

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Increase the Availability of Mental Health Services

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

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

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

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

B. 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 harm; or

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

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

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

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

§ 3049. Involuntary medication of person with mental illness

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

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

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

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

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

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

- A. The person is entitled, at least 7 days before the hearing, to written notice of the hearing and a copy of the request for an order permitting involuntary medication. The notice must include the specific factual basis for the diagnosis of the mental illness and for the belief that the person poses a likelihood of serious harm and describe the treatment benefits of the medication proposed.
- B. The person is entitled to be present at the hearing.
- C. The person is entitled to be represented by counsel.
- D. The person is entitled to present evidence, including by calling one or more witnesses.
- E. The person is entitled to cross-examine any witness that testifies at the hearing.
- F. The person is entitled to appeal any order by the court permitting involuntary medication.

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

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

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

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

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

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

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

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

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

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

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

§ 3069-B. Placement of defendants for observation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUMMARY

This bill authorizes the Commissioner of Corrections to:

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