



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1515

H.P. 1087

House of Representatives, May 7, 2013

### An Act To Increase the Availability of Mental Health Services

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative MALABY of Hancock. (GOVERNOR'S BILL)

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 34-A MRSA §1001, sub-§11-B** is enacted to read:

3 **11-B. Likelihood of serious harm.** "Likelihood of serious harm" means:

4 A. A substantial risk of physical harm to oneself, as manifested by recent evidence of  
5 threats of or attempts at suicide or serious bodily harm to oneself;

6 B. A substantial risk of physical harm to other persons, as manifested by recent  
7 evidence of homicidal or other violent behavior or recent evidence that others are  
8 placed in reasonable fear of violent behavior and serious harm; or

9 C. A reasonable certainty that physical or mental impairment or injury will result to a  
10 person, as manifested by recent evidence of that person's actions or behavior that  
11 demonstrates an inability to avoid or protect oneself from such impairment or injury.

12 **Sec. 2. 34-A MRSA §1001, sub-§12-A** is enacted to read:

13 **12-A. Person with mental illness.** "Person with mental illness" means a person  
14 diagnosed as having a psychiatric or other illness that substantially impairs that person's  
15 mental health. An intellectual disability as defined in Title 34-B, section 5001,  
16 subsection 3 or a personality disorder is not a psychiatric or other illness for purposes of  
17 this subsection.

18 **Sec. 3. 34-A MRSA §3049** is enacted to read:

19 **§3049. Involuntary medication of person with mental illness**

20 **1. Grounds for involuntary medication.** A person with mental illness residing in a  
21 correctional or detention facility may be given medication for the mental illness without  
22 the consent of the person or the person's legal guardian, if any, if:

23 A. As a result of the mental illness, the person poses a likelihood of serious harm;

24 B. The medication has been prescribed by the facility's treating psychiatrist as  
25 treatment for the person's mental illness;

26 C. The person or the person's legal guardian, if any, has been asked to consent to the  
27 medication and has refused; and

28 D. A court order has been issued, upon the request of the chief administrative officer  
29 of the facility, permitting the involuntary medication.

30 **2. Court hearing prior to medication.** Except as provided in this subsection, a  
31 person who is the subject of a request for an order permitting involuntary medication  
32 pursuant to this section must be provided, before being medicated, a hearing in a court of  
33 record at which the person has the following rights.

34 A. The person is entitled, at least 7 days before the hearing, to written notice of the  
35 hearing and a copy of the request for an order permitting involuntary medication.  
36 The notice must include the specific factual basis for the diagnosis of the mental

1 illness and for the belief that the person poses a likelihood of serious harm and  
2 describe the treatment benefits of the medication proposed.

3 B. The person is entitled to be present at the hearing.

4 C. The person is entitled to be represented by counsel.

5 D. The person is entitled to present evidence, including by calling one or more  
6 witnesses.

7 E. The person is entitled to cross-examine any witness that testifies at the hearing.

8 F. The person is entitled to appeal any order by the court permitting involuntary  
9 medication.

10 When an emergency exists, the court may enter an ex parte order permitting involuntary  
11 medication. A request for the ex parte order must include all the information otherwise  
12 required by this subsection, as well as the specific factual basis for the emergency. If the  
13 court enters an ex parte order permitting involuntary medication, a regular hearing, with  
14 all the rights otherwise provided under this subsection, must be held within 10 days.

15 **3. Periodic review.** Involuntary medication of a person under this section may  
16 continue only with periodic reviews consisting of a 2nd hearing conforming with the  
17 requirements of subsection 2 to take place within 10 working days of the first hearing and  
18 of subsequent hearings conforming with the requirements of subsection 2 to take place at  
19 least once every 6 months.

20 **4. Effect of medication by consent.** This section does not preclude giving  
21 medication for a mental illness when either the person to receive the medication or the  
22 person's legal guardian, if any, consents to the medication.

23 **Sec. 4. 34-A MRSA §3069-A** is enacted to read:

24 **§3069-A. Transfer of jail inmates for mental health services**

25 **1. Eligible inmates.** The commissioner may transfer from a jail to a correctional  
26 facility an adult inmate who the chief administrative officer of the Riverview Psychiatric  
27 Center confirms is eligible for admission to a state mental health institute under Title  
28 34-B, section 3863, but for whom no suitable bed is available, for the purpose of  
29 providing to the inmate mental health services in a mental health unit of the correctional  
30 facility. The commissioner may return an inmate transferred pursuant to this subsection  
31 back to the sending facility.

32 **2. Evaluation.** The commissioner may transfer from a jail to a correctional facility  
33 an adult inmate whom the court orders to be examined or further evaluated by the State  
34 Forensic Service under Title 15, section 101-D, subsection 1, 2, 3 or 9 if the State  
35 Forensic Service determines that the jail where the inmate is incarcerated cannot provide  
36 an appropriate setting for the examination but that a mental health unit in a correctional  
37 facility can provide an appropriate setting for the examination. The commissioner shall  
38 return an inmate transferred pursuant to this subsection back to the sending facility upon  
39 the completion of the examination ordered, including any further evaluation ordered.

1 unless the commissioner transferred the inmate for another reason in addition to the  
2 examination.

3 **3. Disclosure of information.** With respect to an adult inmate who has previously  
4 been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make  
5 it a prerequisite to a transfer of the inmate under this section that necessary information  
6 be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1,  
7 paragraph B.

8 **4. Application of other laws.** All other applicable provisions of law governing  
9 inmates, whether detained pending a trial or other court proceeding or sentenced, apply to  
10 inmates transferred under this section.

11 **5. Discretion.** Nothing in this section or in any other provision of law requires the  
12 commissioner to transfer an adult inmate from a jail to a correctional facility or precludes  
13 the commissioner from transferring an adult inmate from a jail to a correctional facility at  
14 any time for any reason at the commissioner's discretion.

15 **Sec. 5. 34-A MRSA §3069-B** is enacted to read:

16 **§3069-B. Placement of defendants for observation**

17 **1. Acceptance of placement.** The commissioner may accept the placement of an  
18 adult defendant in a mental health unit of a correctional facility for observation whom a  
19 court commits to the custody of the Commissioner of Health and Human Services under  
20 Title 15, section 101-D, subsection 4 if, in addition to the findings required under Title  
21 15, section 101-D, subsection 4, the court, after hearing, finds that:

22 A. The defendant is a person with mental illness and, as a result of the defendant's  
23 mental illness, it is more probable than not that the defendant poses a likelihood of  
24 serious harm to others;

25 B. There is not sufficient security at a state mental health institute to address the  
26 likelihood of serious harm; and

27 C. There is no other less restrictive alternative to placement in a mental health unit of  
28 a correctional facility.

29 **2. Termination of placement.** The commissioner may terminate the placement of a  
30 defendant accepted pursuant to this section if the commissioner determines that the  
31 likelihood of serious harm posed by the defendant has decreased or the security at a state  
32 mental health institute has increased or for any other reason.

33 **3. Disclosure of information.** With respect to an adult defendant who has  
34 previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner  
35 may make it a prerequisite to accepting placement of the defendant under this section that  
36 necessary information be disclosed to the department pursuant to Title 34-B, section  
37 1207, subsection 1, paragraph B.

1           **4. Application of other laws.** All other applicable provisions of law governing  
2 defendants committed for observation apply to defendants accepted for placement under  
3 this section.

4           **5. Discretion.** Nothing in this section or in any other provision of law requires the  
5 commissioner to accept the placement of a defendant who is committed for observation.

6           **Sec. 6. 34-A MRSA §3069-C** is enacted to read:

7           **§3069-C. Placement of defendants found incompetent to stand trial for mental**  
8 **health services**

9           **1. Acceptance of placement.** The commissioner may accept the placement of an  
10 adult defendant in a mental health unit of a correctional facility for hospital-level care and  
11 treatment who a court finds is incompetent to stand trial and whom the court commits to  
12 the custody of the Commissioner of Health and Human Services under Title 15, section  
13 101-D, subsection 5 if, in addition to the findings required under Title 15, section 101-D,  
14 subsection 5, the court, after hearing, finds that:

15           A. The defendant is a person with mental illness and, as a result of the defendant's  
16 mental illness, it is more probable than not that the defendant poses a likelihood of  
17 serious harm to others;

18           B. There is not sufficient security at a state mental health institute to address the  
19 likelihood of serious harm; and

20           C. There is no other less restrictive alternative to placement in a mental health unit of  
21 a correctional facility.

22           **2. Termination of placement.** The commissioner may terminate the placement of a  
23 defendant accepted pursuant to this section if the commissioner determines that the  
24 likelihood of serious harm posed by the defendant has decreased or the security at a state  
25 mental health institute has increased or for any other reason.

26           **3. Disclosure of information.** With respect to an adult defendant who has  
27 previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner  
28 may make it a prerequisite to accepting placement of the defendant under this section that  
29 necessary information be disclosed to the department pursuant to Title 34-B, section  
30 1207, subsection 1, paragraph B.

31           **4. Application of other laws.** All other applicable provisions of law governing  
32 defendants found incompetent to stand trial apply to defendants accepted for placement  
33 under this section.

34           **5. Discretion.** Nothing in this section or in any other provision of law requires the  
35 commissioner to accept the placement of a defendant who is found incompetent to stand  
36 trial.

37           **Sec. 7. 34-B MRSA §1207, sub-§1, ¶B,** as repealed and replaced by PL 2009, c.  
38 415, Pt. A, §20, is amended to read:

1 B. Information may be disclosed if necessary to carry out the statutory functions of  
2 the department; the hospitalization provisions of chapter 3, subchapter 4; the  
3 provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes  
4 of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing  
5 with the investigatory function of the independent agency designated with advocacy  
6 and investigatory functions under United States Public Law 88-164, Title I, Part C or  
7 United States Public Law 99-319; ~~or~~ the investigation and hearing pursuant to Title  
8 15, section 393, subsection 4-A; or the provision of mental health services by the  
9 Department of Corrections pursuant to Title 34-A, section 3031, 3069-A, 3069-B or  
10 3069-C;

11 **SUMMARY**

12 This bill authorizes the Commissioner of Corrections to:

- 13 1. Under certain circumstances, transfer an adult jail inmate to a correctional facility  
14 for the purpose of providing the inmate with mental health services;
- 15 2. Accept placement in a mental health unit of a correctional facility for observation  
16 of an adult defendant who has been committed to the custody of the Commissioner of  
17 Health and Human Services; and
- 18 3. Accept placement in a mental health unit of a correctional facility for hospital-  
19 level care and treatment of an adult defendant who has been found incompetent to stand  
20 trial and committed to the custody of the Commissioner of Health and Human Services;
- 21 4. Under certain circumstances, medicate a person with mental illness residing in a  
22 correctional or detention facility without that person's consent, subject to the person's  
23 right to have a court hearing prior to being involuntarily medicated or 2 court hearing  
24 after the issuance of an ex parte court order in an emergency situation.