

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2067

H. P. 1992

House of Representatives, January 13, 1978

Governor's Bill. Referred to the Committee on Health and Institutional Services. Sent up for concurrence.

EDWIN H. PERT, Clerk

Presented by Mrs. Prescott of Hampden.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**AN ACT to Clarify the Rights and Responsibilities of Institutions to Provide
Medical Care.**

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

34 MRSA c. 8 is enacted to read:

CHAPTER 8

INSTITUTIONAL MEDICAL CARE

§ 150. Applicability

This chapter shall apply to residents of state institutions operated by the Department of Mental Health and Corrections.

§ 151. Right to medical care

Every resident shall have access to prompt, appropriate and necessary medical and dental treatment for physical and mental ailments and for the prevention of illness or disability. Medical treatment shall be consistent with the accepted standards of medical practice in the community, unless the religion of the client so prohibits.

1. **Prescription medication; use of medication.** Prescription medication shall be administered only at the written order of a physician. Medication shall not be used as a punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

2. **Notation of medication.** Daily notation of medication received by each client in a residential facility shall be kept in the client's records.

3. **Review.** Periodically, but no less frequently than every 3 months and as often as is dictated by good medical practice, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body. All prescriptions shall have a termination date.

§ 152. **Consent to medical care.**

1. **Informed consent.** "Informed consent" means consent voluntarily given with sufficient understanding of the risks and alternatives of the proposed treatment that a reasonable person would want to consider before accepting treatment.

2. **Routine medical care.** To the extent that each resident is able to understand the risks of and alternatives to a particular medical procedure, the informed consent of that resident is required before treatment. The parent or guardian of a resident who is a minor or the guardian of a resident who has been adjudicated incompetent shall consent to medical treatment of that resident. For all other residents, consent to routine medical care may be presumed by acquiescence.

3. **Surgical procedures.** Except as otherwise provided, surgery may only be performed with the informed consent of the resident, his guardian or the parent or guardian of a resident who is a minor. If there exists an imminent and substantial danger of a death or permanent physical impairment, consent may be presumed when the resident is a minor, an adjudicated incompetent or is unconscious and unable to give informed consent.

4. **Court ordered treatment.** If a resident is unable to or refuses to consent to medical treatment and no guardian exists to authorize treatment, the head of the institution may petition a judge of the District Court or a Justice of the Superior Court, to authorize treatment. The judge or justice may authorize treatment upon a finding that:

A. The illness for which treatment is proposed poses a substantial threat to the other residents and staff of the institution if left untreated; or

B. The illness or condition for which treatment is proposed poses a substantial threat of death or permanent physical injury to the resident and the resident, by

reason of mental illness or defect, lacks the capacity to make a reasoned judgment regarding his need for treatment.

5. Psychotropic medication.

A. Administration of psychotropic medication to a resident held in the institution, administered under chapters 185 or 225, pursuant to court order may be utilized as part of a comprehensive treatment program by order of a resident's treating physician. If a resident objects to the use of that medication, administration shall be forced only after other alternatives have been tried. In these cases, alternative treatment and resort to forced medication shall be approved by a committee appointed by the superintendent, pursuant to regulations promulgated by the department. Residents admitted on an emergency basis, but not yet held pursuant to court commitment or certification, may be forced to accept psychotropic medication only when the attending physician finds that the treatment is necessary to prevent imminent physical danger to the resident or others.

B. Inmates of correctional institutions, administered under chapters 63, 66 or Title 15, chapter 409, may receive psychotropic drugs, prescribed by a qualified physician, as part of a comprehensive treatment program. That medication shall not be administered without the consent of the inmate except in a medical emergency. An emergency exists when the prescribing physician certifies that:

- (1) The inmate is suffering from a mental disorder;**
- (2) There is imminent danger of physical harm to the inmate or others; and**
- (3) No less intrusive alternative to forced medication is available.**

STATEMENT OF FACT

Several recent incidents illustrate the need for mental health authorities to authorize the provision of life-saving medical treatment to people who are not competent to provide personal consent. The responsibilities of authorities and the patients, and the process of providing consent, are specified in this proposed bill. Consideration of patient rights is included and appropriate protection is present.