

# MAINE STATE LEGISLATURE

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# 127th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2016

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Legislative Document

No. 1577

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H.P. 1070

House of Representatives, January 28, 2016

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

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink that reads "R. B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative SANDERSON of Chelsea. (GOVERNOR'S BILL)  
Cosponsored by Senator CYRWAY of Kennebec and  
Representatives: ESPLING of New Gloucester, FREDETTE of Newport, LONG of Sherman,  
MAKER of Calais, PICCHIOTTI of Fairfield, POULIOT of Augusta, TIMBERLAKE of  
Turner, Senator: ROSEN of Hancock.

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

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

4 A. Commit the defendant to the custody of the Commissioner of Health and Human  
5 Services for placement in an appropriate program for observation, care and treatment  
6 of people with mental illness or persons with intellectual disabilities or autism. An  
7 appropriate program may be in an institution for the care and treatment of people  
8 with mental illness, an intermediate care facility for persons who have intellectual  
9 disabilities or autism, a crisis stabilization unit, a nursing home, a residential care  
10 facility, an assisted living facility, a hospice, a hospital, an intensive outpatient  
11 treatment program or any program specifically approved by the court. An  
12 appropriate program may be in a mental health unit of a correctional facility if, based  
13 upon a consensus recommendation of a panel, the Commissioner of Health and  
14 Human Services or the commissioner's designee determines that there is a therapeutic  
15 treatment advantage to placing the person in a mental health unit of a correctional  
16 facility. Placement of a person in a mental health unit of a correctional facility must  
17 be reviewed by the Commissioner of Health and Human Services or the  
18 commissioner's designee at least every 6 months and may not continue beyond 6  
19 months unless, based upon a subsequent review and consensus recommendation of a  
20 panel, the Commissioner of Health and Human Services or the commissioner's  
21 designee determines that there is a therapeutic treatment advantage to the continued  
22 placement of the person in a mental health unit of a correctional facility. At the end  
23 of 30 days or sooner, and again in the event of recommitment, at the end of 60 days  
24 and 180 days, the State Forensic Service or other appropriate office of the  
25 Department of Health and Human Services shall forward a report to the  
26 Commissioner of Health and Human Services relative to the defendant's competence  
27 to stand trial and its reasons. The Commissioner of Health and Human Services shall  
28 without delay file the report with the court having jurisdiction of the case. The court  
29 shall hold a hearing on the question of the defendant's competence to stand trial and  
30 receive all relevant testimony bearing on the question. If the State Forensic Service's  
31 report or the report of another appropriate office of the Department of Health and  
32 Human Services to the court states that the defendant is either now competent or not  
33 restorable, the court shall within 30 days hold a hearing. If the court determines that  
34 the defendant is not competent to stand trial, but there does exist a substantial  
35 probability that the defendant will be competent to stand trial in the foreseeable  
36 future, the court shall recommit the defendant to the custody of the Commissioner of  
37 Health and Human Services for placement in an appropriate program for observation,  
38 care and treatment of people with mental illness or persons with intellectual  
39 disabilities or autism. An appropriate program may be in an institution for the care  
40 and treatment of people with mental illness, an intermediate care facility for persons  
41 who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home,  
42 a residential care facility, an assisted living facility, a hospice, a hospital, an intensive  
43 outpatient treatment program or any program specifically approved by the court. An  
44 appropriate program may be in a mental health unit of a correctional facility if, based  
45 upon a consensus recommendation of a panel, the Commissioner of Health and  
46 Human Services or the commissioner's designee determines that there is a therapeutic

1 treatment advantage to placing the person in a mental health unit of a correctional  
2 facility. Placement of a person in a mental health unit of a correctional facility must  
3 be reviewed by the Commissioner of Health and Human Services or the  
4 commissioner's designee at least every 6 months and may not continue beyond 6  
5 months unless, based upon a subsequent review and consensus recommendation of a  
6 panel, the Commissioner of Health and Human Services or the commissioner's  
7 designee determines that there is a therapeutic treatment advantage to the continued  
8 placement of the person in a mental health unit of a correctional facility. When a  
9 person who has been evaluated on behalf of the court by the State Forensic Service or  
10 other appropriate office of the Department of Health and Human Services is  
11 committed into the custody of the Commissioner of Health and Human Services  
12 under this paragraph, the court shall order that the State Forensic Service or other  
13 appropriate office of the Department of Health and Human Services share any  
14 information that it has collected or generated with respect to the person with the  
15 institution or residential program in which the person is placed. If the defendant is  
16 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section  
17 506-A, 802 or 803-A and the court determines that the defendant is not competent to  
18 stand trial and there does not exist a substantial probability that the defendant can be  
19 competent in the foreseeable future, the court shall dismiss all charges against the  
20 defendant and, unless the defendant is subject to an undischarged term of  
21 imprisonment, order the Commissioner of Health and Human Services to commence  
22 proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is  
23 charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or  
24 Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant  
25 is not competent to stand trial and there does not exist a substantial probability that  
26 the defendant can be competent in the foreseeable future, the court shall dismiss all  
27 charges against the defendant and, unless the defendant is subject to an undischarged  
28 term of imprisonment, notify the appropriate authorities who may institute civil  
29 commitment proceedings for the individual. If the defendant is subject to an  
30 undischarged term of imprisonment, the court shall order the defendant into  
31 execution of that sentence and the correctional facility to which the defendant must  
32 be transported shall execute the court's order. As used in this paragraph, "panel"  
33 means a panel consisting of at least 3 psychiatrists or psychologists, in any  
34 combination, each of whom is not currently involved in the person's diagnosis and  
35 treatment; or

36 **Sec. 2. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further  
37 amended to read:

38 **§103. Commitment following acceptance of negotiated insanity plea or following**  
39 **verdict or finding of insanity**

40 When a court accepts a negotiated plea of not criminally responsible by reason of  
41 insanity or when a defendant is found not criminally responsible by reason of insanity by  
42 jury verdict or court finding, the judgment must so state. In those cases the court shall  
43 order the person committed to the custody of the Commissioner of Health and Human  
44 Services to be placed in an appropriate institution for the care and treatment of persons  
45 with mental illness or in an appropriate residential program that provides care and

1 treatment for persons who have intellectual disabilities or autism for care and treatment.  
2 An appropriate institution may be a mental health unit of a correctional facility if, based  
3 upon a consensus recommendation of a panel, the Commissioner of Health and Human  
4 Services or the commissioner's designee determines that there is a therapeutic treatment  
5 advantage to placing the person in a mental health unit of a correctional facility.  
6 Placement of a person in a mental health unit of a correctional facility must be reviewed  
7 by the Commissioner of Health and Human Services or the commissioner's designee at  
8 least every 6 months and may not continue beyond 6 months unless, based upon a  
9 subsequent review and consensus recommendation of a panel, the Commissioner of  
10 Health and Human Services or the commissioner's designee determines that there is a  
11 therapeutic treatment advantage to the continued placement of the person in a mental  
12 health unit of a correctional facility. Upon placement in the appropriate institution or  
13 residential program and in the event of transfer from one institution or residential  
14 program to another of persons committed under this section, notice of the placement or  
15 transfer must be given by the commissioner to the committing court.

16 When a person who has been evaluated on behalf of a court by the State Forensic  
17 Service is committed into the custody of the Commissioner of Health and Human  
18 Services pursuant to this section, the court shall order that the State Forensic Service  
19 share any information it has collected or generated with respect to the person with the  
20 institution or residential program in which the person is placed.

21 As used in this section, "not criminally responsible by reason of insanity" has the  
22 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or  
23 verdict in this State under former section 102; under a former version of Title 17-A,  
24 section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter  
25 149, section 17-B of the Revised Statutes of 1954. As used in this section, "panel" means  
26 a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of  
27 whom is not currently involved in the person's diagnosis and treatment.

28 **Sec. 3. 34-A MRSA §3069-A, sub-§1**, as enacted by PL 2013, c. 434, §5, is  
29 amended to read:

30 **1. Eligible inmates.** The commissioner may transfer from a jail to a correctional  
31 facility an adult inmate who the chief administrative officer of the Riverview Psychiatric  
32 Center confirms is eligible for admission to a state mental health institute under Title  
33 34-B, section 3863, but for whom no suitable bed is available, for the purpose of  
34 providing to the inmate mental health services in a mental health unit of a correctional  
35 facility that provides intensive mental health care and treatment. ~~The commissioner may~~  
36 ~~not transfer pursuant to this section a person who has been found not criminally~~  
37 ~~responsible by reason of insanity.~~ The commissioner may return an inmate transferred  
38 pursuant to this subsection back to the sending facility.

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

41 **Sec. 4. 34-A MRSA §3069-B, sub-§1**, as enacted by PL 2013, c. 434, §6, is  
42 amended to read:

