

MAINE STATE LEGISLATURE

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L.D. 1577

Date: 4/5/16

Minority

(Filing No. H-637)

HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 1070, L.D. 1577, Bill, "An Act To Increase the Availability of Mental Health Services"

Amend the bill by striking out all of sections 1 and 2 and inserting the following:

Sec. 1. 15 MRSA §101-D, sub-§5, ¶A, as amended by PL 2013, c. 434, §1 and affected by §15, is repealed.

Sec. 2. 15 MRSA §101-D, sub-§5, ¶¶A-1 and A-2 are enacted to read:

A-1. Commit the defendant to the custody of the Commissioner of Health and Human Services for 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 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 program specifically approved by the court. An appropriate program may be in a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. 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.

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1 The Commissioner of Health and Human Services shall without delay file the report
2 with the court having jurisdiction of the case. The court shall hold a hearing on the
3 question of the defendant's competence to stand trial and receive all relevant
4 testimony bearing on the question. If the State Forensic Service's report or the report
5 of another appropriate office of the Department of Health and Human Services to the
6 court states that the defendant is either now competent or not restorable, the court
7 shall within 30 days hold a hearing. If the court determines that the defendant is not
8 competent to stand trial, but there does exist a substantial probability that the
9 defendant will be competent to stand trial in the foreseeable future, the court shall
10 recommit the defendant to the custody of the Commissioner of Health and Human
11 Services for placement in an appropriate program for observation, care and treatment
12 of people with mental illness or persons with intellectual disabilities or autism. An
13 appropriate program may be in an institution for the care and treatment of people
14 with mental illness, an intermediate care facility for persons who have intellectual
15 disabilities or autism, a crisis stabilization unit, a nursing home, a residential care
16 facility, an assisted living facility, a hospice, a hospital, an intensive outpatient
17 treatment program or any program specifically approved by the court. An appropriate
18 program may be in a mental health unit of a correctional facility if, based upon a
19 consensus recommendation of a panel, the Commissioner of Health and Human
20 Services or the commissioner's designee determines that there is a therapeutic
21 treatment advantage to placing the person in a mental health unit of a correctional
22 facility. Placement of a person in a mental health unit of a correctional facility must
23 be reviewed by the Commissioner of Health and Human Services or the
24 commissioner's designee at least every 6 months and may not continue beyond 6
25 months unless, based upon a subsequent review and consensus recommendation of a
26 panel, the Commissioner of Health and Human Services or the commissioner's
27 designee determines that there is a therapeutic treatment advantage to the continued
28 placement of the person in a mental health unit of a correctional facility. When a
29 person who has been evaluated on behalf of the court by the State Forensic Service or
30 other appropriate office of the Department of Health and Human Services is
31 committed into the custody of the Commissioner of Health and Human Services
32 under this paragraph, the court shall order that the State Forensic Service or other
33 appropriate office of the Department of Health and Human Services share any
34 information that it has collected or generated with respect to the person with the
35 institution or residential program in which the person is placed. If the defendant is
36 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section
37 506-A, 802 or 803-A and the court determines that the defendant is not competent to
38 stand trial and there does not exist a substantial probability that the defendant can be
39 competent in the foreseeable future, the court shall dismiss all charges against the
40 defendant and, unless the defendant is subject to an undischarged term of
41 imprisonment, order the Commissioner of Health and Human Services to commence
42 proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is
43 charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or
44 Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant
45 is not competent to stand trial and there does not exist a substantial probability that
46 the defendant can be competent in the foreseeable future, the court shall dismiss all
47 charges against the defendant and, unless the defendant is subject to an undischarged
48 term of imprisonment, notify the appropriate authorities, who may institute civil

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1 commitment proceedings for the individual. If the defendant is subject to an
2 undischarged term of imprisonment, the court shall order the defendant into
3 execution of that sentence, and the correctional facility to which the defendant must
4 be transported shall execute the court's order. As used in this paragraph, "panel"
5 means a panel consisting of at least 3 psychiatrists or psychologists, in any
6 combination, each of whom is not currently involved in the person's diagnosis and
7 treatment.

8 This paragraph is repealed August 1, 2017;

9 A-2. Commit the defendant to the custody of the Commissioner of Health and
10 Human Services for placement in an appropriate program for observation, care and
11 treatment of people with mental illness or persons with intellectual disabilities or
12 autism. An appropriate program may be in an institution for the care and treatment of
13 people with mental illness, an intermediate care facility for persons who have
14 intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a
15 residential care facility, an assisted living facility, a hospice, a hospital, an intensive
16 outpatient treatment program or any program specifically approved by the court. At
17 the end of 30 days or sooner and again, in the event of recommitment, at the end of
18 60 days and 180 days, the State Forensic Service or other appropriate office of the
19 Department of Health and Human Services shall forward a report to the
20 Commissioner of Health and Human Services relative to the defendant's competence
21 to stand trial and its reasons. The Commissioner of Health and Human Services shall
22 without delay file the report with the court having jurisdiction of the case. The court
23 shall hold a hearing on the question of the defendant's competence to stand trial and
24 receive all relevant testimony bearing on the question. If the State Forensic Service's
25 report or the report of another appropriate office of the Department of Health and
26 Human Services to the court states that the defendant is either now competent or not
27 restorable, the court shall within 30 days hold a hearing. If the court determines that
28 the defendant is not competent to stand trial, but there does exist a substantial
29 probability that the defendant will be competent to stand trial in the foreseeable
30 future, the court shall recommit the defendant to the custody of the Commissioner of
31 Health and Human Services for placement in an appropriate program for observation,
32 care and treatment of people with mental illness or persons with intellectual
33 disabilities or autism. An appropriate program may be in an institution for the care
34 and treatment of people with mental illness, an intermediate care facility for persons
35 who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home,
36 a residential care facility, an assisted living facility, a hospice, a hospital, an intensive
37 outpatient treatment program or any program specifically approved by the court.
38 When a person who has been evaluated on behalf of the court by the State Forensic
39 Service or other appropriate office of the Department of Health and Human Services
40 is committed into the custody of the Commissioner of Health and Human Services
41 under this paragraph, the court shall order that the State Forensic Service or other
42 appropriate office of the Department of Health and Human Services share any
43 information that it has collected or generated with respect to the person with the
44 institution or residential program in which the person is placed. If the defendant is
45 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section
46 506-A, 802 or 803-A and the court determines that the defendant is not competent to
47 stand trial and there does not exist a substantial probability that the defendant can be

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1 competent in the foreseeable future, the court shall dismiss all charges against the
 2 defendant and, unless the defendant is subject to an undischarged term of
 3 imprisonment, order the Commissioner of Health and Human Services to commence
 4 proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is
 5 charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or
 6 Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant
 7 is not competent to stand trial and there does not exist a substantial probability that
 8 the defendant can be competent in the foreseeable future, the court shall dismiss all
 9 charges against the defendant and, unless the defendant is subject to an undischarged
 10 term of imprisonment, notify the appropriate authorities, who may institute civil
 11 commitment proceedings for the individual. If the defendant is subject to an
 12 undischarged term of imprisonment, the court shall order the defendant into
 13 execution of that sentence, and the correctional facility to which the defendant must
 14 be transported shall execute the court's order.

15 This paragraph is effective August 1, 2017; or

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

18 B. Issue a bail order in accordance with chapter 105-A, with or without the further
 19 order that the defendant undergo observation at an institution for the care and
 20 treatment of people with mental illness, an appropriate residential program that
 21 provides care and treatment for persons who have intellectual disabilities or autism,
 22 an intermediate care facility for persons who have intellectual disabilities or autism, a
 23 crisis stabilization unit, a nursing home, a residential care facility, an assisted living
 24 facility, a hospice, a hospital approved by the Department of Health and Human
 25 Services or an intensive outpatient treatment program or any program specifically
 26 approved by the court or by arrangement with a private psychiatrist or licensed
 27 clinical psychologist and treatment when it is determined appropriate by the State
 28 Forensic Service. When outpatient observation and treatment is ordered, an
 29 examination must take place within 45 days of the court's order, and the State
 30 Forensic Service shall file its report of that examination within 60 days of the court's
 31 order. The State Forensic Service's report to the court must contain the opinion of the
 32 State Forensic Service concerning the defendant's competency to stand trial and its
 33 reasons. The court shall without delay set a date for and hold a hearing on the
 34 question of the defendant's competence to stand trial, which must be held pursuant to
 35 and consistent with the standards set out in paragraph ~~A~~ A-1 until August 1, 2017 or
 36 A-2 beginning August 1, 2017, as applicable.

37 **Sec. 4. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further
38 amended to read:

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

41 When a court accepts a negotiated plea of not criminally responsible by reason of
 42 insanity or when a defendant is found not criminally responsible by reason of insanity by
 43 jury verdict or court finding, the judgment must so state. In those cases the court shall
 44 order the person committed to the custody of the Commissioner of Health and Human

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1 Services to be placed in an appropriate institution for the care and treatment of persons
 2 with mental illness or in an appropriate residential program that provides care and
 3 treatment for persons who have intellectual disabilities or autism for care and treatment.
 4 Upon placement in the appropriate institution or residential program and in the event of
 5 transfer from one institution or residential program to another of persons committed
 6 under this section, notice of the placement or transfer must be given by the commissioner
 7 to the committing court.

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

13 As used in this section, "not criminally responsible by reason of insanity" has the
 14 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or
 15 verdict in this State under former section 102; under a former version of Title 17-A,
 16 section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter
 17 149, section 17-B of the Revised Statutes of 1954.

18 **1. Additional placement option.** An appropriate institution under this section may
 19 be a mental health unit of a correctional facility if, based upon a consensus
 20 recommendation of a panel, the Commissioner of Health and Human Services or the
 21 commissioner's designee determines that there is a therapeutic treatment advantage to
 22 placing the person in a mental health unit of a correctional facility. Placement of a person
 23 in a mental health unit of a correctional facility must be reviewed by the Commissioner of
 24 Health and Human Services or the commissioner's designee at least every 6 months and
 25 may not continue beyond 6 months unless, based upon a subsequent review and
 26 consensus recommendation of a panel, the Commissioner of Health and Human Services
 27 or the commissioner's designee determines that there is a therapeutic treatment advantage
 28 to the continued placement of the person in a mental health unit of a correctional facility.
 29 As used in this subsection, "panel" means a panel consisting of at least 3 psychiatrists or
 30 psychologists, in any combination, each of whom is not currently involved in the person's
 31 diagnosis and treatment.

32 This subsection is repealed August 1, 2017.'

33 Amend the bill in section 4 in subsection 1 in the first paragraph in the 2nd line (page
 34 4, line 2 in L.D.) by inserting after the following: "defendant" the following: 'or person
 35 who has been found not criminally responsible by reason of insanity'

36 Amend the bill in section 4 in subsection 1 by striking out all of paragraph A (page 4,
 37 lines 8 and 9 in L.D.) and inserting the following:

38 'A. The defendant or person who has been found not criminally responsible by
 39 reason of insanity is a person with mental illness and, as a result of the defendant's or
 40 person's mental illness, the defendant or person poses a likelihood of serious harm to
 41 others;'

42 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
 43 section number to read consecutively.

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SUMMARY

The bill provides that, under certain circumstances, the Commissioner of Health and Human Services or the commissioner's designee may determine that a mental health unit at a correctional facility is an appropriate institution or program for the placement of persons who have been determined to be not competent to stand trial or not criminally responsible by reason of insanity. This amendment, which is the minority report of the committee, establishes a repeal date of August 1, 2017 for the 2 provisions that provide this placement option to the Commissioner of Health and Human Services, at which time the law will revert to the previous version of statute, which does not offer such an option.

FISCAL NOTE REQUIRED
(See attached)



127th MAINE LEGISLATURE

LD 1577

LR 2589(03)

An Act To Increase the Availability of Mental Health Services

Fiscal Note for Bill as Amended by Committee Amendment

Committee: Health and Human Services

Fiscal Note Required: Yes

BCH-637

Fiscal Note

Minor cost increase - General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.