

§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; [PL 2009, c. 651, §29 (NEW).]
- B. The patient poses a likelihood of serious harm; [PL 2009, c. 651, §29 (NEW).]
- C. The patient has the benefit of a suitable individualized treatment plan; [PL 2009, c. 651, §29 (NEW).]
- D. Licensed and qualified community providers are available to support the treatment plan; [PL 2011, c. 492, §1 (AMD).]
- E. The patient is unlikely to follow the treatment plan voluntarily; [PL 2009, c. 651, §29 (NEW).]
- F. Court-ordered compliance will help to protect the patient from interruptions in treatment, relapses or deterioration of mental health; and [PL 2009, c. 651, §29 (NEW).]
- G. Compliance will enable the patient to survive more safely in a community setting without posing a likelihood of serious harm. [PL 2009, c. 651, §29 (NEW).]

[PL 2011, c. 492, §1 (AMD).]

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; [PL 2009, c. 651, §29 (NEW).]
- B. The patient's right to select or to have the patient's attorney select an independent examiner; and [PL 2009, c. 651, §29 (NEW).]
- C. How to contact the District Court. [PL 2009, c. 651, §29 (NEW).]

[PL 2011, c. 492, §1 (AMD).]

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.

[PL 2011, c. 492, §1 (AMD).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

[PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

A-1. Prior to the commencement of the hearing, the court shall inform the patient that, if an order is entered that includes a prohibition on the possession of dangerous weapons, that patient is a prohibited person and may not possess or have under that patient's control a firearm pursuant to Title 15, section 393, subsection 1. [PL 2019, c. 411, Pt. B, §1 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

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. [PL 2009, c. 651, §29 (NEW).]

I. Except as provided in this subsection, the provisions of section 3864, subsections 10 and 11 apply to expenses and the right of appeal. [PL 2009, c. 651, §29 (NEW).]
[PL 2019, c. 411, Pt. B, §1 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

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. [PL 2009, c. 651, §29 (NEW).]

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; [PL 2009, c. 651, §29 (NEW).]

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 [PL 2011, c. 541, §3 (AMD).]

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. [PL 2009, c. 651, §29 (NEW).]
[PL 2011, c. 541, §3 (AMD).]

7-A. Dangerous weapons. If the court directs a patient to follow an individualized treatment plan pursuant to subsection 6, the court may prohibit the patient from possessing a dangerous weapon as described in Title 17-A, section 2, subsection 9, paragraph C, including a firearm as defined in Title 17-A, section 2, subsection 12-A, for the duration of the treatment plan. If the court prohibits the patient from possessing a dangerous weapon, the court shall specify the type of weapon the patient is prohibited from possessing; notify the patient that possession of such a weapon by the person is prohibited pursuant to Title 15, section 393; and direct the patient to relinquish, within 24 hours after service of the order on the patient or such earlier time as the court specifies in the order, such weapons in the possession of the patient to a law enforcement officer for the duration of the order. The duties and liability of a law enforcement agency with respect to dangerous weapons surrendered pursuant to this subsection are governed by Title 25, section 2804-C, subsection 2-C. [PL 2019, c. 411, Pt. B, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

7-B. Transmission of abstract of court ruling to Department of Public Safety. Notwithstanding any other provision of this section or section 1207, a court shall electronically update or transmit to the Department of Public Safety an abstract of the order issued by the court pursuant to

this section that includes a prohibition on the possession of a dangerous weapon pursuant to subsection 7-A. Implementation of this requirement is governed by section 3862-A, subsection 6, paragraph D, subparagraph (5).

[PL 2019, c. 411, Pt. B, §2 (NEW); PL 2019, c. 411, Pt. D, §3 (AFF).]

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.

[PL 2009, c. 651, §29 (NEW).]

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.

[PL 2009, c. 651, §29 (NEW).]

10. Limitation.

[PL 2011, c. 492, §2 (RP).]

SECTION HISTORY

PL 2009, c. 651, §29 (NEW). PL 2011, c. 492, §§1, 2 (AMD). PL 2011, c. 541, §3 (AMD). PL 2019, c. 411, Pt. B, §§1, 2 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF).

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