

APPROVED  
SEPTEMBER 6, 2013  
BY GOVERNOR

CHAPTER  
434  
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THIRTEEN

H.P. 1087 - L.D. 1515

**An Act To Increase the Availability of Mental Health Services**

**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 authorizes the Commissioner of Corrections to transfer an adult jail inmate to a correctional facility for the purpose of providing the inmate with mental health services, and to accept placement of certain adult defendants in a mental health unit of a correctional facility; and

**Whereas**, it is critically important to implement this authority as soon as possible in order to increase the availability of mental health services; 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. 15 MRSA §101-D, sub-§5**, as amended by PL 2013, c. 265, §2, is further amended to read:

**5. Finding of incompetence; custody; bail.** If, after hearing upon motion of the attorney for the defendant or upon the court's own motion, the court finds that any defendant is incompetent to stand trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial and may either:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for ~~appropriate~~ placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis

stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any living situation program specifically approved by the court. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and 180 days, the State Forensic Service or other appropriate office of the Department of Health and Human Services shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services for appropriate placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any living situation program specifically approved by the court. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order

the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital approved by the Department of Health and Human Services or an intensive outpatient treatment program or a living situation any program specifically approved by the court or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

**Sec. 2. 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.

**Sec. 3. 34-A MRSA §1001, sub-§12-A** is enacted to read:

**12-A. Person with mental illness.** "Person with mental illness" means a person who has attained 18 years of age and has been diagnosed as having a psychiatric or other illness that substantially impairs that person's mental health. An intellectual disability as defined in Title 34-B, section 5001, subsection 3 or a personality disorder is not a psychiatric or other illness for purposes of this subsection. This subsection is repealed August 1, 2017.

**Sec. 4. 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 intensive mental health care and treatment may be given medication for the mental illness without the consent of the person if, upon application by the chief administrative officer of the facility, the Superior Court of the county in which the correctional facility is located finds by clear and convincing evidence that:

- A. The person is a person with mental illness;
- B. As a result of the mental illness, the person poses a likelihood of serious harm;
- C. The medication has been recommended by the facility's treating psychiatrist as treatment for the person's mental illness;
- D. The recommendation for the medication has been supported by a professional who is qualified to prescribe the medication and who does not provide direct care to the person;
- E. The person lacks the capacity to make an informed decision regarding medication;
- F. The person is unable or unwilling to consent to the recommended medication;
- G. The need for the recommended medication outweighs the risks and side effects;  
and
- H. The recommended medication is the least intrusive appropriate treatment option.

For purposes of this subsection, "intensive mental health care and treatment" means daily on-site psychiatric treatment services, daily on-site group and individual mental health treatment and other therapeutic programs and 24-hour on-call psychiatric coverage and includes, as authorized in accordance with this section, the ability to order and administer involuntary medication for treatment purposes.

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

- A. The person is entitled, at least 7 days before the hearing, to written notice of the hearing and a copy of the application for an order permitting involuntary medication, including the specific factual basis for each of the grounds set out in subsection 1.
- B. The person is entitled to be present at the hearing.
- C. The person is entitled to be represented by counsel.
- D. The person is entitled to present evidence, including by calling one or more witnesses.
- E. The person is entitled to cross-examine any witness who testifies at the hearing.
- F. The person is entitled to appeal to the Supreme Judicial Court any order by the Superior Court permitting involuntary medication.

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

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

B. The Maine Rules of Evidence apply.

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

D. If the person is indigent, costs of counsel and all other costs, including all costs on appeal, must be provided by the Maine Commission on Indigent Legal Services as in other civil cases.

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

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

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

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

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

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

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

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

**Sec. 5. 34-A MRSA §3069-A** is enacted to read:

**§3069-A. Transfer of jail inmates for mental health services**

**1. Eligible inmates.** The commissioner may transfer from a jail to a correctional facility an adult inmate who the chief administrative officer of the Riverview Psychiatric Center confirms is eligible for admission to a state mental health institute under Title 34-B, section 3863, but for whom no suitable bed is available, for the purpose of providing to the inmate mental health services in a mental health unit of a correctional facility that provides intensive mental health care and treatment. The commissioner may not transfer pursuant to this section a person who has been found not criminally responsible by reason of insanity. The commissioner may return an inmate transferred pursuant to this subsection back to the sending facility.

For purposes of this subsection, "intensive mental health care and treatment" has the same meaning as in section 3049, subsection 1.

**2. Evaluation.** The commissioner may transfer from a jail to a correctional facility an adult inmate whom the court orders to be examined or further evaluated by the State Forensic Service under Title 15, section 101-D, subsection 1, 2, 3 or 9 if the State Forensic Service determines that the jail where the inmate is incarcerated cannot provide an appropriate setting for the examination but that a mental health unit in a correctional facility can provide an appropriate setting for the examination. The commissioner shall return an inmate transferred pursuant to this subsection back to the sending facility upon the completion of the examination ordered, including any further evaluation ordered, unless the commissioner transferred the inmate for another reason in addition to the examination.

**3. Disclosure of information.** With respect to an adult inmate who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to a transfer of the inmate under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

**4. Application of other laws.** All other applicable provisions of law governing inmates, whether detained pending a trial or other court proceeding or sentenced, apply to inmates transferred under this section.

**5. Discretion.** Nothing in this section or in any other provision of law requires the commissioner to transfer an adult inmate from a jail to a correctional facility or precludes the commissioner from transferring an adult inmate from a jail to a correctional facility at any time for any other reason at the commissioner's discretion.

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

**Sec. 6. 34-A MRSA §3069-B** is enacted to read:

**§3069-B. Placement of defendants for observation**

**1. Acceptance of placement.** The commissioner may accept the placement of an adult defendant in a mental health unit of a correctional facility that provides intensive mental health care and treatment for observation whom a court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, subsection 4 if, in addition to the findings required under Title 15, section 101-D, subsection 4, the court, after hearing, finds by clear and convincing evidence that:

A. The defendant is a person with mental illness and, as a result of the defendant's mental illness, the defendant poses a likelihood of serious harm to others;

B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; and

C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

The commissioner may not accept the placement of a person who has been found not criminally responsible by reason of insanity.

For purposes of this subsection, "intensive mental health care and treatment" has the same meaning as in section 3049, subsection 1.

**2. Termination of placement.** The commissioner may terminate the placement of a defendant accepted pursuant to this section if the commissioner determines that the likelihood of serious harm posed by the defendant has decreased or the security at a state mental health institute has increased or for any other reason.

**3. Disclosure of information.** With respect to an adult defendant who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to accepting placement of the defendant under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

**4. Application of other laws.** All other applicable provisions of law governing defendants committed for observation apply to defendants accepted for placement under this section.

**5. Discretion.** Nothing in this section or in any other provision of law requires the commissioner to accept the placement of a defendant who is committed for observation.

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

**Sec. 7. 34-B MRSA §1207, sub-§1, ¶B,** as repealed and replaced by PL 2009, c. 415, Pt. A, §20, is amended to read:

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy

and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; ~~or~~ the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B. This paragraph is repealed August 1, 2017;

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

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

**Sec. 9. Report of Department of Health and Human Services and Department of Corrections.** By January 15, 2015, the Department of Health and Human Services shall, in collaboration with the Department of Corrections, submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the operations of a mental health unit within a correctional facility. The report must include the following information regarding the mental health unit: the average daily population of the unit, the average daily staffing patterns, the average length of stay in the unit, a description of services provided and the number of persons placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A and 3069-B. The report must also include any recommendations for reallocation of resources or the redesign of services of the mental health unit, the forensic services provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A, sections 3069-A and 3069-B.

**Sec. 10. Report of the Department of Corrections.** By January 15, 2015, the Department of Corrections shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of applications submitted and orders granted pursuant to the Maine Revised Statutes, Title 34-A, section 3049.

**Sec. 11. Report of the Department of Health and Human Services.** The Department of Health and Human Services shall prepare a plan regarding how to fully assess for brain injury or suspected brain injury persons who enter into the custody of the department under the Maine Revised Statutes, Title 15, section 101-D or section 103. The plan must include how the department will meet the needs of persons who have traumatic or acquired brain injuries. By January 15, 2015, the department shall report on its plan to the joint standing committee of the Legislature having jurisdiction over criminal justice matters.

**Sec. 12. Forensic Mental Health Services Oversight Committee.**



**1. Establishment.** The Forensic Mental Health Services Oversight Committee, referred to in this section as "the committee," is established to oversee the provision of mental health services to persons receiving services as forensic patients in correctional facilities in the State.

**2. Appointment; chairs; convening; meetings.** The committee consists of 9 members, including 5 members from the political party holding the most seats in the Legislature and 4 members from the political party holding the 2nd most seats in the Legislature. The President of the Senate shall appoint 4 members of the Senate. The first named member of the Senate serves as Senate chair. The Speaker of the House of Representatives shall appoint 5 members of the House of Representatives. The first named member of the House of Representatives serves as House chair. All appointments must be made no later than 30 days following the effective date of this section. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. When the appointment of all members has been completed, the chairs shall call the first meeting of the committee. If 30 days or more after the effective date of this section a majority but not all of the appointments have been made, the chairs may request authority for the committee to meet and conduct its business and the Legislative Council may grant that authority. The committee is authorized to meet up to 4 times.

**3. Duties.** The committee shall oversee expansion of the Mental Health Unit at the Maine State Prison, as provided in this Act. The committee shall review and consider for the purpose of making recommendations the following:

- A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation;
- B. The addition of new staff and training of staff at the Maine State Prison;
- C. Decision-making authority related to admissions, release and transfer to and from the Mental Health Unit;
- D. Eligibility standards;
- E. Due process safeguards for placement and treatment decisions; and
- F. Impact on resources and population of Riverview Psychiatric Center and county jails.

**4. Cooperation.** The Department of Corrections, the State Board of Corrections, the Department of Health and Human Services, the judicial branch and the Office of the Attorney General shall provide to the committee all assistance and information necessary to its oversight duties.

**5. Compensation.** Members of the committee are entitled to receive compensation at the legislative per diem rate and reimbursement of necessary expenses for attendance at authorized meetings of the committee.

**6. Report.** Notwithstanding Joint Rule 353, the committee shall submit its recommendations, including any proposed legislation, by January 15, 2014 for introduction to the Second Regular Session of the 126th Legislature for legislative action.

**7. Staff assistance.** The Legislative Council shall provide staffing services to the committee.

**Sec. 13. Addressing concerns of federal Department of Health and Human Services.** The Department of Health and Human Services shall report at each meeting of the Joint Standing Committee on Health and Human Services held from September 2013 to December 2013 and any time the committee requests to the Joint Standing Committee on Health and Human Services regarding the issues raised in the report issued by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services in 2013, including:

**1. Lower Saco Unit.** The plan to recertify the Lower Saco Unit at the Riverview Psychiatric Center; and

**2. Model.** The plan to implement a recovery and rehabilitation model at the Riverview Psychiatric Center.

The report must address the hiring and training of staff and any other necessary structural changes that must be implemented in order to correct the issues raised in the 2013 report.

The Department of Health and Human Services shall provide a report on the issues outlined in this section to the Joint Standing Committee on Appropriations and Financial Affairs prior to December 1, 2013.

**Sec. 14. Appropriations and allocations.** The following appropriations and allocations are made.

**CORRECTIONS, DEPARTMENT OF**

**Correctional Medical Services Fund 0286**

Initiative: Provides funds for contracted clinical staff to staff a mental health unit at the Maine State Prison effective February 15, 2014.

<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$1,381,771	\$0
<b>GENERAL FUND TOTAL</b>	<b>\$1,381,771</b>	<b>\$0</b>

<b>CORRECTIONS, DEPARTMENT OF</b>	<b>2013-14</b>	<b>2014-15</b>
<b>DEPARTMENT TOTALS</b>		

<b>GENERAL FUND</b>	<b>\$1,381,771</b>	<b>\$0</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>\$1,381,771</b>	<b>\$0</b>

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

**Departmentwide 0640**

Initiative: Reduces funding from salary savings. Notwithstanding any other provision of law, the State Budget Officer shall calculate the amount of savings in this Act that applies to each General Fund account in the Department of Health and Human Services and shall transfer the amounts by financial order upon approval of the Governor. These transfers are considered adjustments to appropriations in fiscal year 2013-14.

<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
Personal Services	(\$1,382,521)	\$0
<b>GENERAL FUND TOTAL</b>	<b>(\$1,382,521)</b>	<b>\$0</b>

**HEALTH AND HUMAN SERVICES,  
DEPARTMENT OF (FORMERLY DHS)  
DEPARTMENT TOTALS**

	<b>2013-14</b>	<b>2014-15</b>
<b>GENERAL FUND</b>	<b>(\$1,382,521)</b>	<b>\$0</b>
<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<b>(\$1,382,521)</b>	<b>\$0</b>

**INDIGENT LEGAL SERVICES, MAINE COMMISSION ON**

**Maine Commission on Indigent Legal Services Z112**

Initiative: Provides funds for indigent legal services.

<b>GENERAL FUND</b>	<b>2013-14</b>	<b>2014-15</b>
All Other	\$750	\$0
<b>GENERAL FUND TOTAL</b>	<b>\$750</b>	<b>\$0</b>

**INDIGENT LEGAL SERVICES, MAINE  
COMMISSION ON  
DEPARTMENT TOTALS**

	<b>2013-14</b>	<b>2014-15</b>
<b>GENERAL FUND</b>	<b>\$750</b>	<b>\$0</b>

<b>DEPARTMENT TOTAL - ALL FUNDS</b>	<u>\$750</u>	<u>\$0</u>
<b>SECTION TOTALS</b>	<b>2013-14</b>	<b>2014-15</b>
<b>GENERAL FUND</b>	<b>\$0</b>	<b>\$0</b>
<b>SECTION TOTAL - ALL FUNDS</b>	<u>\$0</u>	<u>\$0</u>

**Sec. 15. Effective date.** That section of this Act that amends the Maine Revised Statutes, Title 15, section 101-D, subsection 5 takes effect October 9, 2013.

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