizing," he was likely not to take medication and consequently his condition would deteriorate if released.<sup>2</sup>

The federal case most often used to refute both inpatient and outpatient commitment criteria, *O'Connor v. Donaldson*,<sup>3</sup> cannot reasonably be interpreted to invalidate LD 785. While opponents to psychiatric deterioration standards often cite *O'Connor* because of the following line, "[a] statute must be narrowly enough drawn that its terms can be given a reasonably precise content and those persons it encompasses can be identified with reasonable,"<sup>4</sup> they usually fail to mention that the Court did not even address the issue of due process relative to language like LD 785. In fact, the Court specifically stated it was not addressing the question of commitment for medical treatment.<sup>5</sup> *O'Connor* was over a strictly custodial confinement, not whether a person may be involuntary

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<sup>1</sup> *Parens patriae* is the right of government to make decisions on behalf of persons incapable of making them.

<sup>2</sup> *In re Detention of LaBelle*, 728 P.2d 138.

<sup>3</sup> 422 U.S. 563 (1975).

<sup>4</sup> *Id.* at 576.

<sup>5</sup> *Id.* at 574.



committed to a hospital for psychiatric treatment.<sup>6</sup> Absent federal guidance on the subject, we can look to state opinions like *LaBelle* and see that psychiatric deterioration does not violate due process.

People with severe mental illness (SMI) cycle through a revolving door of hospitals, outpatient treatment, and criminal justice involvement that costs the state millions of dollars each year. Allowing local courts to consider psychiatric deterioration as a criterion of inpatient commitment would help get people into treatment earlier in the downward spiral of psychosis and prevent, as the name of the standard implies, further deterioration of their mental state. That is good for the individual with the illness and good for the state of Maine. LD 785 will save lives and money.

Twenty-four states have psychiatric deterioration language in their inpatient commitment statutes. They are Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Illinois, Indiana, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. In many of those states, legislators heard testimony from opponents to changes in their inpatient commitment laws who claimed that adding this criterion would violate due process, but the legislatures correctly determined that applying a psychiatric deterioration standard to a judicial process with several built-in safeguards for the rights and liberties of an individual is a reasonable manner to determine eligibility for inpatient commitment.

Please pass LD 785 for the people of Maine with mental illness who need treatment and for their families struggling to get them help.

Thank you.

Michael Gray  
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Treatment Advocacy Center

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<sup>6</sup> Id.