

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1099

S.P. 331

In Senate, February 22, 2001

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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 DAVIS of Piscataquis.  
Cosponsored by Representative WHEELER of Bridgewater and  
Senator KNEELAND of Aroostook, Representatives: BELANGER of Caribou, COLLINS of  
Wells, GERZOFKY of Brunswick, PERKINS of Penobscot, PINKHAM of Lamoine,  
SNOWE-MELLO of Poland, TOBIN of Dexter.

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

2  
4       **Sec. 1. 34-A MRSA §1001, sub-§§11-B and 11-C** are enacted to read:

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

8           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;

10           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

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

14       **11-C. Mentally ill person.** "Mentally ill person" means a person diagnosed as having a psychiatric or other illness that substantially impairs that person's mental health. "Mentally ill person" does not include a mentally retarded or sociopathic person.

16       **Sec. 2. 34-A MRSA §3048** is enacted to read:

18       **§3048. Involuntary medication of mentally ill person**

20           **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:

22           A. The person is a mentally ill person;

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

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

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

2           E. The person is suffering solely from the effects of the  
3           use of drugs, narcotics, hallucinogens or intoxicants,  
4           including alcohol, and is undergoing a medically supervised  
5           detoxification. The correctional facilities may administer  
6           such medications as determined necessary by the attending  
7           physician or the psychiatrist.

8           2. Hearing prior to medication. A person who is to be  
9           involuntarily medicated pursuant to this section must be  
10           provided, before being medicated, an impartial hearing at which  
11           the person has the rights described in this subsection. The  
12           commissioner shall adopt rules to implement this subsection.  
13           These rules adopted pursuant to this subsection are major  
14           substantive rules as defined in Title 5, chapter 375, subchapter  
15           II-A.

16           A. The person is entitled to be informed in writing at  
17           least 24 hours before the hearing of the specific factual  
18           basis for the diagnosis of the mental illness and for the  
19           belief that the person poses a likelihood of serious harm  
20           and of the treatment benefits of the medication proposed.

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

26           C. The person is entitled to present evidence on the  
27           person's behalf.

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

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

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

35           G. The person is entitled to appeal the decision within 24  
36           hours, before being involuntarily medicated, to the chief  
37           administrative officer of the facility. A decision by the  
38           chief administrative officer must be made within 24 hours of  
39           the appeal.

40           3. Periodic review. Involuntary medication of the person  
41           may continue only with periodic reviews consisting of a 2nd  
42           impartial hearing conforming with the requirements of subsection  
43           2.

2 2 to take place within 10 working days of the first hearing and  
3 of subsequent impartial hearings conforming with the requirements  
4 of subsection 2 to take place a minimum of once every 6 months.

6 4. Record. The department must maintain a record of all  
7 hearings and decisions under this section.

8 5. Effect on medication by consent. This section does not  
9 preclude giving medication for the mental illness when either the  
10 person or the person's legal guardian, if any, consents to the  
11 medication.

## 14 SUMMARY

16 This bill sets out the criteria and procedures for  
17 involuntary medication of mentally ill persons and persons  
18 suffering from the effects of the use of drugs or other  
19 substances residing in Department of Corrections facilities. It  
20 conforms with the requirements set out by the United States  
Supreme Court in Washington v. Harper, 494 U.S. 210 (1990).