

COMMITTEE TO STUDY COURT-ORDERED TREATMENT FOR SUBSTANCE USE DISORDER

Friday, September 16, 2022, 9:00 a.m.

Location: State House, Room 228 (Hybrid Meeting)

Public Access through Maine Legislature's livestream: <https://legislature.maine.gov/Audio/#228>

- I. Welcome [*Committee co-chairs*]
- II. Overview of Committee Duties and Background [*OPLA*]
- III. Committee member extended introductions [*Committee members - approx. 3 min/member*]
- IV. [9:45 am] Presentations: Involuntary Hospitalization and Maine's Progressive Treatment Program
 - Molly Moynihan, AAG, Office of the Attorney General and Dr. Dan Potenza, Dorothea Dix Psychiatric Center
 - Kevin Voyvodich, Esq., Disability Rights Maine
 - Dr. Chris Racine, Maine Health
- V. [11:30am] Presentation: Maine Treatment Courts
 - Richard Gordon, Esq., Administrative Office of the Courts
- VI. Discussion and Next Steps [*Committee members*]
 - Next meeting agenda and materials
 - Written public comment

Committee to Study Court-ordered Treatment for Substance Use Disorder

Resolve 2021, ch. 183

Membership List

Name	Representation
Sen. Anne Carney - Chair	Member of the Senate
Rep. Colleen Madigan - Chair	Member of the House
Sen. Lisa Keim	Member of the Senate
Sen. Heather Sanborn	Member of the Senate
Rep. Stephen Moriarty	Member of the House
Rep. Jennifer Poirier	Member of the House
Dr. Tim Pieh	Member representing hospitals
Malory Shaughnessy	Member representing substance use disorder treatment providers
Karen Walsh	Member representing families affected by substance use disorder
Mikki Rice	Member with lived experience with substance use disorder
Constance Jordan	Member representing primary health care providers
Dr. Chris Racine	Member representing hospital emergency department providers
Meagan Sway	Member representing an organization whose primary mission is the protection of civil liberties
Dr. David Kispert	Member representing a statewide organization representing physicians
Hon. Jed French	Member representing the Judicial Department
Gordon Smith, Esq.	Member appointed by the Governor

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-TWO

H.P. 1496 - L.D. 2008

Resolve, To Establish the Committee To Study Court-ordered Treatment for Substance Use Disorder

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

Whereas, the Committee To Study Court-ordered Treatment for Substance Use Disorder is needed to explore the legal issues and best medical practices and related issues concerning substance use disorder treatment that is involuntary or includes some form of leverage to ensure adherence to treatment; and

Whereas, the study must be initiated before the 90-day period expires in order that the study may be completed and a report submitted in time for submission to the next legislative session; 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

Sec. 1. Study committee established. Resolved: That the Committee To Study Court-ordered Treatment for Substance Use Disorder, referred to in this resolve as "the study committee," is established.

Sec. 2. Study committee membership. Resolved: That, notwithstanding Joint Rule 353, the study committee consists of 16 members appointed as follows:

1. Three members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature;
2. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature;
3. One member appointed by the Governor;
4. One member representing hospitals, appointed by the President of the Senate;

5. One member representing substance use disorder treatment providers, appointed by the Speaker of the House;

6. One member representing families affected by substance use disorder, appointed by the President of the Senate;

7. One member with lived experience with substance use disorder, appointed by the Speaker of the House;

8. One member representing primary health care providers, appointed by the President of the Senate;

9. One member representing hospital emergency department providers, appointed by the Speaker of the House;

10. One member representing an organization whose primary mission is the protection of civil liberties, appointed by the President of the Senate;

11. One member representing a statewide organization representing physicians, appointed by the Speaker of the House; and

12. One member representing the Judicial Department, appointed by the Chief Justice of the Supreme Judicial Court.

Sec. 3. Chairs. Resolved: That the first-named Senate member is the Senate chair and the first-named House of Representatives member is the House chair of the study committee.

Sec. 4. Appointments; convening of study committee. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the chairs shall call and convene the first meeting of the study committee. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority and the Legislative Council may grant authority for the study committee to meet and conduct its business.

Sec. 5. Duties. Resolved: That the study committee shall:

1. Review services and processes currently available in this State for persons with substance use disorder;

2. Review options offered in other jurisdictions for persons with substance use disorder, including but not limited to judicial orders for involuntary treatment as well as other treatment options that include some form of leverage to ensure adherence to treatment, and review outcomes;

3. Review the constitutional and other rights of persons with substance use disorder and how other jurisdictions protect those rights; and

4. Develop recommendations for treatment options for persons with substance use disorder, including implementation plans.

Sec. 6. Staff assistance. Resolved: That the Legislative Council shall provide necessary staffing services to the study committee, except that the Legislative Council staff support is not authorized when the Legislature is in regular or special session.

Sec. 7. Report. Resolved: That, no later than November 2, 2022, the study committee shall submit a report that includes a summary of its activities and recommendations, including suggested legislation, to the Joint Standing Committee on Health and Human Services and the Joint Standing Committee on Judiciary for presentation to the First Regular Session of the 131st Legislature.

Sec. 8. Outside funding. Resolved: That the study committee shall seek funding contributions to fully fund the costs of the study. All funding is subject to approval by the Legislative Council in accordance with its policies. If sufficient contributions to fund the study have not been received within 30 days after the effective date of this resolve, no meetings are authorized and no expenses of any kind may be incurred or reimbursed.

Sec. 9. Appropriations and allocations. Resolved: That the following appropriations and allocations are made.

LEGISLATURE

Study Commissions - Funding 0444

Initiative: Allocates funds from outside sources for the costs to the Legislature of the Committee To Study Court-ordered Treatment for Substance Use Disorder.

OTHER SPECIAL REVENUE FUNDS	2021-22	2022-23
Personal Services	\$660	\$660
All Other	\$840	\$1,090
OTHER SPECIAL REVENUE FUNDS TOTAL	\$1,500	\$1,750

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

Maine's Freedom of Access Act and the Conduct of the Business of the Legislature

Prepared for the Right to Know Advisory Committee
by the Office of Policy and Legal Analysis and the Office of the Attorney General
Updated December 2020

The Maine Freedom of Access Act requires governmental entities to conduct public business in the open and to provide access to public records. Legislative meetings and records are subject to the law and must be open to the public, with some limited exceptions set forth in the law.

Intent of the Freedom of Access Law

The Maine Freedom of Access Act provides that it is the intent of the Legislature that “actions [involving the conduct of the people’s business] be taken openly and that the records of their actions be open to public inspection and their deliberations be conducted openly.” The Freedom of Access Act, found in Title 1 of the Maine Revised Statutes, chapter 13, applies to all governmental entities, including the Legislature.

Public Proceedings

Under state law, all meetings of the Legislature, its joint standing committees and legislative subcommittees are public proceedings. A legislative subcommittee is a group of 3 or more committee members appointed for the purpose of conducting legislative business on behalf of the committee.

The public must be given notice of public proceedings and must be allowed to attend. Notice must be given in ample time to allow the public to attend and in a manner reasonably calculated to notify the general public. The public is also allowed to record the proceedings as long as the activity does not interfere with the orderly conduct of the proceedings.

Party caucuses are not committees or subcommittees of the Legislature, so their meetings do not appear to be public proceedings. Similarly, informal meetings of the members of a committee who are affiliated with the same party are not public proceedings as these members are not designated by the committee as a whole to conduct business of the committee. However, committee members should be careful when they caucus not to make decisions or otherwise use the caucus to circumvent the public proceeding requirements.

Limited Exception to Public Proceedings (Executive Sessions)

In very limited situations, joint standing committees may hold executive sessions to discuss certain matters. State law is quite specific as to those matters that may be deliberated in executive sessions. The executive session must not be used to defeat the purpose of the Act, which is to ensure that the people’s business is conducted in the open.

The permitted reasons for executive session are set forth in the law, Title 1, section 405 and Title 3, section 156. The reasons most relevant to legislative work are discussion of confidential records and pre-hearing conferences on confirmations.

An executive session may be called only by a public, recorded vote of 3/5 of the members, present and voting, of the committee. The motion to go into executive session must indicate the precise nature of the business to be discussed and no other matters may be discussed. A committee may not take any votes or other official action in executive sessions.

If a committee wants to hold an executive session, the committee should discuss the circumstances with an attorney from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review who can provide the committee with guidance about whether an executive session is permitted and, if so, how to proceed.

Public Records

The Freedom of Access Act defines “public records” broadly, to include all material in possession of public agencies, staff and officials if the materials were received or prepared for use in, or relate to, the transaction of public or governmental business. The scope of the definition means that most, if not all, papers and electronic records relating to legislative business are public records. This includes records that may be stored on an individual legislator’s personal computer, tablet or smartphone if they relate to or were prepared for use in the transaction of public business, *e.g.*, constituent inquiries, emails, text messages or other correspondence about legislative matters. Information contained in a communication between a constituent and a legislator may be confidential if it meets certain narrow requirements.

Time-limited Exception from Public Disclosure for Certain Legislative Records

The Freedom of Access Act contains exceptions to the general rule that public records must be made available for public inspection and copying. One exception that is relevant to legislative work allows certain legislative papers to be withheld from public disclosure until the end of the legislative session in which they are being used. The exceptions are as follows:

- ❑ Legislative papers and reports (e.g. bill drafts, committee amendments and the like) are not public records until signed and publicly distributed; and
- ❑ Working papers, drafts, records, and memoranda used to prepare proposed legislative papers or reports are not public records until the end of the legislative session in which the papers or reports are prepared or considered or to which they are carried over.

The Legislative Council’s Confidentiality Policy and the Joint Rules provide guidance to legislative staff about how such records are to be treated before they become public records.

Confidential Records in the Possession of Committees

Committees may also need to be prepared to deal with other types of non-public records, such as individual medical or financial records that are classified as confidential under state or federal law.

If the committee comes into possession of records that are declared confidential by law, the Freedom of Access Act allows the committee to withhold those records from the public and to go into executive session to consider them (see discussion above for the proper process).

In addition, the committee should also find out whether there are laws that set specific limitations on, and penalties for, dissemination of those records. The Office of the Attorney General or an attorney from the Office of Policy and Legal Analysis or the Office of Fiscal and Program Review can help the committee with these records.

Joint Rule 313 also sets forth procedures to be followed by a committee that possesses confidential records.

Legislative Review of Public Record Exceptions

All exceptions to the public records law are subject to a review process. A legislative committee that considers a legislative measure proposing a new statutory exception must refer the measure to the Judiciary Committee if a majority of the committee supports the proposed exception. The Judiciary Committee will review and evaluate the proposal according to statutory standards, then report findings and recommendations to the committee of jurisdiction. The Judiciary Committee regularly seeks input from the Right to Know Advisory Committee on public records, confidentiality and other freedom of access issues.

Public Access Ombudsman

The Public Access Ombudsman, an attorney located in the Department of the Attorney General, is available to provide information about public meetings and public records, to help resolve complaints about accessing proceedings and records and to help educate the public as well as public agencies and officials. Legislators may contact the Public Access Ombudsman, Brenda Kielty, at Brenda.Kielty@maine.gov, or (207) 626-8577 for assistance.