

Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1087, L.D. 1515, Bill, “An Act To Increase the Availability of Mental Health Services”

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This subsection is repealed August 1, 2017.'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 the following: 'This subsection is repealed August 1, 2017.'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

COMMITTEE AMENDMENT

1 may be given medication for the mental illness without the consent of the person if, upon
2 application by the chief administrative officer of the facility, the Superior Court of the
3 county in which the correctional facility is located finds by clear and convincing evidence
4 that:

5 A. The person is a person with mental illness;

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

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

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

12 E. The person lacks the capacity to make an informed decision regarding medication;

13 F. The person is unable or unwilling to consent to the recommended medication;

14 G. The need for the recommended medication outweighs the risks and side effects;
15 and

16 H. The recommended medication is the least intrusive appropriate treatment option.

17 **2. Rights prior to involuntary medication.** Except as provided in this section, a
18 person who is the subject of an application for an order permitting involuntary medication
19 pursuant to this section must be provided, before being medicated, a court hearing at
20 which the person has the following rights.

21 A. The person is entitled, at least 7 days before the hearing, to written notice of the
22 hearing and a copy of the application for an order permitting involuntary medication,
23 including the specific factual basis for each of the grounds set out in subsection 1.

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

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

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

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

29 F. The person is entitled to appeal to the Supreme Judicial Court any order by the
30 Superior Court permitting involuntary medication.

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

33 A. The Superior Court may, in its discretion, grant a continuation of the hearing for
34 up to 10 days for good cause shown.

35 B. The Maine Rules of Evidence apply.

36 C. The Supreme Judicial Court may adopt such rules of court procedure as it
37 determines appropriate.

38 D. If the person is indigent, costs of counsel and all other costs, including all costs on

1 appeal, must be provided by the Maine Commission on Indigent Legal Services as in
2 other civil cases.

3 E. The Superior Court may, in its discretion, subpoena any witness and, if the person
4 is indigent, the witness fees must be provided by the Department of Health and
5 Human Services.

6 F. The hearing must be electronically recorded and, if an appeal is brought and the
7 person is indigent, the transcript fee must be provided by the Department of Health
8 and Human Services.

9 G. The order and the application for the order, the hearing, the record of the hearing
10 and all notes, exhibits and other evidence are confidential.

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

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

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

30 **7. Medication by consent.** This section does not preclude giving medication for a
31 mental illness when either the person to receive the medication or the person's legal
32 guardian, if any, consents to the medication.

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

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

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

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

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

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

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

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

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

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

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

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

12 Amend the bill by inserting after section 7 the following:

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

14 B-3. Information may be disclosed if necessary to carry out the statutory functions of
15 the department; the hospitalization provisions of chapter 3, subchapter 4; the
16 provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes
17 of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing
18 with the investigatory function of the independent agency designated with advocacy
19 and investigatory functions under United States Public Law 88-164, Title I, Part C or
20 United States Public Law 99-319; or the investigation and hearing pursuant to Title
21 15, section 393, subsection 4-A. This paragraph takes effect August 1, 2017;

22 **Sec. 9. Report of Department of Health and Human Services and**
23 **Department of Corrections.** By January 15, 2017, the Department of Health and
24 Human Services shall, in collaboration with the Department of Corrections, submit a
25 report to the joint standing committee of the Legislature having jurisdiction over criminal
26 justice matters regarding the operations of a mental health unit within a correctional
27 facility. The report must include the following information regarding the mental health
28 unit: the average daily population of the unit, the average daily staffing patterns, the
29 average length of stay in the unit, a description of services provided and the number of
30 persons placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections
31 3069-A, 3069-B and 3069-C. The report must also include any recommendations for
32 reallocation of resources or the redesign of services of the mental health unit, the forensic
33 services provided at Riverview Psychiatric Center and the transfer provisions of Title
34 34-A, sections 3069-A, 3069-B and 3069-C.

35 **Sec. 10. Report of the Department of Corrections.** By January 15, 2017, the
36 Department of Corrections shall submit a report to the joint standing committee of the
37 Legislature having jurisdiction over criminal justice matters regarding the number of
38 applications submitted and orders granted pursuant to the Maine Revised Statutes, Title
39 34-A, section 3049.

40 **Sec. 11. Report of the Department of Health and Human Services.** The
41 Department of Health and Human Services shall prepare a plan regarding how to fully
42 assess for brain injury or suspected brain injury persons who enter into the custody of the

1 department under the Maine Revised Statutes, Title 15, section 101-D or section 103.
 2 The plan must include how the department will meet the needs of persons who have
 3 traumatic or acquired brain injuries. By January 15, 2017, the department shall report on
 4 its plan to the joint standing committee of the Legislature having jurisdiction over
 5 criminal justice matters.

6 **Sec. 12. Appropriations and allocations.** The following appropriations and
 7 allocations are made.

8 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY BDS)**

9 **Riverview Psychiatric Center 0105**

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

12	GENERAL FUND	2013-14	2014-15
13	All Other	\$0	\$3,316,250
14			
15	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$3,316,250</u>

16	HEALTH AND HUMAN SERVICES,		
17	DEPARTMENT OF (FORMERLY BDS)		
18	DEPARTMENT TOTALS	2013-14	2014-15
19			
20	GENERAL FUND	\$0	\$3,316,250
21			
22	DEPARTMENT TOTAL - ALL FUNDS	<u>\$0</u>	<u>\$3,316,250</u>

23 **INDIGENT LEGAL SERVICES, MAINE COMMISSION ON**

24 **Maine Commission on Indigent Legal Services Z112**

25 Initiative: Provides funds for indigent legal services.

26	GENERAL FUND	2013-14	2014-15
27	All Other	\$0	\$1,500
28			
29	GENERAL FUND TOTAL	<u>\$0</u>	<u>\$1,500</u>

30	INDIGENT LEGAL SERVICES, MAINE		
31	COMMISSION ON		
32	DEPARTMENT TOTALS	2013-14	2014-15
33			
34	GENERAL FUND	\$0	\$1,500

1			
2	DEPARTMENT TOTAL - ALL FUNDS	\$0	\$1,500
3	SECTION TOTALS	2013-14	2014-15
4			
5	GENERAL FUND	\$0	\$3,317,750
6			
7	SECTION TOTAL - ALL FUNDS	\$0	\$3,317,750
8			

9 **SUMMARY**

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

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

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

23 The amendment adds a repeal date of August 1, 2017 to the new involuntary
 24 medication provisions and the new transfer and placement provisions. The amendment
 25 requires the Department of Health and Human Services and the Department of
 26 Corrections to report to the joint standing committee of the Legislature having
 27 jurisdiction over criminal justice matters by January 15, 2017 regarding the operations of
 28 a correctional facility's mental health unit. The report must include the average daily
 29 population of the mental health unit, the average daily staffing patterns, the average
 30 length of stay in the unit, a description of services provided and the number of persons
 31 placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A,
 32 3069-B and 3069-C. The report must also include any recommendations for reallocation
 33 of resources or the redesign of services of the mental health unit, the forensic services
 34 provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A,
 35 sections 3069-A, 3069-B and 3069-C.

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

