

**§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 [PL 1983, c. 459, §7 (NEW).]
- 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 3862-A or 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-C, section 5-803, subsection 4 to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective. [PL 2019, c. 411, Pt. C, §5 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

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.

[PL 2019, c. 411, Pt. C, §5 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

**1-A. Law enforcement officer's power.**  
[PL 1995, c. 62, §2 (RP).]

**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; [PL 1999, c. 423, §4 (AMD).]
- 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 [PL 1999, c. 423, §4 (AMD).]
- 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. [PL 1999, c. 423, §4 (AMD).]

[PL 1999, c. 423, §4 (AMD).]

**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.

[PL 2009, c. 651, §12 (AMD).]

**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.

[PL 1999, c. 423, §4 (NEW).]

**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.

[PL 1997, c. 422, §7 (AMD).]

#### SECTION HISTORY

PL 1983, c. 459, §7 (NEW). PL 1993, c. 596, §§1,2 (AMD). PL 1993, c. 596, §4 (AFF). PL 1995, c. 62, §§1,2 (AMD). PL 1997, c. 422, §§6,7 (AMD). PL 1997, c. 438, §1 (AMD). PL 1997, c. 683, §A20 (AMD). PL 1999, c. 423, §4 (AMD). PL 2007, c. 178, §1 (AMD). PL 2009, c. 651, §§11, 12 (AMD). PL 2017, c. 402, Pt. C, §97 (AMD). PL 2017, c. 402, Pt. F, §1 (AFF). PL 2019, c. 411, Pt. C, §5 (AMD). PL 2019, c. 411, Pt. D, §3 (AFF). PL 2019, c. 417, Pt. B, §14 (AFF).

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