



TESTIMONY OF THE MAINE HOSPITAL ASSOCIATION

In Opposition To

LD 38 - *An Act To Clarify the Timing of an Appeal of a Finding Regarding Involuntary Mental Health Treatment at a Designated Nonstate Mental Health Institution*

March 4, 2021

Senator Claxton, Representative Meyer and members of the Health and Human Services Committee, my name is Jeffrey Austin and I am with the Maine Hospital Association and I am offering this testimony in opposition to LD 38.

The Maine Hospital Association (MHA) represents all 36 community-governed hospitals including 33 non-profit general acute care hospitals, 2 private psychiatric hospitals, and 1 acute rehabilitation hospital. In addition to acute-care hospital facilities, we also represent 11 home health agencies, 18 skilled nursing facilities, 19 nursing facilities, 12 residential care facilities, and more than 300 physician practices.

Background. The issue underlying this bill is the treatment of individuals receiving inpatient psychiatric services at the two private psychiatric facilities (Spring Harbor, a MaineHealth hospital in Westbrook and Acadia Hospital, a Northern Light hospital in Bangor). As of today, the impact of the legislation will only be felt at Acadia in Bangor.

Because the proposal makes the process to treat patients more difficult and because there is an alternative to this legislation, MHA opposes the proposed change as drafted.

Path to Commitment. Generally, the fact pattern leading to the issues raised by this bill starts with a person in some type of crisis. That person is brought to a community hospital by family or the police. If the person consents to hospitalization, the patient is transferred. If the person does not, or can not consent to hospitalization, the community hospital may initiate the 'Blue Paper' process. This process allows a community hospital to both hold a patient involuntarily and to commit the patient to a psychiatric hospital on an emergency basis. Once the patient is transferred to a psychiatric hospital, Maine's involuntary commitment statute requires a court to hold a hearing on the commitment petition within 14 days. This is the so-called 'White Paper' process.

Involuntary Commitment. Involuntary hospitalizations are governed by 34-B MRSA Article 3 (§3861 to §3874). This bill only involves the white paper process. The section of law at issue is

§3861 (I have included §3861 at the end of my testimony.) Parts of §3864 are helpful to understand so I have included that as well.

Involuntary Treatment. One issue that frequently arises in the course of a White Paper commitment hearing is the issue of involuntary treatment. Patient consent is a bedrock of medical ethics in the United States. However, in cases where the patient objectively lacks decisional capacity, treatment can be ordered.

There are two processes that are used to “order” involuntary treatment. One is the “court” process and one is the “panel” process. This bill deals with the panel process. Hospitals strongly prefer the court process.

The Court Process. As part of a petition to commit an individual to a psychiatric facility, the court ordering the commitment may also review the issue of involuntary treatment (§3864(1-A) at the same time). This process is efficient and is the process hospitals prefer. It is not being changed by this bill.

A central component of the court process is the examination of the individual by an “examiner.” (§3864(4)). This is a clinician not connected to the receiving psychiatric hospital. A patient may retain his own examiner, but most do not. In most cases, the Judicial branch is responsible for securing the services of an examiner.

The examiner must make a recommendation to the court during the commitment process regarding treatment (§3864(4)(E)(4)). The standards for involuntary treatment (not an issue in this bill) are laid out in statute (§3864(7-A)).

As you can see, the statute appears to presume that the white paper examiner is clinically capable of making recommendations regarding treatment. Our understanding is that the examiner who handles white paper commitments in the Portland / Spring Harbor Hospital area is capable of making recommendations regarding treatment. Our understanding is that the current examiner in Bangor does not. This is the underlying issue for hospitals.

Accordingly, in Portland the issue of involuntary treatment is handled by the court as part of the involuntary commitment process at the time of commitment. In Bangor, the Panel process must be used and that takes additional time.

The Panel Process. If the issue of involuntary treatment is not handled by the court as part of the white paper process, a secondary process is available called the clinical review panel process. One part of the panel process is the subject of this bill. The panel process is laid out in §3861(3). Both the state psychiatric hospital panel process as well as the private (non-state) hospital panel process are laid out in this statute. They are not identical, however, and diverge halfway through the process.

In each case, if involuntary treatment is recommended by the clinician treating the patient, a request is made to the chief administrative officer of the hospital. The statute requires that the hospital appoint a clinical review panel within one day of the request. The clinical review panel then convenes and holds a hearing no sooner than 24 hours after the panel has been appointed.

If the clinical review panel orders treatment, it goes into effect 24 hours later. So, this process generally takes 2-3 days; but it is on top of the white paper commitment process which can take 14 days. At this point, the process is complete at a state-run psychiatric hospital.

Not so for private hospitals, there is another step which is the subject of this bill.

The Panel Appeal Process. Once the panel orders involuntary treatment, the process at the two state psychiatric hospitals is basically over (it can be appealed into the courts). Not so at private/non-state psychiatric facilities.

The patient may appeal a panel decision pursuant to 38 MRSA §3861(3)(F). This is the part of the statute that you can see in LD 38. The process is laid out as follows:

- i. Patient Appeal. The patient may appeal to the commissioner of DHHS within 1 day of the patient receiving the written order from the review panel regarding treatment.
- ii. DHHS Review. DHHS, under current law, has 3 days to review the full record and make a decision.
- iii. Effective Date. The DHHS order then becomes effective 24 hours after DHHS communicates its decision to the hospital.

So, the current process takes close to 3 weeks:

- Blue Paper to Submission of White Paper (2-3 days)
- White Paper Preparation Hearing (10 days)
- Clinical Review Panel (1-4 days) plus appeal (1 day)
- **DHHS Appeal Process (3 days) – ***Proposed to be amended by LD 38***
- Effective date (1 day).

LD 38 Changes. The bill before you amends this current 5-day appeal process in three ways:

- a. Assemble the Record. Upon the notice of patient appeal being received by DHHS ((i) above) LD 38 introduces a new deadline of 3 days for the hospital to assemble the record and submit it to DHHS. While this bill would give the hospital 3 days to assemble a record, a hospital will not wait 3 days to forward this information; it will happen as quickly as it happens today.
- b. Argument. Upon submission of the record, LD 38 would allow the parties 3 days to craft their arguments and submit those arguments to DHHS. This period does not exist today.
- c. DHHS Review and Decision. The bill extends the current deadline of 3 days to 4 days.

Theoretically, the bill could add up to 7 days (3 +3 + 1) to the existing 3-week process. Practically speaking, the first new step (a) will not take anymore time under this law than it currently does. However, the 3-day argument formulation step and the extension of the DHHS review period from 3 to 4 days will add a total of 4 days to the existing, long process.

MHA Request. First, if you choose to add a 3 day “argument period” you should shrink rather than expand the DHHS review period from the current 3 days down to 1 instead of expanding it to 4 as proposed. Second, please inquire of the Judicial branch and the administration when Bangor can expect to have an examiner capable of recommending treatment.

Thank you.

Current Law

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter. An admission may be made under the provisions of section 3863 only if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission.

A. The institution, any person contracting with the institution and any of its employees when admitting, treating or discharging a patient under the provisions of sections 3863 and 3864 under a contract with the department, for purposes of civil liability, must be deemed to be a governmental entity or an employee of a governmental entity under the Maine Tort Claims Act, Title 14, chapter 741.

B. Patients with a diagnosis of mental illness or psychiatric disorder in nonstate mental health institutions that contract with the department under this subsection are entitled to the same rights and remedies as patients in state mental health institutes as conferred by the constitution, laws, regulations and rules of this State and of the United States.

C. Before contracting with and approving the admission of involuntary patients to a nonstate mental health institution, the department shall require the institution to:

- (1) Comply with all applicable regulations;
- (2) Demonstrate the ability of the institution to comply with judicial decrees as those decrees relate to services already being provided by the institution; and
- (3) Coordinate and integrate care with other community-based services.

D. Beginning July 31, 1990, the capital, licensing, remodeling, training and recruitment costs associated with the start-up of beds designated for involuntary patients under this section must be reimbursed, within existing resources, of the Department of Health and Human Services.

E. The chief administrative officer of a nonstate mental health institution shall provide notice to the department and such additional information as may be requested by the department when a person who was involuntarily admitted to the institution has died, attempted suicide or sustained a serious injury resulting in significant impairment of physical condition. For the purposes of this paragraph, "significant impairment" includes serious injuries resulting from burns, lacerations, bone fractures, substantial hematoma and injuries to internal organs whether self-inflicted or inflicted by another person. The notice must be provided within 24 hours of occurrence and must include the name of the person; the name, address and telephone number of that person's legal guardian, conservator or legal representative and parents if that person is a minor; a detailed description of the occurrence and any injuries or impairments sustained; the date and time of the occurrence; the name, street address and telephone number of the facility; and the name and job title of the person providing the notice.

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3831 or 3863 if the certifying examination conducted pursuant to section 3863, subsection 2 was completed no more than 2 days before the date of admission; and

B. May receive for observation, diagnosis, care and treatment in the state mental health institute any person whose admission is applied for under section 3864 or is ordered by a court.

Any business entity contracting with the department for psychiatric physician services or any person contracting with a state mental health institute or the department to provide services pertaining to the admission, treatment or discharge of patients under sections 3863 and 3864 within a state mental health institute or any person contracting with a business entity to provide those services within a state mental health institute is deemed to be a governmental entity or an employee of a governmental entity for purposes of civil liability under the Maine Tort Claims Act, Title 14, chapter 741, with respect to the admission, treatment or discharge of patients within a state mental health institute under sections 3863 and 3864.

3. Involuntary treatment. Except for involuntary treatment ordered pursuant to the provisions of section 3864, subsection 7-A, involuntary treatment of a patient at a designated nonstate mental health institution or a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter may be ordered and administered only in conformance with the provisions of this subsection. For the purposes of this subsection, involuntary treatment is limited to medication for the treatment of mental illness and laboratory testing and medication for the monitoring and management of side effects.

A. If the patient's primary treating physician proposes a treatment that the physician, in the exercise of professional judgment, believes is in the best interest of the patient and if the patient lacks clinical capacity to give informed consent to the proposed treatment and the patient is unwilling or unable to comply with the proposed treatment, the patient's primary treating physician shall request in writing a clinical review of the proposed treatment by a clinical review panel. For a patient at a state mental health institute, the request must be made to the superintendent of the institute or the designee of the superintendent. For a patient at a designated nonstate mental health institution, the request must be made to the chief administrative officer or the designee of the chief administrative officer. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the institution or institute and the period of the court-ordered commitment;
- (3) A statement by the primary treating physician that the patient lacks capacity to give informed consent to the proposed treatment. The statement must include documentation of a 2nd opinion that the patient lacks that capacity, given by a professional qualified to issue such an opinion who does not provide direct care to the patient but who may work for the institute or institution;
- (4) A description of the proposed course of treatment, including specific medications, routes of administration and dose ranges, proposed alternative medications or routes of administration, if any, and the circumstances under which any proposed alternative would be used;

- (5) A description of how the proposed treatment will benefit the patient and ameliorate identified signs and symptoms of the patient's psychiatric illness;
- (6) A listing of the known or anticipated risks and side effects of the proposed treatment and how the prescribing physician will monitor, manage and minimize the risks and side effects;
- (7) Documentation of consideration of any underlying medical condition of the patient that contraindicates the proposed treatment; and
- (8) Documentation of consideration of any advance health care directive given in accordance with Title 18-C, section 5-803 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under paragraph A.

(1) Within one business day of receiving a request under paragraph A, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At least one person must be a professional licensed to prescribe medication relevant to the patient's care and treatment. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall notify the following persons in writing that the clinical review panel will be convened:

- (a) The primary treating physician;
- (b) The commissioner or the commissioner's designee;
- (c) The patient's designated representative or attorney, if any;
- (d) The State's designated federal protection and advocacy agency; and
- (e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a lay advisor, who may be employed by the institute or institution, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under paragraph A and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution or that person's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary treatment.

- (a) At the meeting, the clinical review panel shall receive information relevant to the determination of the patient's capacity to give informed consent to treatment and the need for treatment, review relevant portions of the patient's medical records, consult with the physician requesting the treatment, review with the patient that patient's reasons for refusing treatment, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering involuntary treatment have been met.

- (b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating, making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.
 - (c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.
 - (d) Involuntary treatment may not be approved and ordered if the patient affirmatively demonstrates to the clinical review panel that if that patient possessed capacity, the patient would have refused the treatment on religious grounds or on the basis of other previously expressed convictions or beliefs.
- (4) The clinical review panel may approve a request for involuntary treatment and order the treatment if the clinical review panel finds, at a minimum:
- (a) That the patient lacks the capacity to make an informed decision regarding treatment;
 - (b) That the patient is unable or unwilling to comply with the proposed treatment;
 - (c) That the need for the treatment outweighs the risks and side effects; and
 - (d) That the proposed treatment is the least intrusive appropriate treatment option.
- (5) The clinical review panel may make additional findings, including but not limited to findings that:
- (a) Failure to treat the illness is likely to produce lasting or irreparable harm to the patient;
 - or
 - (b) Without the proposed treatment the patient's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the patient to pose a likelihood of serious harm.
- (6) The clinical review panel shall document its findings and conclusions, including whether the potential benefits of the proposed treatment outweigh the potential risks.
- C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.
- (1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.
 - (2) The patient may review any records or documents considered by the clinical review panel.
 - (3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.
 - (4) The patient may ask questions of any person who provides information to the clinical review panel.
 - (5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph 3, division (b).
- D. If the clinical review panel under paragraph A approves the request for involuntary treatment, the clinical review panel shall enter an order for the treatment in the patient's medical records and immediately notify the superintendent of a state mental health institute or chief administrative officer of a designated nonstate mental health institution. The order takes effect:
- (1) For a patient at a state mental health institute, one business day from the date of entry of the order; or
 - (2) For a patient at a designated nonstate mental health institution, one business day from the date of entry of the order, except that if the patient has requested review of the order by the commissioner under paragraph F, subparagraph (2), the order takes effect one business day

from the day on which the commissioner or the commissioner's designee issues a written decision.

E. The order for treatment under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, unless altered by:

- (1) An agreement to a different course of treatment by the primary treating physician and patient;
- (2) For a patient at a designated nonstate mental health institution, modification or vacation of the order by the commissioner or the commissioner's designee; or
- (3) An alteration or stay of the order entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F.

F. The provisions of this paragraph apply to the review and appeal of an order of the clinical review panel entered under paragraph B.

(1) The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

(2) The order of the clinical review panel at a designated nonstate mental health institution may be reviewed by the commissioner or the commissioner's designee upon receipt of a written request from the patient submitted no later than one day after the patient receives the order of the clinical review panel. Within 3 business days of receipt of the request for review, the commissioner or the commissioner's designee shall review the full clinical review panel record and issue a written decision. The decision of the commissioner or the commissioner's designee may affirm the order, modify the order or vacate the order. The decision of the commissioner or the commissioner's designee takes effect one business day after the commissioner or the commissioner's designee issues a written decision. The decision of the commissioner or the commissioner's designee is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

4. Emergency involuntary treatment. Nothing in this section precludes a medical practitioner from administering involuntary treatment to a person who is being held or detained by a hospital against the person's will under the provisions of this subchapter, if the following conditions are met:

A. As a result of mental illness, the person poses a serious and immediate risk of harm to that person or others;

B. The person lacks the decisional capacity either to provide informed consent for treatment or to make an informed refusal of treatment;

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

D. The treatment being administered is a currently recognized standard of treatment for treating the person's mental illness and is the least restrictive form of treatment appropriate in the circumstances;

E. For purposes of evaluation for emergency involuntary treatment, the medical practitioner considers available history and information from other sources, including, but not limited to, family members, that are considered reliable by the examiner; and

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

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a psychiatric hospital, filed under section 3863, subsection 5-A, must be accompanied by:

- A. The emergency application under section 3863, subsection 1;
- B. The accompanying certificate of the medical practitioner under section 3863, subsection 2;
- C. The certificate of the physician or psychologist under section 3863, subsection 7;
- D. A written statement, signed by the chief administrative officer of the psychiatric hospital, certifying that a copy of the application and the accompanying documents have been given personally to the patient and that the patient and the patient's guardian or next of kin, if any, have been notified of:
 - (1) The patient's right to retain an attorney or to have an attorney appointed;
 - (2) The patient's right to select or to have the patient's attorney select an independent examiner; and
 - (3) How to contact the District Court; and
- E. A copy of the notice and instructions given to the patient.

1-A. Involuntary treatment. An application under this section may also include a request for an order of involuntary treatment under subsection 7-A.

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

- A. The District Court orders release or discharge upon the request of the patient or the patient's guardian, parent, spouse or next of kin;
- B. The District Court orders release or discharge upon the report of the applicant that the person may be discharged with safety;
- C. A court orders release or discharge upon a writ of habeas corpus under section 3804;
- D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; or
- E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable.

3. Notice of receipt of application. The giving of notice of receipt of application and date of hearing under this section is governed as follows.

- A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application and date of hearing:
 - (1) To be mailed within 2 days of filing to the person; and
 - (2) To be mailed to the person's guardian, if known, and to the person's spouse, parent or one of the person's adult children or, if none of these persons exist or if none of those persons can be located, to one of the person's next of kin or a friend, except that if the chief administrative officer has reason to believe that notice to any of these individuals would pose risk of harm to the person who is the subject of the application, notice to that individual may not be given.
- B. A docket entry is sufficient evidence that notice under this subsection has been given.

4. Examination. Examinations under this section are governed as follows.

- A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1 and at least 3 days after the person who is the subject of the examination was notified by the psychiatric hospital of the proceedings and of that person's right to retain counsel or to select an examiner, the court shall cause the person to be examined by a medical practitioner. If the application includes a request for an order for involuntary treatment under subsection 7-A, the practitioner must be a medical practitioner who is qualified to prescribe medication relevant to the patient's care. If the person under examination or the counsel for that person selects a qualified examiner who is reasonably available, the court shall give preference to choosing that examiner.
- B. The examination must be held at a psychiatric hospital or at any other suitable place not likely to have a harmful effect on the mental health of the person.
- C.
- D.
- E. The examiner shall report to the court on:
 - (1) Whether the person is a mentally ill person within the meaning of section 3801, subsection 5;
 - (2) When the establishment of a progressive treatment plan under section 3873-A is at issue, whether a person is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A;
 - (3) Whether the person poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A;
 - (4) When involuntary treatment is at issue, whether the need for such treatment meets the criteria of subsection 7-A, paragraphs A and B;
 - (5) Whether adequate community resources are available for care and treatment of the person's mental illness; and
 - (6) Whether the person's clinical needs may be met by an order under section 3873-A to participate in a progressive treatment program.
- F.
- G. Opinions of the examiner may be based on personal observation or on history and information from other sources considered reliable by the examiner.

5. Hearing. Hearings under this section are governed as follows.

- A. The District Court shall hold a hearing on the application not later than 14 days from the date of the application. The District Court may separate the hearing on commitment from the hearing on involuntary treatment.

(1) For good cause shown, on a motion by any party or by the court on its own motion, the hearing on commitment or on involuntary treatment may be continued for a period not to exceed 21 additional days.

(2) If the hearing on commitment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(2-A) If the hearing on involuntary treatment is not held within the time specified, or within the specified continuance period, the court shall dismiss the application for involuntary treatment.

(3) In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

A-1. Prior to the commencement of the hearing, the court shall inform the person that if an order of involuntary commitment is entered, that person is a prohibited person and may not own, possess or have under that person's control a firearm pursuant to Title 15, section 393, subsection 1.

B. The hearing must be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person. If the setting is outside the psychiatric hospital to which the patient is currently admitted, the Department of Health and Human Services shall bear the responsibility and expense of transporting the patient to and from the hearing. If the patient is to be admitted to a psychiatric hospital following the hearing, then the hospital from which the patient came shall transport the patient to the admitting psychiatric hospital. If the patient is to be released following the hearing, then the hospital from which the patient came shall return the patient to that hospital or, at the patient's request, return the patient to the patient's place of residence.

C. The court shall receive all relevant and material evidence that may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent must be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

D. The person must be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person.

E. In addition to proving that the patient is a mentally ill individual, the applicant must show:

(1) By evidence of the patient's recent actions and behavior, that due to the patient's mental illness the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person.

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony, including expert psychiatric testimony, indicating the individual treatment plan to be followed by the psychiatric hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose.

G. A stenographic or electronic record must be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence are confidential.

(2) The record and all notes, exhibits and other evidence must be retained as part of the District Court records for a period of 2 years from the date of the hearing.

H. The hearing is confidential and a report of the proceedings may not be released to the public or press, except by permission of the person or the person's counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or the person's counsel.

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

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

- (1) 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;
- (1-A) That adequate community resources for care and treatment of the person's mental illness are unavailable;
- (2) That inpatient hospitalization is the best available means for treatment of the patient; and
- (3) That it is satisfied with the individual treatment plan offered by the psychiatric hospital to which the applicant seeks the patient's involuntary commitment.

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

C. If the District Court makes the findings in section 3873-A, subsection 1, the court may issue an order under section 3873-A requiring the person to participate in a progressive treatment program.

7. Commitment. Upon making the findings described in subsection 6, paragraph A, the court may order commitment to a psychiatric hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing.

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged immediately.

7-A. Involuntary treatment. This subsection governs involuntary treatment.

A. The court may grant a psychiatric hospital power to implement a recommended treatment plan without a person's consent for up to 120 days or until the end of the commitment, whichever is sooner, if upon application the court finds:

- (1) That the person lacks the capacity to make an informed decision regarding treatment;
- (2) That the person is unable or unwilling to comply with recommended treatment;
- (3) That the need for the treatment outweighs the risks and side effects; and
- (4) That the recommended treatment is the least intrusive appropriate treatment option.

Alternatively, the court may appoint a surrogate to make treatment decisions on the person's behalf for the duration of the commitment if the court is satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests.

B. The need for involuntary treatment under paragraph A may be based on findings that include, but are not limited to, the following:

- (1) That a failure to treat the illness is likely to produce lasting or irreparable harm to the person; or
 - (2) That without the recommended treatment the person's illness or involuntary commitment may be significantly extended without addressing the symptoms that cause the person to pose a likelihood of serious harm.
- C. The parties may agree to change, terminate or extend the treatment plan during the time period of an order for involuntary treatment.
- D. For good cause shown, any party may apply to the court to change or terminate the treatment plan.

8. Continued involuntary hospitalization. If the chief administrative officer of the psychiatric hospital to which a person has been committed involuntarily by the District Court recommends that continued involuntary hospitalization is necessary for that person, the chief administrative officer shall notify the commissioner. The commissioner may then, not later than 21 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court that has territorial jurisdiction over the psychiatric hospital designated for treatment in the application by the commissioner for a hearing to be held under this section.

9. Transportation. Except for transportation expenses paid by the District Court pursuant to subsection 10, a continued involuntary hospitalization hearing that requires transportation of the patient to and from any psychiatric hospital to a court that has committed the person must be provided at the expense of the Department of Health and Human Services. Transportation of an individual to a psychiatric hospital under these circumstances must involve the least restrictive form of transportation available that meets the clinical needs of that individual and be in compliance with departmental regulations.

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

11. Appeals. A person ordered by the District Court to be committed to a psychiatric hospital may appeal from that order to the Superior Court.

- A. The appeal is on questions of law only.
- B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.
- C. The order of the District Court remains in effect pending the appeal.
- D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

12. Transmission of abstract of court ruling to the State Bureau of Identification. Notwithstanding any other provision of this section or section 1207, a court shall transmit to the Department of Public Safety, State Bureau of Identification an abstract of any order for involuntary commitment issued by the court pursuant to this section. The abstract must include:

- A. The name, date of birth and gender of the person who is the subject of the order for involuntary commitment;
- B. The court's ruling that the person has been involuntarily committed; and

C. A notation that the person has been notified by the court in accordance with subsection 5, paragraph A-1 and subsection 13.

The abstract required in this subsection is confidential and is not a "public record" as defined in Title 1, chapter 13; however, a copy of the abstract may be provided by the State Bureau of Identification to a criminal justice agency for legitimate law enforcement purposes, to the Federal Bureau of Investigation, National Instant Criminal Background Check System or to an issuing authority for the purpose of processing concealed firearm permit applications.

For the purposes of this subsection, "criminal justice agency" means a federal, state, tribal, district, county or local government agency or any subunit thereof that performs the administration of criminal justice under a statute or executive order and that allocates a substantial part of its annual budget to the administration of criminal justice. Courts and the Department of the Attorney General are considered criminal justice agencies. "Criminal justice agency" also includes any equivalent agency at any level of Canadian government.

13. Firearms possession prohibition notification. A court that orders a person to be committed involuntarily pursuant to this section shall inform the person that possession, ownership or control of a firearm by that person is prohibited pursuant to Title 15, section 393, subsection 1. As used in this subsection, "firearm" has the same meaning as in Title 17-A, section 2, subsection 12-A.

Thank you.