

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 3, 2014 to July 16, 2015**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 15, 2015**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH THE MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**Augusta, Maine**  
**2015**

~~(2) Cocaine in the form of cocaine base and at the time of the offense the person has one or more prior convictions for any offense under this chapter or for engaging in substantially similar conduct to that of the Maine offenses under this chapter in another jurisdiction. For the purposes of this paragraph, a person has been convicted of an offense on the date the judgment of conviction was entered by the court;~~

- (3) Methamphetamine;
- (4) Oxycodone;
- (5) Hydrocodone; or
- (6) Hydromorphone.

Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this paragraph, the date of a prior conviction may precede the commission of the offense by more than 10 years.

Violation of this paragraph is a Class C crime;

**Sec. 3. 17-A MRSA §1152, sub-§2-D** is enacted to read:

**2-D.** In choosing the appropriate punishment for every natural person convicted of a Class D drug offense, the court shall consider imposing a sentencing alternative that includes medical and mental health treatment for addiction, when appropriate.

See title page for effective date.

**CHAPTER 309  
H.P. 783 - L.D. 1145**

**An Act To Improve Maine's  
Involuntary Commitment  
Processes**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** this legislation needs to take effect before the expiration of the 90-day period in order to facilitate the appropriate treatment of patients with mental illness; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 34-B MRSA §3861, sub-§4** is enacted to read:

**4. Emergency involuntary treatment.** Nothing in this section precludes a medical practitioner from administering involuntary treatment to a person who is being held or detained by a hospital against the person's will under the provisions of this subchapter, if the following conditions are met:

- A. As a result of mental illness, the person poses a serious and immediate risk of harm to that person or others;
- B. The person lacks the decisional capacity either to provide informed consent for treatment or to make an informed refusal of treatment;
- C. A person legally authorized to provide consent for treatment on behalf of the person is not reasonably available under the circumstances;
- D. The treatment being administered is a currently recognized standard of treatment for treating the person's mental illness and is the least restrictive form of treatment appropriate in the circumstances;
- E. For purposes of evaluation for emergency involuntary treatment, the medical practitioner considers available history and information from other sources, including, but not limited to, family members, that are considered reliable by the examiner; and
- F. A reasonable person concerned for the welfare of the person would conclude that the benefits of the treatment outweigh the risks and potential side effects of the treatment and would consent to the treatment under the circumstances.

**Sec. 2. 34-B MRSA §3863, sub-§2,** as amended by PL 2009, c. 651, §14, is further amended to read:

**2. Certifying examination.** The written application must be accompanied by a dated certificate, signed by a medical practitioner stating:

- A. That the practitioner has examined the person on the date of the certificate;
- B. That the medical practitioner is of the opinion that the person is mentally ill and, because of that illness, poses a likelihood of serious harm. The written certificate must include a description of the grounds for that opinion. The opinion may be based on personal observation or on history and information from other sources considered reliable by the examiner, including, but not limited to, family members; and
- C. That adequate community resources are unavailable for care and treatment of the person's mental illness; ~~and~~

~~D. The grounds for the practitioner's opinion, which may be based on personal observation or on history and information from other sources considered reliable by the examiner.~~

**Sec. 3. 34-B MRSA §3863, sub-§3, ¶¶D and E** are enacted to read:

D. A person who has been held against that person's will for no more than 24 hours pursuant to paragraph B may be held for a reasonable additional period of time, not to exceed 48 hours, if:

(1) The hospital has had an evaluation of the person conducted by an appropriately designated individual and that evaluation concludes that the person poses a likelihood of serious harm due to mental illness;

(2) The hospital, after undertaking its best efforts, has been unable to locate an available inpatient bed at a psychiatric hospital or other appropriate alternative; and

(3) The hospital has notified the department of the name of the person, the location of the person, the name of the appropriately designated individual who conducted the evaluation pursuant to subparagraph (1) and the time the person first presented to the hospital.

E. If a person remains in a hospital for the full 48 hours allowed under paragraph D, the person may be held for one additional 48-hour period, if:

(1) The hospital satisfies again the requirements of paragraph D; and

(2) The department provides its best efforts to find an inpatient bed at a psychiatric hospital or other appropriate alternative.

**Sec. 4. 34-B MRSA §3863, sub-§4, ¶B**, as amended by PL 2007, c. 319, §9, is further amended to read:

B. The Department of Health and Human Services is responsible for any reasonable transportation expenses under this section, including return from the psychiatric hospital if admission is declined. The department shall utilize any 3rd-party payment sources that are available.

**Sec. 5. 34-B MRSA §3863, sub-§7-A** is enacted to read:

**7-A. Post-admission discharge.** If it is necessary to discharge a person because findings required for admission under subsection 2 are not certified in a 2nd opinion by a staff physician or licensed clinical psychologist after examination in accordance with subsection 7, the staff physician or licensed clinical psychologist shall record the discharge on the written application, which must contain a statement that the

findings required for the person's admission specified under subsection 2 were not met.

**Sec. 6. 34-B MRSA §3864, sub-§2, ¶C**, as amended by PL 1995, c. 496, §3, is further amended to read:

C. A court orders release or discharge upon a writ of habeas corpus under section 3804; ~~or~~

**Sec. 7. 34-B MRSA §3864, sub-§2, ¶D**, as amended by PL 2007, c. 319, §10, is further amended to read:

D. Upon request of the commissioner, the District Court orders the transfer of a patient in need of more specialized treatment to another psychiatric hospital. In the event of a transfer, the court shall transfer its file to the District Court having territorial jurisdiction over the receiving psychiatric hospital; ~~or~~

**Sec. 8. 34-B MRSA §3864, sub-§2, ¶E** is enacted to read:

E. The person has capacity to make an informed decision for informal voluntary admission, agrees to informal voluntary admission and the chief administrative officer of the hospital determines that informal voluntary admission is suitable.

**Sec. 9. 34-B MRSA §3868, sub-§1, ¶C** is enacted to read:

C. For a patient transferred under this subsection, the order of involuntary commitment and the order of involuntary treatment, if any, remain in effect and are transferred to the receiving hospital.

**Sec. 10. 34-B MRSA §3874** is enacted to read:

**§3874. Medical examinations conducted via telemedicine technologies**

Notwithstanding any other provision in this subchapter, any medical examination or consultation required or permitted to be conducted under this subchapter may be conducted using telemedicine or other similar technologies that enable the medical examination or consultation to be conducted in accordance with applicable standards of care. As used in this section, "telemedicine" has the same meaning as in Title 24-A, section 4316, subsection 1.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective July 2, 2015.