

**§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; [PL 2013, c. 434, §4 (NEW).]
- B. As a result of the mental illness, the person poses a likelihood of serious harm; [PL 2013, c. 434, §4 (NEW).]
- C. The medication has been recommended by the facility's treating psychiatrist as treatment for the person's mental illness; [PL 2013, c. 434, §4 (NEW).]
- 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; [PL 2013, c. 434, §4 (NEW).]
- E. The person lacks the capacity to make an informed decision regarding medication; [PL 2013, c. 434, §4 (NEW).]
- F. The person is unable or unwilling to consent to the recommended medication; [PL 2013, c. 434, §4 (NEW).]
- G. The need for the recommended medication outweighs the risks and side effects; and [PL 2013, c. 434, §4 (NEW).]
- H. The recommended medication is the least intrusive appropriate treatment option. [PL 2013, c. 434, §4 (NEW).]

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.

[PL 2013, c. 434, §4 (NEW).]

**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. [PL 2013, c. 434, §4 (NEW).]
- B. The person is entitled to be present at the hearing. [PL 2013, c. 434, §4 (NEW).]
- C. The person is entitled to be represented by counsel. [PL 2013, c. 434, §4 (NEW).]
- D. The person is entitled to present evidence, including by calling one or more witnesses. [PL 2013, c. 434, §4 (NEW).]
- E. The person is entitled to cross-examine any witness who testifies at the hearing. [PL 2013, c. 434, §4 (NEW).]
- F. The person is entitled to appeal to the Supreme Judicial Court any order by the Superior Court permitting involuntary medication. [PL 2013, c. 434, §4 (NEW).]

[PL 2013, c. 434, §4 (NEW).]

**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. [PL 2013, c. 434, §4 (NEW).]

B. The Maine Rules of Evidence apply. [PL 2013, c. 434, §4 (NEW).]

C. The Supreme Judicial Court may adopt such rules of court procedure as it determines appropriate. [PL 2013, c. 434, §4 (NEW).]

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. [PL 2013, c. 434, §4 (NEW).]

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. [PL 2013, c. 434, §4 (NEW).]

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. [PL 2013, c. 434, §4 (NEW).]

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. [PL 2013, c. 434, §4 (NEW).]

[PL 2013, c. 434, §4 (NEW).]

**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.

[PL 2013, c. 434, §4 (NEW).]

**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.

[PL 2013, c. 434, §4 (NEW).]

**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.

[PL 2013, c. 434, §4 (NEW).]

**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.

[PL 2013, c. 434, §4 (NEW).]

**8. Repeal.**

[PL 2017, c. 147, §3 (RP).]

SECTION HISTORY

PL 2013, c. 434, §4 (NEW). PL 2017, c. 147, §3 (AMD).

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