

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

SECOND REGULAR SESSION-2014

Legislative Document

No. 1814

S.P. 727

In Senate, March 12, 2014

An Act To Create a Secure, Therapeutic Mental Health Unit

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator GERZOFKY of Cumberland.
Cosponsored by Representative DION of Portland and
Senators: President ALFOND of Cumberland, CRAVEN of Androscoggin, DUTREMBLE of York, FLOOD of Kennebec, HASKELL of Cumberland, KATZ of Kennebec, LACHOWICZ of Kennebec, PLUMMER of Cumberland, Representatives: CROCKETT of Bethel, GATTINE of Westbrook, GIDEON of Freeport, LAJOIE of Lewiston, PLANTE of Berwick, PRIEST of Brunswick, TYLER of Windham.

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**

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SECURE, THERAPEUTIC MENTAL HEALTH UNIT

§4301. Secure, therapeutic mental health unit

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

§4302. Definitions

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

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

2. Likelihood of serious harm. "Likelihood of serious harm" means a 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.

3. 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.

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

§4303. Unit establishment

The department and the Commissioner of Health and Human Services shall enter into an agreement with either the sheriff of Cumberland County or the sheriff of Somerset County to establish a secure, therapeutic mental health unit within the county jail facilities of either Cumberland County or Somerset County for the purposes of providing risk assessments for forensic patients and therapeutic care for forensic patients and persons with mental illness who pose a likelihood of serious harm.

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

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

B. Therapeutic mental health care that meets or exceeds the standards for mental health services in a correctional facility established by a national organization that has an accreditation program for correctional facilities that provide mental health treatment. The department, in consultation with the Department of Health and Human Services, may contract with a private entity to provide therapeutic mental 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. In the unit, forensic patients
5 must be separated from persons who are involuntarily transferred to the unit pursuant to
6 Title 34-B, section 3861, subsection 4 by sight and sound.

7 **3. Admittance to the unit.** A person who is ordered to undergo examination by the
8 State Forensic Service under Title 15, section 101-D or a person who is a patient at a state
9 mental health institute for whom an order of involuntary transfer has been ordered under
10 Title 34-B, section 3861, subsection 4 or an order of involuntary placement has been
11 ordered under Title 34-B, section 3864, subsection 7-B who poses a likelihood of serious
12 harm must be placed into the unit unless:

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

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

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

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

21 **Sec. 8. 34-B MRSA §1207, sub-§1, ¶B,** as amended by PL 2013, c. 434, §7, is
22 further amended to read:

23 B. Information may be disclosed if necessary to carry out the statutory functions of
24 the department; the hospitalization provisions of chapter 3, subchapter 4; the
25 provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes
26 of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing
27 with the investigatory function of the independent agency designated with advocacy
28 and investigatory functions under United States Public Law 88-164, Title I, Part C or
29 United States Public Law 99-319; the investigation and hearing pursuant to Title 15,
30 section 393, subsection 4-A; or the provision of mental health services by the
31 Department of Corrections pursuant to Title 34-A, section 3031, 3069-A ~~or~~ 3069-B
32 or 4303. This paragraph is repealed August 1, 2017;

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

35 B-3. Information may be disclosed if necessary to carry out the statutory functions of
36 the department; the hospitalization provisions of chapter 3, subchapter 4; the
37 provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes
38 of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing
39 with the investigatory function of the independent agency designated with advocacy
40 and investigatory functions under United States Public Law 88-164, Title I, Part C or
41 United States Public Law 99-319; ~~or~~ the investigation and hearing pursuant to Title

1 15, section 393, subsection 4-A; or the provision of therapeutic mental health care by
2 the Department of Corrections pursuant to Title 34-A, section 4303. This paragraph
3 takes effect August 1, 2017;

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

6 **7-B. Psychiatric hospital.** "Psychiatric hospital" means:

- 7 A. A state mental health institute;
- 8 B. A nonstate mental health institution; or
- 9 C. A designated nonstate mental health institution.

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

12 **Sec. 11. 34-B MRSA §3861, sub-§4** is enacted to read:

13 **4. Involuntary transfer.** A patient at a state mental health institute who is an
14 involuntarily committed patient under the provisions of this subchapter, who poses a
15 likelihood of serious harm and for whom there is not security at the state mental health
16 institute sufficient to address the likelihood of serious harm may be involuntarily
17 transferred in conformance with the provisions of this subsection to a secure, therapeutic
18 mental health unit established pursuant to Title 34-A, section 4303.

19 A. If the patient's primary treating physician proposes a transfer of the patient to the
20 secure, therapeutic mental health unit and the patient is unwilling or unable to comply
21 with the proposed transfer, the patient's primary treating physician shall request in
22 writing a clinical review of the proposed transfer by a clinical review panel. The
23 request must be made to the superintendent of the state mental health institute or the
24 superintendent's designee. The request must include the following information:

25 (1) The name of the patient, the patient's diagnosis and the unit on which the
26 patient is hospitalized;

27 (2) The date that the patient was committed to the state mental health institute
28 and the period of the court-ordered commitment;

29 (3) A statement by the primary treating physician that the patient is unwilling or
30 unable to give informed consent to the proposed involuntary transfer;

31 (4) A description of how the proposed involuntary transfer is likely to meet the
32 needs of the patient and alleviate or stabilize the likelihood of serious harm;

33 (5) A statement that the mental health condition of the patient does not
34 contraindicate the proposed involuntary transfer; and

35 (6) Documentation of consideration of any advance health-care directive given
36 in accordance with Title 18-A, section 5-802 and any declaration regarding
37 medical treatment of psychotic disorders executed in accordance with section
38 11001.

1 B. The provisions of this paragraph apply to the appointment, duties and procedures
2 of the clinical review panel under paragraph A.

3 (1) Within one business day of receiving a request under paragraph A, the
4 superintendent of a state mental health institute or the superintendent's designee
5 shall appoint a clinical review panel of 2 or more licensed professional staff who
6 do not provide direct care to the patient. At the time of appointment of the
7 clinical review panel, the superintendent of a state mental health institute or the
8 superintendent's designee shall notify the following persons in writing that the
9 clinical review panel will be convened:

10 (a) The primary treating physician;

11 (b) The commissioner or the commissioner's designee;

12 (c) The patient's designated representative or attorney, if any;

13 (d) The State's designated federal protection and advocacy agency; and

14 (e) The patient. Notice to the patient must inform the patient that the clinical
15 review panel will be convened and of the right to assistance from a lay
16 advisor, at no expense to the patient, and the right to obtain an attorney at the
17 patient's expense. The notice must include contact information for requesting
18 assistance from a lay advisor, who may be employed by the institute, and
19 access to a telephone to contact a lay advisor must be provided to the patient.

20 (2) Within 4 days of receiving a request under paragraph A and no less than 24
21 hours before the meeting of the clinical review panel, the superintendent of a
22 state mental health institute or the superintendent's designee shall provide notice
23 of the date, time and location of the meeting to the patient's primary treating
24 physician, the patient and any lay advisor or attorney.

25 (3) The clinical review panel shall hold the meeting and any additional meetings
26 as necessary, reach a final determination and render a written decision ordering
27 or denying involuntary transfer to the secure, therapeutic mental health unit.

28 (a) At the meeting, the clinical review panel shall receive information
29 relevant to the patient's mental health condition, review relevant portions of
30 the patient's medical records, consult with the physician requesting the
31 transfer, review with the patient that patient's reasons for refusing transfer,
32 provide the patient and any lay advisor or attorney an opportunity to ask
33 questions of anyone presenting information to the clinical review panel at the
34 meeting and determine whether the requirements for ordering transfer have
35 been met.

36 (b) All meetings of the clinical review panel must be open to the patient and
37 any lay advisor or attorney, except that any meetings held for the purposes of
38 deliberating, making findings and reaching final conclusions are confidential
39 and not open to the patient and any lay advisor or attorney.

40 (c) The clinical review panel shall conduct its review in a manner that is
41 consistent with the patient's rights.

1 (4) The clinical review panel may approve a request for involuntary transfer and
2 order the involuntary transfer if the clinical review panel finds, at a minimum:

3 (a) That the patient is unwilling to consent to transfer or lacks the capacity to
4 make an informed decision regarding the proposed involuntary transfer;

5 (b) That the proposed involuntary transfer is likely to meet the needs of the
6 patient and alleviate or stabilize the likelihood of serious harm;

7 (c) That the mental health condition of the patient does not contraindicate the
8 proposed involuntary transfer; and

9 (d) That the clinical review panel has considered any advance health-care
10 directive given in accordance with Title 18-A, section 5-802 and any
11 declaration regarding medical treatment of psychotic disorders executed in
12 accordance with section 11001.

13 C. The provisions of this paragraph govern the rights of a patient who is the subject
14 of a clinical review panel under paragraph A.

15 (1) The patient is entitled to the assistance of a lay advisor without expense to
16 the patient. The patient is entitled to representation by an attorney at the patient's
17 expense.

18 (2) The patient may review any records or documents considered by the clinical
19 review panel.

20 (3) The patient may provide information orally and in writing to the clinical
21 review panel and may present witnesses.

22 (4) The patient may ask questions of any person who provides information to the
23 clinical review panel.

24 (5) The patient and any lay advisor or attorney may attend all meetings of the
25 clinical review panel except for any private meetings authorized under paragraph
26 B, subparagraph (3), division (b).

27 D. If the clinical review panel under paragraph A approves the request for
28 involuntary transfer, the clinical review panel shall enter an order for the involuntary
29 transfer in the patient's records and immediately notify the superintendent of the state
30 mental health institute. The order takes effect one business day from the date of entry
31 of the order.

32 E. The order for involuntary transfer under this subsection remains in effect for 120
33 days or until the end of the period of commitment, whichever is sooner, or:

34 (1) Until the Commissioner of Corrections, in consultation with the
35 Commissioner of Health and Human Services, determines that continued
36 placement in the secure, therapeutic mental health unit is not likely to meet the
37 needs of the patient and alleviate or stabilize the likelihood of serious harm posed
38 by the patient or that the mental health condition of the patient contraindicates the
39 continued placement in the secure, therapeutic mental health unit; or

1 (2) An alteration or stay of the order is entered by the Superior Court after
2 reviewing the entry of the order by the clinical review panel on appeal under
3 paragraph F.

4 F. The order of the clinical review panel at a state mental health institute is final
5 agency action that may be appealed to the Superior Court in accordance with Rule
6 80C of the Maine Rules of Civil Procedure.

7 For purposes of this subsection, "likelihood of serious harm" has the same meaning as in
8 Title 34-A, section 4302, subsection 2.

9 **Sec. 12. 34-B MRSA §3863, sub-§2-A**, as amended by PL 2007, c. 319, §9, is
10 further amended to read:

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

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

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

33 **Sec. 13. 34-B MRSA §3864, sub-§7-B** is enacted to read:

34 **7-B. Involuntary placement order.** Upon making the findings in subsection 6,
35 paragraph A and ordering the patient to be involuntarily committed under subsection 7 to
36 the custody of the commissioner, the court may in addition order the patient to be
37 involuntarily placed for treatment in the secure, therapeutic mental health unit established
38 pursuant to Title 34-A, section 4303 if the court finds that involuntary placement is likely
39 to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm,
40 that the mental health condition of the patient does not contraindicate the proposed
41 involuntary transfer and that there is not security at the state mental health institute

1 sufficient to address the likelihood of serious harm. An order of involuntary placement
2 under this subsection lasts until the first occurring of the following events:

3 A. The period of commitment under subsection 7 ends; or

4 B. The Commissioner of Corrections, in consultation with the Commissioner of
5 Health and Human Services, determines that continued placement in the secure,
6 therapeutic mental health unit is not likely to meet the needs of the patient and
7 alleviate or stabilize the likelihood of serious harm posed by the patient or that the
8 mental health condition of the patient contraindicates the continued placement in the
9 secure, therapeutic mental health unit.

10 If an order for involuntary placement under this subsection ends prior to the period of
11 commitment under subsection 7, the Department of Corrections shall transfer the patient
12 to the physical custody of a state mental health institute.

13 For purposes of this subsection, "likelihood of serious harm" has the same meaning as in
14 Title 34-A, section 4302, subsection 2.

15 **Sec. 14. Report of Department of Health and Human Services,**
16 **Department of Corrections and the Cumberland County sheriff or Somerset**
17 **County sheriff.** By January 15, 2016, the Department of Corrections, in collaboration
18 with the Department of Health and Human Services and the county sheriff of the county
19 in which the secure, therapeutic mental health unit established pursuant to the Maine
20 Revised Statutes, Title 34-A, section 4303 is located, shall submit a report to the joint
21 standing committee of the Legislature having jurisdiction over criminal justice matters
22 regarding the operations of the unit. The report must include the following information
23 regarding the unit: the average daily population of the unit, the average daily staffing
24 patterns, the average length of stay in the unit, a description of services provided and the
25 number of persons placed in the unit. The report must also include recommendations
26 regarding the reallocation of resources for the unit; the design of the unit; the provisions
27 of forensic services at the Riverview Psychiatric Center and the unit; and the transfer
28 provisions of Title 34-A, sections 3069, 3069-A and 3069-B.

29 SUMMARY

30 This bill provides for the establishment of a secure, therapeutic mental health unit for
31 defendants undergoing court-ordered assessments to determine their competency to stand
32 trial or their criminal culpability and to provide therapeutic care for forensic patients and
33 authorizes involuntary placement in or transfer to the secure, therapeutic mental health
34 unit for civilly committed patients with mental illness who pose a likelihood of serious
35 harm to others. The bill establishes the unit as follows.

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

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

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

6 4. It requires that the population in a secure, therapeutic mental health unit be
7 separated by sight and sound from the general jail population and that forensic patients
8 and civil patients must also be separated by sight and sound within the unit.

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

14 6. It also provides that a person not in a state correctional facility who poses a
15 likelihood of serious harm must be admitted to the unit unless the Commissioner of
16 Health and Human Services determines that the person's mental health condition
17 contraindicates admittance to the unit or the unit does not have a suitable bed. Inmates
18 with mental illness housed in a state correctional facility must be treated at the Maine
19 State Prison's mental health unit and are not eligible to be admitted to the unit.

20 This bill establishes a procedure through which a patient who has been involuntarily
21 committed to a state mental health institute may be involuntarily transferred to the secure,
22 therapeutic mental health unit upon the order of a clinical review panel and after
23 completion of a procedure that protects the rights of the patient and provides due process.

24 It also authorizes a court, in the process of ordering involuntary civil commitment for
25 a person, to order placement in the secure, therapeutic mental health unit and provides for
26 transfer of physical custody to a state mental health institute at the end of the order of
27 involuntary placement.