INVOLUNTARY HOSPITALIZATION & OUTPATIENT SERVICES LAWS

A BASIC GUIDE TO LAWS COVERING INVOLUNTARY ADMISSION TO PSYCHIATRIC HOSPITALS AND TO OUTPATIENT SERVICES

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INTRODUCTION

This manual is designed as a *simple* guide through the involuntary hospitalization process and the involuntary outpatient services laws.

The involuntary hospitalization process can also lead to an order for involuntary treatment. A guide to this process is included in the section on involuntary hospitalization. Involuntary treatment is generally treatment with medications.

This manual also includes a guide on the process whereby outpatient services may be ordered involuntarily. These services are called the "Progressive Treatment Program." Procedures dealing with this program are in a separate section in this manual.

Beneath each sub-section you'll find a reference to the law being explained. Each of these laws is included in the *appendix*, which begins on page 37.

You'll find a chart laying out critical timelines at page 34.

There are blank pages at the end of the manual for your own notes.

This manual has been prepared as a public service. It is not intended as legal advice.

VOLUNTARY ADMISSION

This manual describes the involuntary hospitalization process. Of course, a person may also be admitted to a psychiatric hospital initially on a voluntary basis. As noted in this manual, a voluntary admission can also occur at various points even after an involuntary process is initiated.

A person may be admitted on a voluntary basis if:

- the chief administrative officer of the psychiatric hospital deems the person suitable for admission, care and treatment,
- suitable accommodations are available (unless there is a medical emergency in which case, this limitation does not apply),
- if the person is under the age of 18, the person's parent or guardian consents,
- if the person is under the age of 18 and the admission is to a state mental health institute, the Commissioner of the Department of Health and Human Services consents,[1]
- if the person is an adult and under guardianship, the person's guardian consents and the person does not object to the admission,
- if the person has an Advance Directive and the admission is consistent with the terms of the directive.

A person who is admitted voluntarily is free to leave the psychiatric hospital at any time after admission and within 16 hours of the patient's request to leave unless the hospital initiates an involuntary admission within that period.

34-B MRSA§3831; 34-B MRSA §3832

[1] The state mental health institutes generally do not admit minors.

INVOLUNTARY HOSPITALIZATION AND INPATIENT TREATMENT

WHERE A PERSON MAY BE INVOLUNTARILY HOSPITALIZED

A person may be admitted involuntarily to:

- State institutions: Riverview Psychiatric Center and Dorothea Dix Psychiatric Center.
- Non-state mental health institutions: a public institution, a private institution or a mental health center, which is administered by an entity other than the state and which is equipped to provide inpatient care and treatment for the mentally ill. This is generally the freestanding hospitals, Spring Harbor and Acadia Hospitals, and community hospitals with psychiatric units.

34-B MRSA §3801(6) and (9); 34-B MRSA §3861

PROTECTIVE CUSTODY

An involuntary admission may start with protective custody. This happens when a law enforcement officer takes a person into custody to bring the person in for an evaluation for possible involuntary psychiatric hospitalization. A law enforcement officer may be a policeman or an officer of the county sheriff's department.

34-B MRSA §3862

PROTECTIVE CUSTODY PROCESS

The law enforcement officer must bring the person for an evaluation by a medical practitioner. A medical practitioner is a licensed physician, registered physician assistant, certified psychiatric clinical nurse specialist, nurse practitioner or licensed clinical psychologist. Most frequently the law enforcement officer takes the person to a hospital emergency room.

34-B MRSA §3862; 34-B MRSA §3801(4-B)

TRANSPORTATION USED IN PROTECTIVE CUSTODY

The law enforcement officer must use the least restrictive form of transportation that meets the security needs of the situation when taking the person to the evaluation.

34-B MRSA §3862

WHEN A LAW ENFORCEMENT OFFICER MAY TAKE A PERSON INTO PROTECTIVE CUSTODY

In order to take a person into protective custody, the police officer must have probable cause to believe that the person:

- may be mentally ill, **AND**
- that the person presents a threat of substantial physical harm to him or herself, or to someone else because of the person's mental illness.

34-B MRSA §3862

PROBABLE CAUSE IN PROTECTIVE CUSTODY

If the officer's beliefs are based on information from a 3rd party – such as a family member or a mental health worker – the officer must make sure that the 3rd party recently talked with or recently saw the person who is being considered for protective custody.

34-B MRSA §3862

AWAITING EVALUATION

The person may have to wait for an evaluation. The person cannot be made to wait in a jail or in a correctional facility.

The officer may leave if (s)he has formally transferred custody of the person to a health care agency. Most often this is a hospital emergency room. A formal transfer can only happen if the law enforcement agency has a written agreement with the health care agency.

34-B MRSA §3863(2-A)

HOW LONG MAY PROTECTIVE CUSTODY LAST?

A person can remain in protective custody up to and during the evaluation and then once the practitioner completes the certificate:

- For a period up to 18 hours, if the evaluation was conducted in a non-hospital setting, or 24 hours if done in a hospital, while a judge's review of the application is sought, **OR**

- If the evaluator's official statement was filled out after 11:00 p.m., the person may be transported to a psychiatric hospital and held there until the judge's signature is obtained as soon as possible after 7:00 a.m. **OR**

- A person who has been held in a general hospital against that person's will for no more than 24 hours may be held for a reasonable additional period of time without a judges signature, not to exceed 48 hours, if:

  1) The hospital has had an evaluation of the person conducted by an appropriate practitioner and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness; **AND**

  2) The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or other appropriate alternative; **AND**

  3) The hospital has notified the department of health and human services of the name of the person, the location of the person, the name of the practitioner who conducted the evaluation the time the person first presented to the hospital.

- If a person remains in a general hospital for the full 48 hours allowed the person may be held for one additional 48-hour period, if:

  1) The general hospital satisfies again the above three requirements; AND

  2) The department of health and human services provides its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative.

34-B MRSA §3862(3); 34-B MRSA §3863(3)

LAW ENFORCEMENT OFFICER RESPONSIBILITY AFTER EVALUATION

If the evaluator decides that the person doesn't need hospitalization, the law enforcement officer must release the person, and, with the person's permission, return the person home or to the place where he or she was taken into custody.

If the individual is also under arrest for a criminal charge, he or she may be held on the criminal charges.

34-B MRSA §3862(2)

VOLUNTARY ADMISSION

If the evaluator believes that the person needs to be hospitalized, a person can still be admitted on a voluntary basis.

34-B MRSA §3831; 34-B MRSA §3863(5-A)

INVOLUNTARY ADMISSION APPLICATION

An emergency application must be completed before a person can be admitted to a psychiatric hospital involuntarily. This application is called the "blue paper" in Maine.

34-B M.R.S.A. §3863

LIKELIHOOD OF SERIOUS HARM

"*Likelihood of serious harm*", is a term that is used both for the blue paper and in judicial commitment and appears in this manual frequently. In the context of inpatient involuntary hospitalization it means[2]:

- A substantial risk of physical harm to the person, as shown by recent threats of, or attempts at, suicide or serious self-inflicted bodily harm, **OR**
- A substantial risk of physical harm to others as shown by recent homicidal or violent behavior or by recent actions that placed others in reasonable fear of serious physical harm, **OR**
- A reasonable certainty that the person will suffer severe physical or mental harm as shown by recent behavior that demonstrates the person's inability to avoid or protect themself from such impairment or injury.

34-B MRSA §3801

[2] The term has a different meaning when used in involuntary outpatient services. That definition appears on page 24 of this manual in the section covering outpatient services.

PART 1 OF THE BLUE PAPER

Any person, including health professionals and law enforcement officers, may complete Part 1 of the blue paper. The person must state his or her belief that:

- The person to be examined has a mental illness
- The person poses a likelihood of serious harm because of the mental illness

The person must also state why they have these beliefs.

34-B MRSA §3863(1)

PART 2 OF THE BLUE PAPER

A practitioner completes Part 2 of the blue paper. A practitioner is a licensed physician, registered physician assistant, certified psychiatric clinical nurse specialist, nurse practitioner or licensed clinical psychologist. The practitioner must officially state:

- That they examined the person on the same day as filling out the blue paper;
- That they believe the person has a mental illness;
- That they believe that because of the mental illness that the person poses a likelihood of serious harm;
- That adequate community resources are unavailable for care and treatment of the person's mental illness; and
- The grounds for the opinion.

The practitioner's opinion may be based on personal observation or on history and information from other sources that the practitioner considers reliable.

34-B MRSA §3863(2)

PART 3 OF THE BLUE PAPER

A judge or justice of the peace signs Part 3 of the blue paper.

This judge or justice is simply making sure that the application was completed the way the law requires. This official is not making any decision about whether the statements on the application are true or not.

The judge or justice of the peace must also name the hospital that the person is to be taken to.

34-B MRSA §3863(3)

MEANS OF TRANSPORTATION TO THE HOSPITAL

Transportation to the hospital must be by the least restrictive form of transportation that meets *the clinical needs of the patient*. Least restrictive means refers both to the type of vehicle used and any restraining devices.

34-B MRSA §3863(4); 34-B MRSA §3801(1-B)

HOSPITAL ADMISSION

A person brought to a psychiatric hospital on a blue paper is not automatically admitted. The head of the psychiatric hospital may do one of three things.

- Admit the person as an involuntary patient, so long as the professional who signed the blue paper completed the examination no more than *two days* before the date of admission, **OR**
- Admit the person as a voluntary patient, **OR**
- Not admit the person at all, if the hospital believes that the person does not need involuntary hospitalization and either does not need or does not agree to voluntary hospitalization.

34-B MRSA §3861

24-HOUR POST ADMISSION PROCESS

A doctor or psychologist must examine the patient within 24 hours of admission. If this professional does not officially find that the person has a mental illness and due to the mental illness poses a likelihood of serious harm, the person must be released.

34-B MRSA §3863(7)

POST ADMISSION NOTICES

After consulting the person admitted, the hospital must give notice that the person has been admitted to the hospital to the patient's guardian, spouse, parent, adult child or, if none exists, to the next of kin or friend.

If the hospital believes that this notice would pose a risk of harm to the patient, then it may not be given.

34-B MRSA §3863(6)

HOW LONG DO BLUE PAPERS LAST?

Within 3 days from the date of admission of the person under this section, the hospital must:

- Admit the person as a voluntary patient, **OR**
- File an application for judicial commitment except that if the 3rd day falls on a weekend or holiday, the application must be filed on the next business day following that weekend or holiday, **OR**
- Discharge the person.

The patient may be discharged sooner, if during the period of the blue paper the hospital decides that the person may be safely discharged.

The hospital may admit a person as a voluntary patient at any time during the period of the "blue paper."

34-B MRSA §3863(5-A)

COURT COMMITMENT APPLICATION

If the hospital believes that the person needs continued hospitalization after the blue paper period, and if the person has not agreed to voluntary hospitalization, the hospital can only keep the person hospitalized if court commitment procedures are started. The procedures are started with an application to the District Court.

34-B MRSA §3863(5-A) and 34-B MRSA §3864

COURT APPLICATION NOTICE GIVEN BY HOSPITAL

Before filing an application for court commitment, the hospital must give the person a copy of the application to the person. It must also give the person and his or her guardian or next of kin notice of the following:

- The right to hire an attorney or to have an attorney appointed;
- The right to choose an independent examiner or to have his/her attorney select an independent examiner;
- How to contact the District Court.

34-B MRSA §3864(1)(D)

COURT APPLICATION

An application for court commitment is filed with the District Court having territorial jurisdiction over the psychiatric hospital.

For patients at state hospitals, applications may be filed by the chief administrative officers. For patients at designated non-state mental health institutions, the chief administrative officer may seek involuntary commitment only by requesting the commissioner to apply.

The application is a request to the court to issue an order for hospitalization. The hospital may also ask the court to issue an order authorizing involuntary treatment.

The following documents must be attached to the application.

- The blue paper;
- The evaluation completed within 24 hours of admission;

- A statement signed by the chief administrative officer of the hospital certifying that the patient was given a copy of the application, the attached documents and the notice that they gave the person and his or her guardian or next of kin the required notice of rights; and

- A copy of the notice and instructions given to the person.

34-B MRSA §3864(1)

NOTICES BY THE COURT

When the court receives the application, it must:

- Send a notice to the person that the application has been received and include the date of the hearing. This notice has to be mailed within two days of the filing of the application.

- Send the same notice to the person's guardian, spouse, parent, adult child, or, if none exist, to the person's next of kin or friend, unless this notice would pose a risk of harm to the patient.

34-B MRSA §3864(3)

APPOINTMENTS BY THE COURT

Three days after the person was informed of their rights, the court will appoint an attorney if the person has not made other arrangements to be represented.

The court will also appoint a practitioner to examine the person and report to the court. If, in addition to seeking involuntary hospitalization, the hospital is requesting an order permitting it to involuntarily treat the person, the court must appoint a practitioner who is qualified to prescribe medication.

If the person or the person's attorney has notified the court of a choice of examiner, the court will give preference to appointing that examiner, provided the examiner is reasonably available.

34-B MRSA §3864(4)

REPORT OF EXAMINATION

The examiner must report the following to the court:

- Whether the person is a mentally ill person. A mentally ill person is defined as a person having a psychiatric or other disease that substantially impairs the person's mental health. It may include persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. It does not include individuals who have mental retardation or who have sociopathic personality disorders.

- Whether the person poses a likelihood of serious harm. **AND**

- Whether adequate community resources are available for care and treatment of the person.

- When involuntary treatment is at issue:

  - Whether the person lacks the capacity to make an informed decision regarding treatment[3];

  - Whether the person is unable or unwilling to comply with recommended treatment;

  - Whether the need for the treatment outweighs the risks and side effects;

  - Whether the recommended treatment is the least intrusive appropriate treatment option; and

  - Why the treatment is needed, which may be because :

    - Failure to treat the illness would result in lasting or irreparable harm, or

    - Without treatment the person's involuntary commitment would be significantly extended without addressing symptoms that cause the person to pose a likelihood of serious harm.

- If the court orders that the person participate in the progressive treatment program, the examiner must also report to the court on the items listed in the section entitled "Independent Examination" on page 29.

34-B MRSA §3864(4)(E)

[3] The definition for inability to make an informed decision appears on page 25.

HEARING

The hearing must be held within 14 days of the date of application.

The hearing may be postponed for up to 21 days if the hospital or the patient requests a postponement for a good reason or if the court independently determines there is good reason for postponing the hearing.

The hearing will be conducted in an informal, but orderly manner, in a setting that is not likely to have a harmful effect on the mental health of the patient.

The hearing is confidential and reports of the proceedings may not be released to the public or press without the person's consent and approval of the Court.

If the person requests a public hearing, the court may allow the hearing to be public.

34-B MRSA §3864(5)

TRANSPORTATION TO HEARING

The hearing may occur at the hospital. If not, the person must be transported to the hearing. Transportation costs are borne by the District Court, except when the individual is already under court commitment and the hearing is a recommitment, and then costs are borne by the Department of Health and Human Services. Transportation must be by the least restrictive means appropriate to the person's clinical condition.

34-B MRSA §3864(5) and (9)(B) and (10)

RIGHTS AT HEARING

The person and any individual to whom notice is required to be sent has the right to appear at the hearing, to testify, to present witnesses and to cross-examine witnesses. If the person has not retained an attorney, the court will appoint one.

34-B MRSA §3864(5)

NOTICE TO THE PERSON BY THE COURT

Before the hearing starts, the court must inform the person that if an order of involuntary commitment is entered that the person may not own, possess or have a firearm under their control.

34-B MRSA 3864 [and 15 MRSA §393(1) – not in appendix]

WHAT THE HOSPITAL MUST PROVE AT THE HEARING FOR INVOLUNTARY HOSPITALIZATION

The hospital is required to show by recent evidence of the person's actions and behaviors, that:

- The person is a mentally ill individual; **AND**
- The person poses a likelihood of serious harm due to mental illness; **AND**
- Inpatient hospitalization is the best available means for treatment of the person after taking into consideration less restrictive treatment settings.

34-B MRSA §3864(5)(E)

WHAT THE HOSPITAL MUST PROVE AT THE HEARING FOR INVOLUNTARY TREATMENT

The hospital is required to show that:

- The person lacks the capacity to make an informed decision regarding treatment;
- The person is unable or unwilling to comply with recommended treatment;
- The need for the treatment outweighs the risks and side effects; **AND**
- The recommended treatment is the least intrusive appropriate treatment option.

The hospital's proof that there is a need for treatment can be based upon a showing, that:

- A failure to treat the illness is likely to produce lasting or irreparable harm to the person; **OR**

- 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; **OR**

- Other reasons as the court might find sufficient.

34-B MRSA §3864(7-A)

WHAT TYPE OF EVIDENCE IS REQUIRED?

- The hospital must include expert psychiatric testimony in its evidence.

- The hospital must also present an individual treatment plan to be followed.

34-B MRSA §3864(5)(F)

COURT DECISION ON INVOLUNTARY HOSPITALIZATION

The court must answer the following questions when deciding whether to order that a person be involuntarily hospitalized:

- Does the person have a mental illness?

- Does the person's recent actions and behavior demonstrate that the person poses a likelihood of serious harm?

- Is hospitalization the best available means for treatment? **AND**

- Is the individual treatment plan offered by the hospital satisfactory?

Before the court can answer these questions "*YES*" it must have a very strong conviction that its decision is based on the truth. The court must base its decision on "*clear and convincing*" evidence.

34-B MRSA §3864(6)

COURT ORDER ON INVOLUNTARY HOSPITALIZATION

If the court answers all the questions under the previous heading ***YES,*** it may commit the person to the hospital as an involuntary patient for a period up to 4 months.

If it answers the first three questions ***YES*** but it is not satisfied with the hospital's treatment plan, it may postpone the hearing for 10 days to let the hospital revise its treatment plan.
If the court answers any of the first three questions ***NO,*** the application must be dismissed and the person must be discharged from the hospital.

34-B MRSA §3864(6) and (7)

COURT ORDER FOR INVOLUNTARY OUTPATIENT SERVICES

If the court makes findings that would support ordering a patient to involuntary outpatient services, the court may issue an order requiring the person to participate in the progressive treatment program. A description of the progressive treatment program begins at page 23, and the required court findings are listed on page 31.

34-B MRSA §3864(6)(3)(C)

COURT DECISION ON INVOLUNTARY TREATMENT

The court must answer the following questions when deciding whether to order that a person may be involuntarily treated while hospitalized:

- Does the person lack the capacity to make an informed decision regarding treatment?
- Is the person is unable or unwilling to comply with recommended treatment?
- Is there a need for treatment? The need may be based upon a finding that:
  - a failure to treat the illness is likely to produce lasting or irreparable harm to the person; **OR**
  - 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.
- Does the need for the treatment outweigh the risks and side effects?
- Is the recommended treatment the least intrusive appropriate treatment option?

34-B MRSA §3864(7-A)

COURT ORDER ON INVOLUNTARY TREATMENT

If the court answers all the questions under the previous heading ***YES,*** it may:

- Grant the 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, **OR**

- Appoint an individual to act as a surrogate to make treatment decisions on the person's behalf for the duration of the commitment. The court must be satisfied that the surrogate is suitable, willing and reasonably available to act in the person's best interests.

34-B MRSA §3864(7-A)

WHEN IS THE ORDER ENTERED?

The court usually issues an order immediately after the close of the hearing but it can also take additional time to consider the case. If it does not issue an order of commitment within 24 hours, the must dismiss the application for commitment and order the patient discharged immediately.

34-B MRSA §3864(7)(B)

NOTICES BY THE COURT

The court must transmit an abstract of any order for involuntary commitment to the Department of Public Safety, State Bureau of Identification.

The court shall inform the person that possession, ownership or control of a firearm by that person is prohibited by law.

34-B MRSA §3864(12) and (13)

APPEAL

The person may appeal the court order to the Superior Court. The appeal must be filed within 30 days of the District Court's order.

34-B MRSA §3864(11) [and Rule 76D, Maine Rules of Civil Procedure – not in appendix]

HABEAS CORPUS

A person who is hospitalized is at all times entitled to petition the court for a writ of habeas corpus if the person believes they are unlawfully detained.

34-B MRSA §3804 [and 14 MRSA §5501 – not in appendix]

OTHER POST ORDER PROCEEDINGS

- **Change in treatment plan if involuntary treatment ordered:**

  The hospital and person may agree to changes in the treatment plan during the time period of an order for involuntary treatment.

  Any party may apply to the court to change or terminate the treatment plan.

- **Person sentenced for a criminal act while under commitment:**

  If a person is sentenced to a term of imprisonment in a county jail while under commitment, the chief administrative officer of the hospital must notify the sheriff of the hospitalization so that the sheriff may process the person to initiate the start of the sentence in a manner that disrupts the person's hospitalization as little as possible.

34-B MRSA §3864; 34-B MRSA §3863-A [and 15 MRSA §2211-A(3-A) – not in appendix]

RECOMMITMENT

- The hospital may apply for an additional period of commitment if it believes that the person needs continued involuntary hospitalization.
- The application must be filed no later than 21 days before the end of the original period of commitment.
- All other procedures for recommitment are the same as for an original commitment, except that a person may be recommitted for a period of up to 12 months.

34-B MRSA §3864(8)

DISCHARGE AT END OF COMMITMENT

The hospital must discharge the person at the end of the commitment period unless:

- It has started recommitment procedures, **OR**
- The person is suitable for and has accepted voluntary admission.

34-B MRSA §3864(8)

RELEASE DURING COMMITMENT

A hospital is not required to hospitalize a person for the entire period of commitment. It must discharge a person during the commitment period if it determines that conditions have changed and that the person no longer needs hospitalization. The period of inpatient commitment also terminates if the person is admitted to the progressive treatment program.

34-B MRSA §3871

OBLIGATIONS IN DISCHARGE PLANNING

In conducting discharge planning, a hospital must inquire (and document it inquiries) whether the patient has access to firearms and must notify the patient, the patient's family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged is prohibited under law.

34-B MRSA §3871

CONVALESCENT STATUS

A hospital may release a person to live in the community on convalescent status. People on convalescent status technically remain patients of the hospital.

The chief administrative officer of the psychiatric hospital may authorize the convalescent status release of a person when the officer believes

- The person's condition has improved;
- It is in the person's best interest; **AND**
- The patient does not pose a likelihood of serious harm.

The chief administrative officer of a non-state psychiatric hospital must also obtain the approval of the commissioner before releasing an involuntarily committed patient to convalescent status. The request for approval must a plan for continued responsibility.

34-B MRSA §3870

RETURN TO HOSPITAL FROM CONVALESCENT STATUS

A person who was a voluntary patient at the time convalescent status started may return voluntarily to the hospital if hospitalization is needed. The person may be returned involuntarily only if "blue papers" are started.

A person who was an involuntary patient may be returned voluntarily ***OR*** involuntarily if:

- The hospital considers it in the person's best interest, **OR**
- The hospital believes that the person poses a likelihood of serious harm; **AND**
- The hospital issues an order for return;
- The order is endorsed by a judge or justice of the peace, **AND**
- The judge decides it is in the person's best interest to return or that the person poses a likelihood of serious harm.

34-B MRSA §3870

INVOLUNTARY OUTPATIENT SERVICES: PROGRESSIVE TREATMENT PROGRAM

DEFINITION: ASSERTIVE COMMUNITY TREATMENT

An ACT Team has the following characteristics and responsibilities:

- The team consists of staff from multiple disciplines. It must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor. It may include an occupational therapist, community-based mental health rehabilitation technician, a psychologist, licensed clinical social worker, or licensed clinical professional counselor.
- Team services must be available 24 hours per day, seven days per week.
- The team must provide treatment, rehabilitation and support services in order to address the person's symptoms stability and prevent relapse.
- The team assists the person
    - in maintaining safe affordable housing in normative settings;
    - in establishing natural support networks to combat isolation and withdrawal;
    - in minimizing involvement with the criminal justice system;
    - with individual recovery education;
    - and with services to enable the person to function at a work site.

34-B MRSA §3801(11)

DEFINITION: LIKELIHOOD OF SERIOUS HARM

For all purposes related to the Progressive Treatment Program, including original admission and re-hospitalization during participation in the program, "likelihood of serious harm" has the following definition

- In view of the person's treatment history, current behavior and inability to make an informed decision, a reasonable likelihood that deterioration of the person's mental health will occur and that the person will in the foreseeable future pose:

    1) A substantial risk of physical harm to the person as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm;

2) A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to themselves; **OR**

3) A substantial risk of severe physical or mental impairment or injury to the person as manifested by recent evidence of actions or behavior that demonstrates the person's inability to avoid or protect the person from such impairment or injury.

34-B MRSA §3801

DEFINITION: SEVERE AND PERSISTENT MENTAL ILLNESS

"Severe and persistent mental illness" means:

- a diagnosis of schizophrenia, schizoaffective disorder, other psychotic disorder, major depressive disorder, or bipolar disorder **AND**
- a resulting disability or functional impairment that has persisted continuously or intermittently for one year or that is expected to persist for at least one year; **OR**
- a combination of mental disorders **AND**
- a resulting disability or functional impairment that has persisted continuously or intermittently for one year or that is expected to persist for at least one year.

The resulting "disabilities or functional impairments" include:

- inability to adequately manage one's own finances,
- inability to perform activities of daily living,
- and inability to behave in ways that do not bring the person to the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect him/herself from harm.

34-B MRSA §3801

DEFINITION: INABILITY TO MAKE AN INFORMED DECISION

"Inability to make an informed decision" means:

- being unable to make a responsible decision whether to accept or refuse a recommended treatment

- as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment
- after a thorough and informative explanation has been given by a qualified mental health professional.

34-B MRSA §3801

INVOLUNTARY OUTPATIENT TREATMENT SERVICES

The program of involuntary outpatient services is called the "Progressive Treatment Program." The treatment services are delivered pursuant to an individualized treatment plan. The person ordered to follow the individualized treatment plan may be committed to the care and supervision of an ACT team or other outpatient facility.[4]

34-B MRSA §3873-A(6) and (7)

APPLICATION FOR ADMISSION TO THE PROGRESSIVE TREATMENT PROGRAM

The superintendent or chief administrative officer of a psychiatric hospital, the commission of the Department of Health and Human Services, the director of an ACT team, a medical practitioner, a law enforcement officer or the legal guardian of the person who is the subject of the application may seek an order to admit a person to the progressive treatment program. The application must be filed with the District Court.

34-B MRSA §3873-A(1)

PROGRESSIVE TREATMENT PROGRAM: ADMISSION REQUIREMENTS

In order for a person to be admitted to the Progressive Treatment Program, the following conditions must apply:

- The person must have a severe and persistent mental illness;
- The person must pose a likelihood of serious harm as defined for purposes of the progressive treatment program. This includes a requirement that the person lacks ability to make an informed decision.

[4] Other outpatient facility is not defined in the statute.

- The person must have a suitable individualized treatment plan;
- Licensed and qualified community providers are available to support the treatment plan;
- It is unlikely that the person would follow the treatment plan voluntarily;
- Compliance with the plan will help to protect the person from interruptions in treatment, relapses or deterioration of mental health, and
- Compliance with the plan will enable the person to survive more safely in a community setting without posing a likelihood of serious harm.

34-B MRSA §3873-A (1)

APPLICATION CONTENTS

The application must contain:

- A certificate of a medical practitioner stating the facts and opinions that support the application.
- The certificate must indicate that the opinions are based upon one or more recent examinations of the person or upon the practitioner's recent treatment of the person. The statute also says that the opinions may be based on personal observation and must include consideration of history and information from other sources considered reliable by the practitioner when those sources are available.
- A proposed treatment plan that identifies the licensed and qualified providers who are willing to support the plan.
- A statement certifying the following:
    - a copy of the application and attached documents were given to the person and the person's guardian or next of kin;
    - the person was notified of their right to retain and attorney or to have one appointed by the court;
    - the person was notified of their or their attorney's right to select an independent examiner;
    - how to contact the District Court.

34-B MRSA §3873-A (2)

NOTICES

Within two days of receiving the application, the court mails a notice of the hearing date to the person.

The notice is also sent to the person's guardian and spouse, parent or adult child, and if none are known or can be located, then to the person's next of kin or friend if known, if known. If the applicant has reason to believe that the notice to any of these individuals would pose a risk of harm to the person, then the notice may not be given.

If the individual is not a patient in a hospital when the application is filed, the applicant must personally serve the individual and provide proof of the service with the court.

34-B MRSA §3873-A (3)

APPOINTMENT OF INDEPENDENT EXAMINER

At least three days after the person is notified of their right to select or to have their attorney select an independent examiner, the court will arrange to have the person examined by a practitioner. The court gives preference to the person's selection if that practitioner is reasonably available.

34-B MRSA §3873-A (4)

INDEPENDENT EXAMINATION

The independent examination may be conducted at a psychiatric hospital, a crisis center, at the offices of an ACT Team or other place that is not likely to have a harmful effect on the person's health.

- Whether the person is a mentally ill person. A mentally ill person is defined as a person having a psychiatric or other disease that substantially impairs the person's mental health. It may include persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. It does not include individuals who have intellectual disabilities or who have sociopathic personality disorders.

- Whether the person is suffering from a severe and persistent mental illness.

- Whether the person poses a likelihood of serious harm as defined for purposes of the progressive treatment program. Note that this definition includes a requirement that the person lacks ability to make an informed decision.

34-B MRSA §3873-A(4)(C); 34-B MRSA §3801(4-A), (5), (8-A), and (10).

COURT HEARING

- The hearing must be held within 14 days of the date of application.

- The hearing may be postponed for up to 21 days if the hospital or the patient requests a postponement for a good reason or if the court independently determines there is good reason for postponing the hearing.

- The hearing will be conducted in an informal, but orderly manner, in a setting that is not likely to have a harmful effect on the mental health of the patient.

- The hearing is confidential and reports of the proceedings may not be released to the public or press without the person's consent and approval of the Court.

- If the person requests a public hearing, the court may allow the hearing to be public.

34-B MRSA §3873-A(5)

TRANSPORTATION TO HEARING

The applicant is responsible for transporting the person to and from the hearing.

34-B MRSA §3873-A(5)(B)

RIGHTS AT HEARING

The person and any individual to whom notice is required to be sent has the right to appear at the hearing, to testify, to present witnesses and to cross-examine witnesses. If the person has not retained an attorney, an attorney will be appointed.

34-B MRSA §3873-A(5)(C)

WHAT THE APPLICANT MUST PROVE AT HEARING

The hospital is required to present evidence supporting the application and to describe the proposed individual treatment plan. This means that the applicant must prove that the person meets all the requirements for admission to the progressive treatment program, being:

- The person must have a severe and persistent mental illness;
- The person must pose a likelihood of serious harm as defined for purposes of the progressive treatment program. This includes a requirement that the person lacks ability to make an informed decision.
- The person must have a suitable individualized treatment plan;
- Community resources must be available to support the treatment plan;
- It is unlikely that the person would follow the treatment plan voluntarily;
- Compliance with the plan will help to protect the person from interruptions in treatment, relapses or deterioration of mental health, and
- Compliance with the plan will enable the person to survive more safely in a community setting without posing a likelihood of serious harm.

34-B MRSA §3873-A(5)(E) and 34-B MRSA §3873-A (1)

EFFECT OF AN ADVANCE DIRECTIVE

A person may have an Advance Directive or durable health care power of attorney. The court may consider the content of these documents and receive testimony on them, but the law states that the court is not bound by their contents. But see also the provisions of 18-A MRSA §5-807 regarding the obligations of a health care provider when an individual has an advance directive.

34-B MRSA §3873-A(5)(F)

COURT ACTION AND DECISION ON APPLICATION

The court must answer the following questions when deciding whether the person may be admitted to the Progressive Treatment Program.

- Does the person have a severe and persistent mental illness?
- Does the person pose a likelihood of serious harm as defined for purposes of the progressive treatment program? This includes a requirement that the person lacks ability to make an informed decision.
- Does the person have a suitable individualized treatment plan?
- Are community resources available to support the treatment plan?
- Is it unlikely that the person would follow the treatment plan voluntarily?
- Will compliance with the plan help to protect the person from interruptions in treatment, relapses or deterioration of mental health?
- Will compliance with the plan enable the person to survive more safely in a community setting without posing a likelihood of serious harm?

The definition of likelihood of serious harm would require that the court consider the person's treatment history and current behavior.

34-B MRSA §3873-A(1)

COURT ORDER

If the court answers **YES** to **all** of the above questions, it may issue an order that includes the following:

- Directing the person to follow an individualized treatment plan;
- Identifying incentives for compliance potential consequences for noncompliance;
- Committing the person to the care and supervision of an ACT team or other outpatient facility.

34-B MRSA §3873(6) and (7)

DURATION OF COURT ORDER

The court order may be effective for a period up to 12 months. The order is subject to termination or renewal as described below.

34-B MRSA §3873(6)

APPEAL

The person may appeal the court order to the Superior Court. The appeal must be filed within 30 days of the District Court's order.

34-B MRSA §3873-A(5)(I) and §386(11) [and Rule 76D, Maine Rules of Civil Procedure – not in appendix]

NON-COMPLIANCE WITH THE ORDER

If the person fails to comply with the court's order, including failure to comply with the treatment plan, the applicant may file a motion to enforce the order. The motion must include a certificate from a practitioner identifying the noncompliance.

After notice and hearing on the motion, if the court finds that the person has been noncompliant with the order and that the person poses a likelihood of serious harm as defined for purposes of the progressive treatment program, the court may authorize emergency hospitalization. The motion must comply with all the requirements for Part II of the blue paper, as described page 8.

OTHER POST ORDER PROCEDURES

Any party to the original action may file a motion with the court to modify, extend, or dissolve the court order. If the court finds good cause, it may:

- Modify the order;
- Dissolve the order;
- Order the term of the treatment plan to extend for a period of up to one year.
- Order that any restrictions in the order be terminated or suspended upon the person's achievement of the goals under the treatment plan.

34-B MRSA §3873(7)(C); 34-B MRSA §3873-A(9)

INVOLUNTARY HOSPITALIZATION STATUTORY TIMELINES

EVENT	TIME
Release of voluntary patient who asks to leave	within 16 hours of request unless blue paper initiated within that time
Admission	within 2 days of certifying examination
Certification following admission	within 24 hours of admission
Filing of judicial application	within 3 days (not *working* days) of date of admission – unless third day is a weekend or holiday, then next business day
Hospital notice to patient of right to retain counsel, select examiner, how to contact court, and copy of application	prior to filing of application
Notice mailed by court to patient with date of hearing	within 2 days of filing of application
Examination by independent examiner	at least 3 days after hospital notified patient of right to select examiner
Hearing	within 14 days of application
Continuance of initial hearing for cause	not to exceed 21days from date of scheduled initial hearing
Continuance of hearing for purpose of resubmission and reconsideration of treatment plan	not to exceed 10 days after initial hearing
Issuance of court order	within 24 hours of the hearing
Length of commitment	not to exceed 4 months, initial commitment not to exceed 12 months, recommitments
Application for continued commitment	not later than 21 days prior to date of expiration of commitment order
Appeal to Superior Court	within 30 days

LINK TO FORMS

The Maine Department of Health and Human Services, Office of Substance Abuse and Mental Health Services posts forms relating to involuntary hospital commitment on its web site. You will find these forms at the following link:

http://www.maine.gov/dhhs/samhs/mentalhealth/rights-legal/involuntary/home.html

APPENDIX: LAWS

34-B MRSA §3801. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1-A. Designated nonstate mental health institution. "Designated nonstate mental health institution" means a nonstate mental health institution that is under contract with the department for receipt by the hospital of involuntary patients.

1-B. Least restrictive form of transportation. "Least restrictive form of transportation" means the vehicle used for transportation and any restraining devices that may be used during transportation that impose the least amount of restriction, taking into consideration the stigmatizing impact upon the individual being transported.

2. Licensed physician. "Licensed physician" means a person licensed under the laws of the State to practice medicine or osteopathy or a medical officer of the Federal Government while in this State in the performance of his official duties.

3. Licensed clinical psychologist. "Licensed clinical psychologist" means a person licensed under the laws of the State as a psychologist and who practices clinical psychology.

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

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

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

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

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

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

5. Mentally ill person. "Mentally ill person" means a person having a psychiatric or other disease that substantially impairs that person's mental health or creates a substantial risk of suicide. "Mentally ill person" includes persons suffering effects from the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol. A person with developmental

disabilities or a person diagnosed as a sociopath is not for those reasons alone a mentally ill person.

6. **Nonstate mental health institution.** "Nonstate mental health institution" means a public institution, a private institution or a mental health center, which is administered by an entity other than the State and which is equipped to provide inpatient care and treatment for the mentally ill.

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

7-A. **Progressive treatment program.** "Progressive treatment program" or "program" means a program of court-ordered services provided to participants under section 3873-A.

7-B. **Psychiatric hospital.** "Psychiatric hospital" means:

A. A state mental health institute;

B. A nonstate mental health institution; or

C. A designated nonstate mental health institution.

8. **Residential care facility.** "Residential care facility" means a licensed or approved boarding care, nursing care or foster care facility which supplies supportive residential care to individuals due to their mental illness.

8-A. **Severe and persistent mental illness.** "Severe and persistent mental illness" means a diagnosis of one or more qualifying mental illnesses or disorders plus a listed disability or functional impairment that has persisted continuously or intermittently or is expected to persist for at least one year as a result of that disease or disorder. The qualifying mental illnesses or disorders are schizophrenia, schizoaffective disorder or other psychotic disorder, major depressive disorder, bipolar disorder or a combination of mental disorders sufficiently disabling to meet the criteria of functional disability. The listed disabilities or functional impairments, which must result from a diagnosed qualifying mental illness or disorder, include inability to adequately manage one's own finances, inability to perform activities of daily living and inability to behave in ways that do not bring the attention of law enforcement for dangerous acts or for acts that manifest the person's inability to protect the person from harm.

9. **State mental health institute.** "State mental health institute" means the Riverview Psychiatric Center or the Dorothea Dix Psychiatric Center.

10. **Inability to make an informed decision.** "Inability to make an informed decision" means being unable to make a responsible decision whether to accept or refuse a

recommended treatment as a result of lack of mental capacity to understand sufficiently the benefits and risks of the treatment after a thorough and informative explanation has been given by a qualified mental health professional.

11. Assertive community treatment. "Assertive community treatment" or "ACT" means a self-contained service with a fixed point of responsibility for providing treatment, rehabilitation and support services to persons with mental illness for whom other community-based treatment approaches have been unsuccessful. Assertive community treatment uses clinical and rehabilitative staff to address symptom stability; relapse prevention; maintenance of safe, affordable housing in normative settings that promote well-being; establishment of natural support networks to combat isolation and withdrawal; the minimizing of involvement with the criminal justice system; individual recovery education; and services to enable the person to function at a work site. Assertive community treatment is provided by multidisciplinary teams who are on duty 24 hours per day, 7 days per week; teams must include a psychiatrist, registered nurse, certified rehabilitation counselor or certified employment specialist, a peer recovery specialist and a substance abuse counselor and may include an occupational therapist, community-based mental health rehabilitation technician, psychologist, licensed clinical social worker or licensed clinical professional counselor. An ACT team member who is a state employee is, while in good faith performing a function as a member of an ACT team, performing a discretionary function within the meaning of Title 14, section 8104-B, subsection 3.

34-B MRSA §3803. Patient's Rights

A patient in a psychiatric hospital or residential care facility under this subchapter has the following rights

1. Civil rights. Every patient is entitled to exercise all civil rights, including, but not limited to, the right to civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, the right to enter into contractual relationships and the right to manage the patient's property, unless:

A. The chief administrative officer of the psychiatric hospital or residential care facility determines that it is necessary for the medical welfare of the patient to impose restrictions on the exercise of these rights and, if restrictions are imposed, the restrictions and the reasons for them must be made a part of the clinical record of the patient;

B. A patient has been adjudicated incompetent and has not been restored to legal capacity; or

C. The exercise of these rights is specifically restricted by other statute or rule, but not solely because of the fact of admission to a psychiatric hospital or residential care facility.

2. Humane care and treatment. Every patient is entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

3. Restraints and seclusion. Restraint, including any mechanical means of restricting movement, and seclusion, including isolation by means of doors that cannot be opened by the patient, may not be used on a patient, unless the chief administrative officer of the psychiatric hospital or residential care facility or the chief administrative officer's designee determines that either is required by the medical needs of the patient.

A. The chief administrative officer of the psychiatric hospital or facility shall record and make available for inspection every use of mechanical restraint or seclusion and the reasons for its use.

B. The limitation of the use of seclusion in this section does not apply to maximum security installations.

4. Communication. Patient communication rights are as follows.

A. Every patient is entitled to communicate by sealed envelopes with the department, a member of the clergy of the patient's choice, the patient's attorney and the court that ordered the patient's hospitalization, if any

B. Every patient is entitled to communicate by mail in accordance with the rules of the psychiatric hospital.

5. Visitors. Every patient is entitled to receive visitors unless definitely contraindicated by the patient's medical condition, except that the patient may be visited by a member of the clergy of the patient's choice or the patient's attorney at any reasonable time.

6. Sterilization. A patient may not be sterilized except in accordance with chapter 7.

34-B MRSA §3804. Habeas Corpus

Any person detained pursuant to this subchapter is entitled to the writ of habeas corpus, upon proper petition by himself or by a friend to any justice generally empowered to issue the writ of habeas corpus in the county in which the person is detained.

34-B MRSA §3805. Prohibited Acts; Penalty

1. Unwarranted hospitalization. A person is guilty of causing unwarranted hospitalization, if he willfully causes the unwarranted hospitalization of any person under this subchapter.

2. Denial of rights. A person is guilty of causing a denial of rights if he willfully causes the denial to any person of any of the rights accorded to him by this subchapter.

3. Penalty. Causing unwarranted hospitalization or causing a denial of rights is a Class C crime.

34-B MRSA §3831. Admission

A psychiatric hospital may admit on an informal voluntary basis for care and treatment of a mental illness any person desiring admission or the adult ward of a legally appointed guardian, subject to the following conditions.

1. Availability of accommodations. Except in cases of medical emergency, voluntary admission is subject to the availability of suitable accommodations.

2. Standard hospital information. Standard hospital information may be elicited from the person if, after examination, the chief administrative officer of the psychiatric hospital determines the person suitable for admission, care and treatment.

3. Persons under 18 years of age. Any person under 18 years of age must have the consent of the person's parent or guardian.

4. State mental health institute. Any person under 18 years of age must have the consent of the commissioner for admission to a state mental health institute.

5. Adults under guardianship. An adult ward may be admitted on an informal voluntary basis only if the adult ward's legally appointed guardian consents to the admission and the ward makes no objection to the admission.

6. Adults with advance health care directives. An adult with an advance health care directive authorizing psychiatric hospital treatment may be admitted on an informal voluntary basis if the conditions specified in the advance health care directive for the directive to be effective are met in accordance with the method stated in the advance health care directive or, if no such method is stated, as determined by a physician or a psychologist. If no conditions are specified in the advance health care directive as to how the directive becomes effective, the person may be admitted on an informal voluntary basis if the person has been determined to be incapacitated pursuant to Title 18-A, Article 5, Part 8. A person may be admitted only if the person does not at the time object to the admission or, if the person does object, if the person has directed in the advance health care directive that admission to the psychiatric hospital may occur despite that person's objections. The duration of the stay in the psychiatric hospital of a person under this subsection may not exceed 5 working days. If at the end of that time the chief administrative officer of the psychiatric hospital recommends further hospitalization of the person, the chief administrative officer shall proceed in accordance with section 3863, subsection 5-A.

This subsection does not create an affirmative obligation of a psychiatric hospital to admit a person consistent with the person's advance health care directive. This subsection does not create an affirmative obligation on the part of the psychiatric hospital or treatment provider to provide the treatment consented to in the person's advance health care directive if the

physician or psychologist evaluating or treating the person or the chief administrative officer of the psychiatric hospital determines that the treatment is not in the best interest of the person.

34-B MRSA §3832. Freedom to Leave

1. Patient's right. A patient admitted under section 3831 is free to leave the psychiatric hospital at any time after admission within 16 hours of the patient's request unless application for admission of the person under section 3863 is initiated within that time.

2. Notice. The chief administrative officer of the psychiatric hospital shall cause every patient admitted under section 3831 to be informed, at the time of admission, of:

A. The patient's status as an informally admitted patient; and

B. The patient's freedom to leave the psychiatric hospital under this section.

34-B MRSA §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-A, section 5-802 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.

34-B MRSA §3861-A. Notification of Hospitalization

When a person who is hospitalized in a psychiatric hospital under the provisions of this chapter is sentenced to serve a straight term of imprisonment or a split sentence in a county jail, the chief administrative officer of the hospital shall notify the sheriff of the county jail so that, in accordance with the provisions of Title 15, section 2211-A, the sheriff may process the person to serve the sentence while hospitalized and the person may remain in the hospital until ready for discharge.

34-B MRSA §3862. Protective Custody

1. Law enforcement officer's power. If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person presents a

threat of imminent and substantial physical harm to that person or to other persons, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity, the law enforcement officer:

A. May take the person into protective custody; and

B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-A, section 5-802, subsection (d) to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.

When formulating probable cause, the law enforcement officer may rely upon information provided by a 3rd-party informant if the officer confirms that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person presents a threat of imminent and substantial physical harm to that person or to other persons.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, and, for a person who has an advance health care directive authorizing mental health treatment, if the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have not been met or, in the absence of stated conditions, that the person does not lack capacity, the officer shall:

A. Release the person from protective custody and, with the person's permission, return the person forthwith to the person's place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with the person's permission, return the person forthwith to the place where the person was taken into protective custody; or

C. If the person is also under arrest for a violation of law, retain the person in custody until the person is released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a period of time not to exceed 18 hours as may be necessary to obtain that endorsement.

3-A. Advance health care directive effect. If the examiner determines that the conditions specified in the advance health care directive for the directive to be effective have been met or, in the absence of stated conditions, that the person lacks capacity, the person may be treated in accordance with the terms of the advance health care directive.

4. Transportation costs. The costs of transportation under this section must be paid in the manner provided under section 3863. Any person transporting an individual to a hospital under the circumstances described in this section shall use the least restrictive form of transportation available that meets the security needs of the situation.

34-B MRSA §3863. Emergency Procedure

A person may be admitted to a psychiatric hospital on an emergency basis according to the following procedures.

1. Application. Any health officer, law enforcement officer or other person may apply to admit a person to a psychiatric hospital, subject to the prohibitions and penalties of section 3805, stating:

A. The applicant's belief that the person is mentally ill and, because of the person's illness, poses a likelihood of serious harm; and

B. The grounds for this belief.

2. Certifying examination. The written application must be accompanied by a dated certificate, signed by a medical practitioner stating:

A. That the practitioner has examined the person on the date of the certificate;

B. That the medical practitioner is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. The written certificate must include a description of the grounds for that opinion;

C. That adequate community resources are unavailable for care and treatment of the person's mental illness; and

D. The grounds for the practitioner's opinion, which may be based on personal observation or on history and information from other sources considered reliable by the examiner.

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a

transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

A person with mental illness may not be detained or confined in any jail or local correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

3. Judicial review. The application and accompanying certificate must be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a justice of the peace, who may review the original application and accompanying certificate or a facsimile transmission of them.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting psychiatric hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice.

B. A person may not be held against the person's will in a hospital under this section, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 24 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the psychiatric hospital undertakes to secure the endorsement immediately upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons seeking the involuntary admission undertake to secure the endorsement immediately upon execution of the certificate by the examiner.

C. Notwithstanding paragraph B, subparagraphs (1) and (2), a person sought to be admitted informally under section 3831 or involuntarily under this section may be transported to a psychiatric hospital and held there for evaluation and treatment pending judicial endorsement of the application and certificate if the endorsement is obtained between the soonest available hours of 7:00 a.m. and 11:00 p.m. [2007, c. 319, §9 (AMD).]

D. A person who has been held against that person's will for no more than 24 hours pursuant to paragraph B may be held for a reasonable additional period of time, not to exceed 48 hours, if:

(1) The hospital has had an evaluation of the person conducted by an appropriately designated individual and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness;

(2) The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or other appropriate alternative; and

(3) The hospital has notified the department of the name of the person, the location of the person, the name of the appropriately designated individual who conducted the evaluation pursuant to subparagraph (1) and the time the person first presented to the hospital.

E. If a person remains in a hospital for the full 48 hours allowed under paragraph D, the person may be held for one additional 48-hour period, if:

(1) The hospital satisfies again the requirements of paragraph D; and

(2) The department provides its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative.

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, a law enforcement officer or other person designated by the judge or justice may take the person into custody and transport that person to the psychiatric hospital designated in the application. 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.

B. The Department of Health and Human Services is responsible for any transportation expenses under this section, including return from the psychiatric hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available.

C. When a person who is under a sentence or lawful detention related to commission of a crime and who is incarcerated in a jail or local correctional or detention facility is admitted to a psychiatric hospital under any of the procedures in this subchapter, the county where the incarceration originated shall pay all expenses incident to transportation of the person between the psychiatric hospital and the jail or local correctional or detention facility.

5-A. Continuation of hospitalization. If there is need for further hospitalization of the person as determined by the chief administrative officer of the hospital, the chief administrative officer shall first determine if the person may be informally admitted under section 3831. If informal admission is not suitable or is refused by the person, the chief administrative officer may seek involuntary commitment in accordance with this subsection.

A. If the person is at a state mental health institute, the chief administrative officer may seek involuntary commitment by applying for an order under section 3864.

B. If the person is at a designated nonstate mental health institution, the chief administrative officer may seek involuntary commitment only by requesting the commissioner to apply for an order under section 3864.

C. An application under this subsection must be made to the District Court having territorial jurisdiction over the psychiatric hospital to which the person is admitted on an emergency basis and must be filed within 3 days from the date of admission of the patient under this section, except that, if the 3rd day falls on a weekend or holiday, the application

must be filed on the next business day following that weekend or holiday. If no application to the District Court is timely filed, the person must be promptly discharged.

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the psychiatric hospital shall notify, as soon as possible regarding the fact of admission, the person's:

A. Guardian, if known;

B. Spouse;

C. Parent;

D. Adult child; or

E. Either the next of kin or a friend, if no guardian or immediate family member is known or can be quickly located.

If the chief administrative officer has reason to believe that notice to any individual in paragraphs A to E would pose risk of harm to the person admitted, then notice may not be given to that individual.

6-A. Notification to law enforcement of release after examination. When a person is taken by a law enforcement officer to a hospital for examination under this section and not admitted but released, the chief administrative officer of the hospital shall notify the law enforcement officer or the law enforcement officer's agency of that release.

7. Post-admission examination. Every patient admitted to a psychiatric hospital under this section must be examined as soon as practicable after the patient's admission. If findings required for admission under subsection 2 are not certified in a 2nd opinion by a staff physician or licensed clinical psychologist within 24 hours after admission, the person must be immediately discharged.

8. Rehospitalization from progressive treatment program. An ACT team practitioner or the commissioner may apply under this section to admit to a state mental health institute a patient who fails to fully participate in the progressive treatment program in accordance with section 3873-A.

9. Limitation. Admission to a psychiatric hospital on an emergency basis under the provisions of this section is not commitment to a psychiatric hospital.

34-B MRSA §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; or

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.

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.

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.

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.

34-B MRSA §3865. Hospitalization by Federal Agency

If a person ordered to be hospitalized under section 3864 is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of a certificate from the agency showing that facilities are available and that the person is eligible for care or treatment in the facilities, may order the person to be placed in the custody of the agency for hospitalization.

1. Rules and rights. A person admitted under this section to any psychiatric hospital or institution operated by any agency of the United States, inside or outside the State, is subject to the rules of the agency, but retains all rights to release and periodic court review granted by this subchapter.

2. Powers of chief administrative officer. The chief administrative officer of any psychiatric hospital or institution operated by a federal agency in which the person is hospitalized has, with respect to the person, the same powers as the chief administrative officer of psychiatric hospitals or the commissioner within this State with respect to detention, custody, transfer, conditional release or discharge of patients.

3. Court jurisdiction. Every order of hospitalization issued under this section is conditioned on the retention of jurisdiction in the courts of this State to, at any time:

A. Inquire into the mental condition of a person hospitalized; and

B. Determine the necessity for continuance of the person's hospitalization.

34-B MRSA §3866. Members of the Armed Forces

1. Admission to psychiatric hospital. Any member of the Armed Forces of the United States who was a resident of the State at the time of the member's induction into the service and who is determined by a federal board of medical officers to have a mental disease not incurred in line of duty must be received, at the discretion of the commissioner and without formal commitment, at either of the state mental health institutes, upon delivery at the institute designated by the commissioner of:

A. The member of the Armed Forces; and

B. The findings of the board of medical officers that the member is mentally ill.

2. Status. After delivery of the member of the Armed Forces at the state mental health institute designated by the commissioner, the member's status is the same as if the member had been committed to the institute under section 3864.

34-B MRSA §3867. Transfer From Out-of-State Institutions

1. Commissioner's authority. The commissioner may, upon request of a competent authority of the District of Columbia or of a state that is not a member of the Interstate Compact on Mental Health, authorize the transfer of a mentally ill person directly to a state mental health institute in Maine, if:

A. The person has resided in this State for a consecutive period of one year during the 3-year period immediately preceding commitment in the other state or the District of Columbia;

B. The person is currently confined in a recognized institution for the care of the mentally ill as the result of proceedings considered legal by that state or by the District of Columbia;

C. A duly certified copy of the original commitment proceedings and a copy of the person's case history is supplied;

D. The commissioner, after investigation, considers the transfer justifiable; and

E. All expenses of the transfer are borne by the agency requesting it.

2. Receipt of patient. When the commissioner has authorized a transfer under this section, the superintendent of the state mental health institute designated by the commissioner shall receive the patient as having been regularly committed to the state mental health institute under section 3864.

34-B MRSA §3868. Transfer to Other Institutions

1. To other hospitals. The commissioner may transfer, or authorize the transfer of, a patient from one hospital to another, either inside or outside the State, if the commissioner determines that it would be consistent with the medical or psychiatric needs of the patient to do so.

A. Before a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, the patient's parents or spouse or, if none of these persons exists or can be located, to the patient's next of kin or friend, except that if the chief administrative officer of the hospital to which the patient is currently admitted has reason to believe that notice to any of these individuals would pose risk of harm to the person, then notice may not be given to that individual.

B. In making all such transfers, the commissioner shall give due consideration to the relationship of the patient to the patient's family, guardian or friends, in order to maintain relationships and encourage visits beneficial to the patient.

2. To federal agency. Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any involuntarily hospitalized person and

that the person is eligible for care and treatment in a hospital or institution of the agency, the chief administrative officer of the psychiatric hospital may cause the person's transfer to the agency of the United States for hospitalization.

A. Upon making such a transfer, the chief administrative officer shall notify the court that ordered hospitalization and the persons specified in subsection 1, paragraph A.

B. A person may not be transferred to an agency of the United States if the person is confined pursuant to conviction of any felony or misdemeanor or if the person has been acquitted of the charge solely on the ground of mental illness, unless before the transfer the court originally ordering confinement of the person enters an order for transfer after appropriate motion and hearing.

C. Any person transferred under this section to an agency of the United States is deemed to be hospitalized by the agency pursuant to the original order of hospitalization.

34-B MRSA §3869. Return From Unauthorized Absence

If any patient committed under section 3864 leaves the grounds of the psychiatric hospital without authorization of the chief administrative officer of the psychiatric hospital or the chief administrative officer's designee, or refuses to return to the psychiatric hospital from a community pass when requested to do so by the chief administrative officer or the chief administrative officer's designee, law enforcement personnel of the State or of any of its subdivisions may, upon request of the chief administrative officer or the chief administrative officer's designee, assist in the return of the patient to the psychiatric hospital.

34-B MRSA §3870. Convalescent Status

1. Authority. The chief administrative officer of a state mental health institute may release an improved patient on convalescent status when the chief administrative officer believes that the release is in the best interest of the patient and that the patient does not pose a likelihood of serious harm. The chief administrative officer of a nonstate mental health institute may release an improved patient on convalescent status when the chief administrative officer believes that the release is in the best interest of the patient, the patient does not pose a likelihood of serious harm and, when releasing an involuntarily committed patient, the chief administrative officer has obtained the approval of the commissioner after submitting a plan for continued responsibility.

A. Release on convalescent status may include provisions for continuing responsibility to and by the psychiatric hospital, including a plan of treatment on an outpatient or nonhospital basis.

B. Before release on convalescent status under this section, the chief administrative officer of a psychiatric hospital shall make a good faith attempt to notify, by telephone, personal communication or letter, of the intent to release the patient on convalescent status and of the plan of treatment, if any:

(1) The parent or guardian of a minor patient;

(2) The legal guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the patient, then notice may not be given to that individual.

C. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

D. Before releasing a patient on convalescent status, the chief administrative officer of the psychiatric hospital shall advise the patient, orally and in writing, of the terms of the patient's convalescent status, the treatment available while the patient is on convalescent status and, if the patient is a voluntary patient, of the patient's right to request termination of the status and, if involuntarily committed, the means by which and conditions under which rehospitalization may occur.

2. Reexamination. Before a patient has spent a year on convalescent status, and at least once a year thereafter, the chief administrative officer of the psychiatric hospital shall reexamine the facts relating to the hospitalization of the patient on convalescent status.

3. Discharge. Discharge from convalescent status is governed as follows.

A. If the chief administrative officer of the psychiatric hospital determines that, in view of the condition of the patient, convalescent status is no longer necessary, the chief administrative officer shall discharge the patient and make a report of the discharge to the commissioner.

B. The chief administrative officer shall terminate the convalescent status of a voluntary patient within 10 days after the day the chief administrative officer receives from the patient a request for discharge from convalescent status.

C. Discharge from convalescent status occurs upon expiration of the period of involuntary commitment.

4. Rehospitalization. Rehospitalization of patients under this section is governed as follows.

A. If, prior to discharge, there is reason to believe that it is in the best interest of an involuntarily committed patient on convalescent status to be rehospitalized, or if an involuntarily committed patient on convalescent status poses a likelihood of serious harm, the commissioner, or the chief administrative officer of the psychiatric hospital with the approval of the commissioner, may issue an order for the immediate rehospitalization of the patient.

C. If the order is not voluntarily complied with, an involuntarily committed patient on convalescent leave may be returned to the psychiatric hospital if the following conditions are met:

(1) An order is issued pursuant to paragraph A;

(2) The order is brought before a District Court Judge or justice of the peace; and

(3) Based upon clear and convincing evidence that return to the psychiatric hospital is in the patient's best interest or that the patient poses a likelihood of serious harm, the District Court Judge or justice of the peace approves return to the psychiatric hospital.

After approval by the District Court Judge or justice of the peace, a law enforcement officer may take the patient into custody and arrange for transportation of the patient in accordance with the provisions of section 3863, subsection 4.

This paragraph does not preclude the use of protective custody by law enforcement officers pursuant to section 3862.

5. Notice of change of status. Notice of the change of convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a psychiatric hospital is to be changed, either because of a decision of the chief administrative officer of the psychiatric hospital or because of a request made by a voluntary patient, the chief administrative officer of the psychiatric hospital shall immediately make a good faith attempt to notify, by telephone, personal communication or letter, of the contemplated change:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, unless the patient requests in writing that the notice not be given.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this paragraph would pose risk of harm to the person, then notice may not be given to that individual.

B. If the change in convalescent status is due to the request of a voluntary patient, the chief administrative officer of the psychiatric hospital shall give the required notice within 10 days after the day the chief administrative officer receives the request.

C. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

34-B MRSA §3871. Discharge

1. Examination. The chief administrative officer of a psychiatric hospital shall, as often as practicable, but no less often than every 30 days, examine or cause to be examined every patient to determine that patient's mental status and need for continuing hospitalization.

2. Conditions for discharge. The chief administrative officer of a psychiatric hospital shall discharge, or cause to be discharged, any patient when:

A. Conditions justifying hospitalization no longer obtain;

B. The patient is transferred to another hospital for treatment for that patient's mental or physical condition;

C. The patient is absent from the psychiatric hospital unlawfully for a period of 90 days;

D. Notice is received that the patient has been admitted to another hospital, inside or outside the State, for treatment for that patient's mental or physical condition; or

E. Although lawfully absent from the psychiatric hospital, the patient is admitted to another hospital, inside or outside the State, for treatment of that patient's mental or physical condition, except that, if the patient is directly admitted to another hospital and it is the opinion of the chief administrative officer of the psychiatric hospital that the patient will directly reenter the psychiatric hospital within the foreseeable future, the patient need not be discharged.

3. Discharge against medical advice. The chief administrative officer of a psychiatric hospital may discharge, or cause to be discharged, any patient even though the patient is mentally ill and appropriately hospitalized in the psychiatric hospital, if:

A. The patient and either the guardian, spouse or adult next of kin of the patient request that patient's discharge; and

B. In the opinion of the chief administrative officer of the psychiatric hospital, the patient does not pose a likelihood of serious harm due to that patient's mental illness.

3-A. Discharge limited. A psychiatric hospital may not discharge a person committed under section 3864 solely because the person is placed in execution of a sentence in a county jail.

5. Notice. Notice of discharge is governed as follows.

A. When a patient is discharged under this section, the chief administrative officer of the psychiatric hospital shall immediately make a good faith attempt to notify the following people, by telephone, personal communication or letter that the discharge has taken or will take place:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given or unless the patient was transferred from or will be returned to a state correctional facility.

If the chief administrative officer of the psychiatric hospital to which the patient is currently admitted has reason to believe that notice to any of the individuals listed in this

paragraph would pose a risk of harm to the person, then notice may not be given to that individual.

B. The psychiatric hospital is not liable when good faith attempts to notify the parents, spouse or guardian have failed.

6. **Discharge to progressive treatment program.** If a person participates in the progressive treatment program under section 3873-A, the time period of a commitment under this section terminates on entry into the progressive treatment program.

7. **Firearms and discharge planning.** Discharge planning must include inquiries and documentation of those inquiries into access by the patient to firearms and notification to the patient, the patient's family and any other caregivers that possession, ownership or control of a firearm by the person to be discharged 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.

34-B MRSA §3873-A. Progressive Treatment Program

1. **Application.** The superintendent or chief administrative officer of a psychiatric hospital, the commissioner, the director of an ACT team, a medical practitioner, a law enforcement officer or the legal guardian of the patient who is the subject of the application may obtain an order from the District Court to admit a patient to a progressive treatment program upon the following conditions:

A. The patient suffers from a severe and persistent mental illness;

B. The patient poses a likelihood of serious harm;

C. The patient has the benefit of a suitable individualized treatment plan;

D. Licensed and qualified community providers are available to support the treatment plan;

E. The patient is unlikely to follow the treatment plan voluntarily;

F. Court-ordered compliance will help to protect the patient from interruptions in treatment, relapses or deterioration of mental health; and

G. Compliance will enable the patient to survive more safely in a community setting without posing a likelihood of serious harm.

2. **Contents of the application.** The application must be accompanied by a certificate of a medical practitioner providing the facts and opinions necessary to support the application. The certificate must indicate that the examiner's opinions are based on one or more recent examinations of the patient or upon the examiner's recent personal treatment of the patient. Opinions of the examiner may be based on personal observation and must include a consideration of history and information from other sources considered reliable by the examiner when such sources are available. The application must include a proposed

individualized treatment plan and identify one or more licensed and qualified community providers willing to support the plan.

The applicant must also provide a written statement 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:

A. The patient's right to retain an attorney or to have an attorney appointed;

B. The patient's right to select or to have the patient's attorney select an independent examiner; and

C. How to contact the District Court.

3. Notice of hearing. Upon receipt by the District Court of the application or any motion relating to the application, the court shall cause written notice of hearing to be mailed within 2 days to the applicant, to the patient and to the following persons if known: to anyone serving as the patient's guardian and to the patient's spouse, a parent or an adult child, if any. If no immediate relatives are known or can be located, notice must be mailed to a person identified as the patient's next of kin or a friend, if any are known. If the applicant has reason to believe that notice to any individual would pose risk of harm to the patient, notice to that individual may not be given. A docket entry is sufficient evidence that notice under this subsection has been given. If the patient is not hospitalized, the applicant shall serve the notice of hearing upon the patient personally and provide proof of service to the court.

4. Examinations. 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 is notified by the applicant 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 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, a crisis center, an ACT team facility or at another suitable place not likely to have a harmful effect on the mental health of the patient.

C. The examiner shall report to the court on:

(1) Whether the patient is a mentally ill person within the meaning of section 3801, subsection 5;

(2) Whether the patient is suffering from a severe and persistent mental illness within the meaning of section 3801, subsection 8-A; and

(3) Whether the patient poses a likelihood of serious harm within the meaning of section 3801, subsection 4-A.

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

A. The District Court shall hold a hearing on the application or any subsequent motion not later than 14 days from the date when the application or motion is filed. For good cause shown, on a motion by any party or by the court on its own motion, the hearing may be continued for a period not to exceed 21 additional days. If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application or motion. In computing the time periods set forth in this paragraph, the Maine Rules of Civil Procedure apply.

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 harm the mental health of the patient. The applicant shall transport the patient to and from the place of hearing. If the patient is released following the hearing, the patient must be transported to the patient's place of residence if the patient so requests.

C. The court shall conduct the hearing in accordance with accepted rules of evidence. The patient, 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. The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

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

E. At the time of hearing, the applicant shall submit to the court expert testimony to support the application and to describe the proposed individual treatment plan. The applicant shall bear the expense of providing witnesses for this purpose.

F. The court may consider, but is not bound by, an advance directive or durable power of attorney executed by the patient and may receive testimony from the patient's guardian or attorney in fact.

G. A stenographic or electronic record must be made of the proceedings. The record and all notes, exhibits and other evidence are confidential and 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 patient or the patient'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 patient or patient's counsel.

I. Except as provided in this subsection, the provisions of section 3864, subsections 10 and 11 apply to expenses and the right of appeal.

6. Order. After notice, examination and hearing, the court may issue an order effective for a period of up to 12 months directing the patient to follow an individualized treatment plan and identifying incentives for compliance and potential consequences for noncompliance.

7. Compliance. To ensure compliance with the treatment plan, the court may:

A. Order that the patient be committed to the care and supervision of an ACT team or other outpatient facility with such restrictions or conditions as may be reasonable and necessary to ensure plan compliance;

B. Endorse an application for admission to a psychiatric hospital under section 3863 conditioned on receiving a certificate from a medical practitioner that the patient has failed to comply with an essential requirement of the treatment plan; and

C. Order that any present or conditional restrictions on the patient's liberty or control over the patient's assets or affairs be suspended or ended upon achievement of the designated goals under the treatment plan.

8. **Consequences.** In addition to any conditional remedies contained in the court's order, if the patient fails to comply with the treatment plan, the applicant may file with the court a motion for enforcement supported by a certificate from a medical practitioner identifying the circumstances of noncompliance. If after notice and hearing the court finds that the patient has been noncompliant and that the patient presents a likelihood of serious harm, the court may authorize emergency hospitalization under section 3863 if the practitioner's certificate supporting the motion complies with section 3863, subsection 2. Nothing in this section precludes the use of protective custody by law enforcement officers under section 3862.

9. **Motion to dissolve, modify or extend.** For good cause shown, any party to the application may move to dissolve or modify an order or to extend the term of the treatment plan for an additional term of up to one year.

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