

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2015

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Legislative Document

No. 440

S.P. 169

In Senate, February 24, 2015

### An Act To Create a Secure, Therapeutic Mental Health Unit

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Secretary of the Senate

Presented by Senator GERZOFSKY of Cumberland.  
Cosponsored by Representative DION of Portland and  
Senators: BURNS of Washington, DIAMOND of Cumberland, HASKELL of Cumberland,  
KATZ of Kennebec, ROSEN of Hancock, Representatives: GATTINE of Westbrook, LONG  
of Sherman, TUCKER of Brunswick.

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

2 **Sec. 1. 15 MRSA §101-D, sub-§4**, as amended by PL 2013, c. 265, §1, is further  
3 amended to read:

4 **4. Commitment for observation.** The court may commit the defendant to the  
5 custody of the Commissioner of Health and Human Services for placement in the secure,  
6 therapeutic mental health unit established pursuant to Title 34-A, section 4303 unless the  
7 Commissioner of Health and Human Services determines the defendant's placement in  
8 that unit is contraindicated, in which case the defendant may be placed in an appropriate  
9 alternative institution that is appropriate for the care and treatment of people with mental  
10 illness or in an appropriate residential program that provides care and treatment for  
11 persons who have intellectual disabilities or autism, as set forth in this subsection. If the  
12 State Forensic Service determines that observation of the defendant will materially  
13 enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9  
14 and the defendant is incarcerated, the observation may take place at the correctional  
15 facility where the defendant is incarcerated if the State Forensic Service determines that  
16 the correctional facility can provide an appropriate setting for the observation. ~~If the~~  
17 ~~observation is to take place in a correctional facility, the court may not commit the~~  
18 ~~defendant to the custody of the Commissioner of Health and Human Services.~~

19 A. If the State Forensic Service determines that observation of the defendant in the  
20 secure, therapeutic mental health unit or an appropriate alternative institution that is  
21 appropriate for the care of people with mental illness or in an appropriate residential  
22 program that provides care and treatment for persons who have intellectual  
23 disabilities or autism will materially enhance its ability to perform an examination  
24 ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise  
25 the court. The State Forensic Service may make this determination based upon  
26 consultation with the defendant's attorney and the attorney for the State and the court  
27 and upon such other information as it determines appropriate. In addition, the State  
28 Forensic Service may include such a determination in a report to the court that  
29 recommends further evaluation of the defendant.

30 B. Upon a determination by the State Forensic Service under paragraph A, a court  
31 having jurisdiction in a criminal case may commit the defendant to the custody of the  
32 Commissioner of Health and Human Services for placement in the secure, therapeutic  
33 mental health unit unless the Commissioner of Health and Human Services  
34 determines the defendant's placement in that unit is contraindicated, in which case the  
35 defendant may be placed in an appropriate alternative institution that is appropriate  
36 for the care and treatment of people with mental illness or in an appropriate  
37 residential program that provides care and treatment for persons who have intellectual  
38 disabilities or autism for observation for a period not to exceed 60 days. If the State  
39 Forensic Service requires additional time for observation, it shall communicate its  
40 request and the reasons for that request to the court and to counsel for the parties.  
41 The court shall accommodate a party's request to be heard on the issue of whether an  
42 extension should be granted and may extend the commitment for up to an additional  
43 90 days. Unless the defendant objects, an order under this paragraph must authorize  
44 the institution or residential program where the defendant is placed by the

1 Commissioner of Health and Human Services to provide treatment to the defendant.  
2 When further observation of the defendant is determined no longer necessary by the  
3 State Forensic Service, the commissioner shall report that determination to the court  
4 and the court shall terminate the commitment. If the defendant had been incarcerated  
5 prior to the commitment for observation and if, during the period of observation, the  
6 defendant presents a substantial risk of causing bodily injury to staff or others that  
7 cannot be managed in an appropriate institution for the care and treatment of people  
8 with mental illness or in an appropriate residential program that provides care and  
9 treatment for persons who have intellectual disabilities or autism, the commissioner  
10 ~~may return the defendant to the correctional facility~~ shall commit the defendant to the  
11 secure, therapeutic mental health unit. The commissioner shall report the risk  
12 management issues to the court. Upon receiving the report, the court shall review the  
13 report and may enter any order authorized by this section, including termination of  
14 the commitment.

15 ~~C. If the court has provided for remand to a correctional facility following the~~  
16 ~~commitment under paragraph B, the correctional facility shall execute the remand~~  
17 ~~order upon advice from the Commissioner of Health and Human Services that~~  
18 ~~commitment is determined no longer necessary.~~

19 **Sec. 2. 15 MRSA §101-D, sub-§5, ¶A,** as amended by PL 2013, c. 434, §1 and  
20 affected by §15, is further amended to read:

21 A. Commit the defendant to the custody of the Commissioner of Health and Human  
22 Services for placement in the secure, therapeutic mental health unit established in  
23 Title 34-A, section 4303 unless the Commissioner of Health and Human Services  
24 determines the defendant's placement in that unit is contraindicated, in which case the  
25 defendant may be placed in an appropriate alternative program that is appropriate for  
26 observation, care and treatment of people with mental illness or persons with  
27 intellectual disabilities or autism. An appropriate program may be in an institution  
28 for the care and treatment of people with mental illness, an intermediate care facility  
29 for persons who have intellectual disabilities or autism, a crisis stabilization unit, a  
30 nursing home, a residential care facility, an assisted living facility, a hospice, a  
31 hospital, an intensive outpatient treatment program or any program specifically  
32 approved by the court. At the end of 30 days or sooner, and again in the event of  
33 recommitment, at the end of 60 days and 180 days, the State Forensic Service or  
34 other appropriate office of the Department of Health and Human Services shall  
35 forward a report to the Commissioner of Health and Human Services relative to the  
36 defendant's competence to stand trial and its reasons. The Commissioner of Health  
37 and Human Services shall without delay file the report with the court having  
38 jurisdiction of the case. The court shall hold a hearing on the question of the  
39 defendant's competence to stand trial and receive all relevant testimony bearing on  
40 the question. If the State Forensic Service's report or the report of another  
41 appropriate office of the Department of Health and Human Services to the court  
42 states that the defendant is either now competent or not restorable, the court shall  
43 within 30 days hold a hearing. If the court determines that the defendant is not  
44 competent to stand trial, but there does exist a substantial probability that the  
45 defendant will be competent to stand trial in the foreseeable future, the court shall  
46 recommit the defendant to the custody of the Commissioner of Health and Human

1 Services for placement in the secure, therapeutic mental health unit established  
2 pursuant to Title 34-A, section 4303 unless the Commissioner of Health and Human  
3 Services determines the defendant's placement in that unit is contraindicated, in  
4 which case the defendant may be placed in an appropriate alternative program that is  
5 appropriate for observation, care and treatment of people with mental illness or  
6 persons with intellectual disabilities or autism. An appropriate program may be in an  
7 institution for the care and treatment of people with mental illness, an intermediate  
8 care facility for persons who have intellectual disabilities or autism, a crisis  
9 stabilization unit, a nursing home, a residential care facility, an assisted living  
10 facility, a hospice, a hospital, an intensive outpatient treatment program or any  
11 program specifically approved by the court. When a person who has been evaluated  
12 on behalf of the court by the State Forensic Service or other appropriate office of the  
13 Department of Health and Human Services is committed into the custody of the  
14 Commissioner of Health and Human Services under this paragraph, the court shall  
15 order that the State Forensic Service or other appropriate office of the Department of  
16 Health and Human Services share any information that it has collected or generated  
17 with respect to the person with the institution or residential program in which the  
18 person is placed. If the defendant is charged with an offense under Title 17-A,  
19 chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court  
20 determines that the defendant is not competent to stand trial and there does not exist a  
21 substantial probability that the defendant can be competent in the foreseeable future,  
22 the court shall dismiss all charges against the defendant and, unless the defendant is  
23 subject to an undischarged term of imprisonment, order the Commissioner of Health  
24 and Human Services to commence proceedings pursuant to Title 34-B, chapter 3,  
25 subchapter 4. If the defendant is charged with an offense other than an offense under  
26 Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the  
27 court determines that the defendant is not competent to stand trial and there does not  
28 exist a substantial probability that the defendant can be competent in the foreseeable  
29 future, the court shall dismiss all charges against the defendant and, unless the  
30 defendant is subject to an undischarged term of imprisonment, notify the appropriate  
31 authorities who may institute civil commitment proceedings for the individual. If the  
32 defendant is subject to an undischarged term of imprisonment, the court shall order  
33 the defendant into execution of that sentence and the correctional facility to which the  
34 defendant must be transported shall execute the court's order; or

35 **Sec. 3. 15 MRSA §103, first ¶**, as amended by PL 2011, c. 542, Pt. A, §10, is  
36 further amended to read:

37 When a court accepts a negotiated plea of not criminally responsible by reason of  
38 insanity or when a defendant is found not criminally responsible by reason of insanity by  
39 jury verdict or court finding, the judgment must so state. In those cases the court shall  
40 order the person committed to the custody of the Commissioner of Health and Human  
41 Services to be placed in the secure, therapeutic mental health unit established pursuant to  
42 Title 34-A, section 4303 unless the Commissioner of Health and Human Services  
43 determines the person's placement in that unit is contraindicated, in which case the person  
44 may be placed in an appropriate alternative institution that is appropriate for the care and  
45 treatment of persons with mental illness or in an appropriate residential program that  
46 provides care and treatment for persons who have intellectual disabilities or autism for

1 care and treatment. Upon placement in the appropriate institution or residential program  
2 and in the event of transfer from one institution or residential program to another of  
3 persons committed under this section, notice of the placement or transfer must be given  
4 by the commissioner to the committing court.

5 **Sec. 4. 34-A MRSA §3069-A, sub-§§1 and 2**, as enacted by PL 2013, c. 434,  
6 §5, are amended to read:

7 **1. Eligible inmates.** The commissioner may transfer from a jail to a correctional  
8 facility an adult inmate who the chief administrative officer of the Riverview Psychiatric  
9 Center confirms is eligible for admission to a state mental health institute under Title  
10 34-B, section 3863, but for whom no suitable bed is available, for the purpose of  
11 providing to the inmate mental health services in a mental health unit of a correctional  
12 facility that provides intensive mental health care and treatment. The commissioner may  
13 not transfer pursuant to this section a person who has been found not criminally  
14 responsible by reason of insanity. The commissioner may return an inmate transferred  
15 pursuant to this subsection back to the sending facility.

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

18 For purposes of this subsection, "state mental health institute" includes the secure,  
19 therapeutic mental health unit established pursuant to section 4303.

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

31 **Sec. 5. 34-A MRSA §3069-B, sub-§1, ¶B**, as enacted by PL 2013, c. 434, §6, is  
32 amended to read:

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

35 **Sec. 6. 34-A MRSA §3069-B, sub-§1, ¶B-1** is enacted to read:

36 B-1. There is not a suitable bed available at the secure, therapeutic mental health unit  
37 established pursuant to section 4303; and

38 **Sec. 7. 34-A MRSA c. 3, sub-c. 10** is enacted to read:

39 **SUBCHAPTER 10**

1 **SECURE, THERAPEUTIC MENTAL HEALTH UNIT**

2 **§4301. Secure, therapeutic mental health unit**

3 The department shall establish a secure, therapeutic mental health unit in accordance  
4 with this subchapter.

5 **§4302. Definitions**

6 As used in this subchapter, unless the context otherwise indicates, the following  
7 terms having the following meanings.

8 **1. Forensic patient.** "Forensic patient" means a person who has been ordered by a  
9 court to undergo examination by the State Forensic Service under Title 15, section 101-D  
10 or a person committed under Title 15, section 103.

11 **2. Likelihood of serious harm.** "Likelihood of serious harm" means a substantial  
12 risk of physical harm to other persons, as manifested by a person's recent homicidal or  
13 other violent behavior or recent conduct placing others in reasonable fear of serious  
14 physical harm.

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

20 **4. Unit.** "Unit" means the secure, therapeutic mental health unit established pursuant  
21 to section 4303.

22 **§4303. Unit establishment**

23 The department and the Commissioner of Health and Human Services shall enter into  
24 an agreement with either the sheriff of Cumberland County or the sheriff of Somerset  
25 County to establish a secure, therapeutic mental health unit within the county jail  
26 facilities of either Cumberland County or Somerset County for the purposes of providing  
27 risk assessments and therapeutic care for forensic patients.

28 **1. Security and mental health staff.** The department shall provide:

29 A. Security for the unit and transportation of patients to and from the unit. Security  
30 staff must be dedicated to the unit and trained to provide security in a mental health  
31 hospital environment; and

32 B. Therapeutic mental health care that meets or exceeds the standards for mental  
33 health services in a correctional facility established by a national organization that  
34 has an accreditation program for correctional facilities that provide mental health  
35 treatment. The department, in consultation with the Department of Health and  
36 Human Services, may contract with a private entity to provide therapeutic mental  
37 health care at the unit or may enter into an agreement with the Department of Health

1           and Human Services and the county jail to have the Department of Health and  
2           Human Services provide therapeutic mental health care.

3           **2. Sight and sound separation.** The population in the unit must be separated by  
4           sight and sound from the general jail population at all times.

5           **3. Admittance to the unit.** A person who is ordered to undergo examination by the  
6           State Forensic Service under Title 15, section 101-D must be placed into the unit unless:

7           A. The person is an inmate at a state correctional facility;

8           B. The Department of Health and Human Services determines that the person's  
9           mental health condition contraindicates placement in the unit; or

10          C. The department determines that there is not a suitable bed in the unit available for  
11          the person.

12          **4. Federal certification.** The department, the Department of Health and Human  
13          Services and the county sheriff for the county in which the unit is located shall work to  
14          obtain and maintain for the unit federal certification as a mental health hospital.

15          **Sec. 8. 34-B MRSA §1207, sub-§1, ¶B,** as amended by PL 2013, c. 132, §1 and  
16          amended by c. 434, §7, is repealed and the following enacted in its place:

17          B. Information may be disclosed if necessary to carry out the statutory functions of  
18          the department; the hospitalization provisions of chapter 3, subchapter 4; the  
19          provisions of section 1931; the purposes of section 3608; the purposes of Title 5,  
20          section 19506; the purposes of United States Public Law 99-319, dealing with the  
21          investigatory function of the independent agency designated with advocacy and  
22          investigatory functions under United States Public Law 88-164, Title I, Part C or  
23          United States Public Law 99-319; the investigation and hearing pursuant to Title 15,  
24          section 393, subsection 4-A; or the provision of mental health services by the  
25          Department of Corrections pursuant to Title 34-A, section 3031, 3069-A, 3069-B or  
26          4303. This paragraph is repealed August 1, 2017;

27          **Sec. 9. 34-B MRSA §1207, sub-§1, ¶B-3,** as enacted by PL 2013, c. 434, §8, is  
28          amended to read:

29          B-3. Information may be disclosed if necessary to carry out the statutory functions of  
30          the department; the hospitalization provisions of chapter 3, subchapter 4; the  
31          provisions of section 1931; the purposes of ~~sections 3607-A and~~ section 3608; the  
32          purposes of Title 5, section 19506; the purposes of United States Public Law 99-319,  
33          dealing with the investigatory function of the independent agency designated with  
34          advocacy and investigatory functions under United States Public Law 88-164, Title I,  
35          Part C or United States Public Law 99-319; ~~or~~ the investigation and hearing pursuant  
36          to Title 15, section 393, subsection 4-A; or the provision of therapeutic mental health  
37          care by the Department of Corrections pursuant to Title 34-A, section 4303. This  
38          paragraph takes effect August 1, 2017;

39          **Sec. 10. 34-B MRSA §3801, sub-§7-B,** as amended by PL 2009, c. 651, §9, is  
40          further amended to read:



1           **7-B. Psychiatric hospital.** "Psychiatric hospital" means:

2           A. A state mental health institute;

3           B. A nonstate mental health institution; or

4           C. A designated nonstate mental health institution.

5           For purposes of sections 3863 and 3864, "psychiatric hospital" includes the secure,  
6           therapeutic mental health unit established pursuant to Title 34-A, section 4303.

7           **Sec. 11. 34-B MRSA §3863, sub-§2-A,** as amended by PL 2007, c. 319, §9, is  
8           further amended to read:

9           **2-A. Custody agreement.** A state, county or municipal law enforcement agency  
10          may meet with representatives of those public and private health practitioners and health  
11          care facilities that are willing and qualified to perform the certifying examination required  
12          by this section in order to attempt to work out a procedure for the custody of the person  
13          who is to be examined while that person is waiting for that examination. Any agreement  
14          must be written and signed by and filed with all participating parties. In the event of  
15          failure to work out an agreement that is satisfactory to all participating parties, the  
16          procedures of section 3862 and this section continue to apply.

17          As part of an agreement the law enforcement officer requesting certification may transfer  
18          protective custody of the person for whom the certification is requested to another law  
19          enforcement officer, a health officer if that officer agrees or the chief administrative  
20          officer of a public or private health practitioner or health facility or the chief  
21          administrative officer's designee. Any arrangement of this sort must be part of the written  
22          agreement between the law enforcement agency and the health practitioner or health care  
23          facility. In the event of a transfer, the law enforcement officer seeking the transfer shall  
24          provide the written application required by this section.

25          ~~A~~ Except for placement in the secure, therapeutic mental health unit established pursuant  
26          to Title 34-A, section 4303, a person with mental illness may not be detained or confined  
27          in any jail or local correctional or detention facility, whether pursuant to the procedures  
28          described in section 3862, pursuant to a custody agreement or under any other  
29          circumstances, unless that person is being lawfully detained in relation to or is serving a  
30          sentence for commission of a crime.

31          **Sec. 12. Report of Department of Health and Human Services,**  
32          **Department of Corrections and the Cumberland County sheriff or Somerset**  
33          **County sheriff.** By January 15, 2017, the Department of Corrections, in collaboration  
34          with the Department of Health and Human Services and the county sheriff of the county  
35          in which the secure, therapeutic mental health unit established pursuant to the Maine  
36          Revised Statutes, Title 34-A, section 4303 is located, shall submit a report to the joint  
37          standing committee of the Legislature having jurisdiction over criminal justice matters  
38          regarding the operations of the unit. The report must include the following information  
39          regarding the unit: the average daily population of the unit, the average daily staffing  
40          patterns, the average length of stay in the unit, a description of services provided and the  
41          number of persons placed in the unit. The report must also include recommendations  
42          regarding the reallocation of resources for the unit; the design of the unit; the provisions

1 of forensic services at the Riverview Psychiatric Center and the unit; and the transfer  
2 provisions of Title 34-A, sections 3069, 3069-A and 3069-B.

3 **SUMMARY**

4 This bill provides for the establishment of a secure, therapeutic mental health unit for  
5 defendants undergoing court-ordered assessments to determine their competency to stand  
6 trial or their criminal culpability and to provide therapeutic care for forensic patients.  
7 The bill establishes the unit as follows.

8 1. It directs the Commissioner of Corrections and the Commissioner of Health and  
9 Human Services to enter into an agreement to establish the unit with the sheriff of either  
10 Cumberland County or Somerset County.

11 2. It directs the Department of Corrections to provide security for the unit. Security  
12 staff must be dedicated to the unit and trained to provide security in a mental health  
13 hospital environment.

14 3. It directs the Department of Corrections to provide therapeutic mental health care  
15 for the unit. The therapeutic mental health care must meet standards established by a  
16 national organization on correctional facilities mental health standards. The Department  
17 of Health and Human Services may also provide mental health services to the unit upon  
18 agreement with the Department of Corrections and the county jail.

19 4. It requires that the population in a secure, therapeutic mental health unit be  
20 separated by sight and sound from the general jail population.

21 5. It specifies that a person under a court order to undergo a mental evaluation by the  
22 State Forensic Service must be admitted to the unit unless the Department of Health and  
23 Human Services determines that the person's mental health condition contraindicates  
24 admittance to the unit, the person is an inmate at a state correctional facility or there is not  
25 a suitable bed available.