

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1667

S.P. 549

In Senate, March 26, 1997

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**An Act to Permit Involuntary Medication of Mentally Ill Persons  
Residing in Department of Corrections Facilities.**

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Submitted by the Department of Corrections pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator MITCHELL of Penobscot.  
Cosponsored by Representative JONES of Greenville and  
Representatives: FRECHETTE of Biddeford, McALEVEY of Waterboro, MUSE of South  
Portland, PEAVEY of Woolwich, POVICH of Ellsworth, TOBIN of Dexter, WHEELER of  
Bridgewater.

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

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4       **Sec. 1. 34-A MRS §1001, sub-§§11-B and 11-C** are enacted to read:

6       **11-B. Likelihood of serious harm.** "Likelihood of serious harm" means:

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

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11       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 to them; or

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

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15       **11-C. Mentally ill person.** "Mentally ill person" means a person having a psychiatric or other disease that substantially impairs that person's mental health, including a person suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol, but not including a mentally retarded or sociopathic person.

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17       **Sec. 2. 34-A MRS §3048** is enacted to read:

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19       **§3048. Involuntary medication of mentally ill person**

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21       **1. Grounds for involuntary medication.** A mentally ill person 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 and only if:

22       A. The person is a mentally ill person;

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

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

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

4           2. Hearing prior to medication. A person who is to be  
5           involuntarily medicated pursuant to this section must, before  
6           being medicated, be provided an impartial hearing at which the  
7           person has the rights described in this subsection. The  
8           commissioner shall adopt rules to implement this subsection.  
9           These rules are major substantive rules for purposes of Title 5,  
10           chapter 375, subchapter II-A.

12           A. The person is entitled to be informed in writing of the  
13           specific factual basis for the diagnosis of mental illness  
14           and for the belief that the person poses a likelihood of  
15           serious harm and of the treatment benefits of the medication  
16           proposed.

18           B. The person is entitled to be present at the hearing,  
19           except that the person may be prevented from attending or be  
20           removed if the person's behavior indicates that the person  
21           is in danger of self-injury or is a danger to other persons  
22           or property.

24           C. The person is entitled to present evidence on the  
25           person's behalf.

26           D. The person is entitled to call one or more witnesses,  
27           which right may not be unreasonably withheld or restricted.

29           E. The person is entitled to question any witness that  
30           testifies at the hearing, which right may not be  
31           unreasonably withheld or restricted.

32           F. The person is entitled to be represented by counsel  
33           substitute.

34           G. The person is entitled to appeal the decision, before  
35           being involuntarily medicated, to the chief administrative  
36           officer of the facility.

37           3. Periodic review. Involuntary medication of the person  
38           may continue only with periodic reviews consisting of a 2nd  
39           impartial hearing conforming with the requirements of subsection  
40           2 to take place within 10 working days of the first hearing and  
41           of subsequent impartial hearings conforming with the requirements  
42           of subsection 2 to take place a minimum of once every 6 months.  
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