

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

Amend the bill by striking out all of section 1 and inserting the following:

‘**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 a person, as manifested by that person's recent threats of, or attempts at, suicide or serious self-inflicted harm;

B. Substantial risk of physical harm to other persons, as manifested by a person's recent homicidal or other violent behavior or recent conduct placing others in reasonable fear of serious physical harm; or

C. Reasonable certainty that a person will suffer severe physical or mental harm as manifested by that person's recent behavior demonstrating an inability to avoid risk or to protect the person's self adequately from impairment or injury.

This subsection is repealed August 1, 2017.’

Amend the bill in section 2 in subsection 12-A in the first line (page 1, line 13 in L.D.) by inserting after the following: "means a person" the following: 'who has attained 18 years of age and has been'

Amend the bill in section 2 in subsection 12-A in the last line (page 1, line 17 in L.D.) by inserting after the following: "subsection." the following: 'This subsection is repealed August 1, 2017.'

Amend the bill by striking out all of section 3 and inserting the following:

‘**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 mental health unit of a correctional facility that provides hospital-level care and treatment may be given medication for the mental illness without the consent of the person if, upon application by the chief administrative officer of the facility, the Superior Court of the county in which the correctional facility is located finds by clear and convincing evidence that:

A. The person is a person with mental illness;

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

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

D. The recommendation for the medication has been supported by a professional who is qualified to prescribe the medication and who does not provide direct care to the person;

- E. The person lacks the capacity to make an informed decision regarding medication;
- F. The person is unable or unwilling to consent to the recommended medication;
- G. The need for the recommended medication outweighs the risks and side effects; and
- H. The recommended medication is the least intrusive appropriate treatment option.

2. Rights prior to involuntary medication. Except as provided in this section, a person who is the subject of an application for an order permitting involuntary medication pursuant to this section must be provided, before being medicated, a court hearing 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 application for an order permitting involuntary medication, including the specific factual basis for each of the grounds set out in subsection 1.
- 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 who testifies at the hearing.
- F. The person is entitled to appeal to the Supreme Judicial Court any order by the Superior Court permitting involuntary medication.

3. Court hearing. Except as provided in this section, the following applies to the court hearing.

- A. The Superior Court may, in its discretion, grant a continuation of the hearing for up to 10 days for good cause shown.
- B. The Maine Rules of Evidence apply.
- C. The Supreme Judicial Court may adopt such rules of court procedure as it determines appropriate.
- D. If the person is indigent, costs of counsel and all other costs, including all costs on appeal, must be provided by the Maine Commission on Indigent Legal Services as in other civil cases.
- E. The Superior Court may, in its discretion, subpoena any witness and, if the person is indigent, the witness fees must be provided by the Department of Health and Human Services.
- F. The hearing must be electronically recorded and, if an appeal is brought and the person is indigent, the transcript fee must be provided by the Department of Health and Human Services.
- G. The order and the application for the order, the hearing, the record of the hearing and all notes, exhibits and other evidence are confidential.

4. Ex parte order. When there exists an imminent likelihood of serious harm, the Superior Court may enter an ex parte order permitting involuntary medication. An application for the ex parte order must include all the information otherwise required under this section, as well as the specific factual basis for the belief that the likelihood of serious harm is imminent. The ex parte order and the application for the ex parte order, the proceeding, any record of the proceeding and all notes, exhibits and other evidence are confidential. If the court enters an ex parte order permitting involuntary medication, a hearing conforming with the requirements of subsections 2 and 3 must be held within 10 days.

5. Court order. If the Superior Court finds by clear and convincing evidence that each of the grounds set out in subsection 1 has been met, the court may grant the application for involuntary medication, as requested or as may be modified based upon the evidence, and may authorize the correctional facility's chief administrative officer to permit qualified health care staff to order and administer medication for treatment of the mental illness, as well as laboratory testing and medication for the monitoring and management of side effects.

6. Periodic review. Involuntary medication of a person under this section may continue only with periodic reviews consisting of subsequent hearings conforming with the requirements of subsections 2 and 3 to take place at least once every 120 days.

7. 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.

8. Repeal. This section is repealed August 1, 2017.'

Amend the bill in section 4 in §3069-A by inserting after subsection 5 the following:

'6. Repeal. This section is repealed August 1, 2017.'

Amend the bill in section 5 in §3069-B in subsection 1 in the last line (page 3, line 21 in L.D.) by inserting after the following: "finds" the following: 'by clear and convincing evidence'

Amend the bill in section 5 in §3069-B in subsection 1 in paragraph A in the 2nd line (page 3, line 23 in L.D.) by striking out the following: "it is more probable than not that"

Amend the bill in section 5 in §3069-B by inserting after subsection 5 the following:

'6. Repeal. This section is repealed August 1, 2017.'

Amend the bill in section 6 in §3069-C in subsection 1 in the last line (page 4, line 14 in L.D.) by inserting after the following: "finds" the following: 'by clear and convincing evidence'

Amend the bill in section 6 in §3069-C in subsection 1 in paragraph A in the 2nd line (page 4, line 16 in L.D.) by striking out the following: "it is more probable than not that"

Amend the bill in section 6 in §3069-C by inserting after subsection 5 the following:

'6. Repeal. This section is repealed August 1, 2017.'

Amend the bill in section 7 in paragraph B in the last line (page 5, line 10 in L.D.) by inserting after the following: "3069-C" the following: '. This paragraph is repealed August 1, 2017'

Amend the bill by inserting after section 7 the following:

‘Sec. 8. 34-B MRSA §1207, sub-§1, ¶B-3 is enacted to read:

B-3. 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. This paragraph takes effect August 1, 2017;

Sec. 9. Report of Department of Health and Human Services and Department of Corrections. By January 15, 2017, the Department of Health and Human Services shall, in collaboration with the Department of Corrections, submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the operations of a mental health unit within a correctional facility. The report must include the following information regarding the mental health unit: the average daily population of the unit, the average daily staffing patterns, the average length of stay in the unit, a description of services provided and the number of persons placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A, 3069-B and 3069-C. The report must also include any recommendations for reallocation of resources or the redesign of services of the mental health unit, the forensic services provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A, sections 3069-A, 3069-B and 3069-C.

Sec. 10. Report of the Department of Corrections. By January 15, 2017, the Department of Corrections shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of applications submitted and orders granted pursuant to the Maine Revised Statutes, Title 34-A, section 3049.

Sec. 11. Report of the Department of Health and Human Services. The Department of Health and Human Services shall prepare a plan regarding how to fully assess for brain injury or suspected brain injury persons who enter into the custody of the department under the Maine Revised Statutes, Title 15, section 101-D or section 103. The plan must include how the department will meet the needs of persons who have traumatic or acquired brain injuries. By January 15, 2017, the department shall report on its plan to the joint standing committee of the Legislature having jurisdiction over criminal justice matters.

Sec. 12. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY BDS)

Riverview Psychiatric Center 0105

Initiative: Provides funds for contracted clinical staff assigned to a mental health unit within a state correctional facility.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$3,316,250
GENERAL FUND TOTAL	\$0	\$3,316,250

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY BDS)		
DEPARTMENT TOTALS	2013-14	2014-15
GENERAL FUND	\$0	\$3,316,250
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$3,316,250

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Provides funds for indigent legal services.

GENERAL FUND	2013-14	2014-15
All Other	\$0	\$1,500
GENERAL FUND TOTAL	\$0	\$1,500

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON		
DEPARTMENT TOTALS	2013-14	2014-15
GENERAL FUND	\$0	\$1,500
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,500

SECTION TOTALS	2013-14	2014-15
GENERAL FUND	\$0	\$3,317,750
SECTION TOTAL - ALL FUNDS	\$0	\$3,317,750

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SUMMARY

This amendment makes the language in the bill relating to involuntary medication of a person with mental illness residing in a mental health unit of a Department of Corrections correctional facility consistent with the language in the Maine Revised Statutes, Title 34-B relating to involuntary medication of a person with mental illness residing in a state mental health institute.

The amendment also makes clear that the provision for involuntary medication by court order applies only to those persons with mental illness who are at least 18 years of age and residing in a mental health unit of a Department of Corrections correctional facility providing hospital-level care and treatment.

The amendment also adds a new "second opinion" ground that must be met to obtain an involuntary medication order, sets out a clear and convincing evidence standard for all court findings and specifies various elements of the involuntary medication court hearings.

The amendment adds a repeal date of August 1, 2017 to the new involuntary medication provisions and the new transfer and placement provisions. The amendment requires the Department of Health and Human Services and the Department of Corrections to report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 15, 2017 regarding the operations of a correctional facility's mental health unit. The report must include the average daily population of the mental health unit, the average daily staffing patterns, the average length of stay in the unit, a description of services provided and the number of persons placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A, 3069-B and 3069-C. The report must also include any recommendations for reallocation of resources or the redesign of services of the mental health unit, the forensic services provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A, sections 3069-A, 3069-B and 3069-C.

The amendment also requires the Department of Corrections, by January 15, 2017, to submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of applications submitted and orders granted pursuant to Title 34-A, section 3049.

Finally, the amendment requires the Department of Health and Human Services to prepare a plan regarding how to fully assess for brain injury or suspected brain injury persons who enter into the custody of the department under Title 15, section 101-D or section 103. The plan must include how the department will meet the needs of persons who have traumatic or acquired brain injuries and must be presented in a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters by January 15, 2017.

The amendment also adds an appropriations and allocations section.

FISCAL NOTE REQUIRED

(See attached)