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January 8, 2024

Senator Pinny Beebe-Center, Chair
Representative Suzanne Salisbury, Chair
Joint Standing Committee on Criminal Justice and Public Safety
100 State House Station
Augusta, Maine 04333-0100

Senator Beebe-Center, Representative Salisbury, and Honorable Members of the Joint Standing Committee on Criminal Justice and Public Safety,

As the Commissioners of the Maine Department of Health and Human Services and the Maine Department of Corrections, we submit the attached report to the Committee pursuant to Public Law 2021, Chapter 259.

During the First Regular Session of the 130th Legislature, the Departments worked collaboratively with the Committee to enact legislation that has supported the state in ensuring appropriate and safe care for individuals who are found incompetent to stand trial and committed to the custody of the Commissioner of the Department of Health and Human Services under 15 MRS §101-D(5). Since its enactment, the process enacted in PL 2021, Ch. 259 has been used infrequently, but has been a critical tool in ensuring the safety and care of defendants and other patients in the state's psychiatric hospitals, as well as staff safety at state facilities.

We look forward to working with the Committee to maintain this important process. Thank you for the opportunity to provide this update to you.

Sincerely,

Handwritten signature of Jeanne M. Lambrew in cursive.

Jeanne M. Lambrew, Ph.D.
Commissioner
Maine Department of Health and Human Services

Handwritten signature of Randall A. Liberty in cursive.

Randall A. Liberty
Commissioner
Maine Department of Corrections

Report to the Legislature

Pursuant to Public Law 2021, Chapter 259

*An Act to Increase the Availability of Mental Health Services for a Defendant
Who Has Been Found Incompetent to Stand Trial*

Introduction

In 2021, the 130th Maine Legislature passed Public Law 2021, Chapter 259 (effective October 18, 2021). The law enables the Commissioner of the Department of Corrections to accept the placement of an adult defendant in a mental health unit of a correctional facility if a court has found the defendant incompetent to stand trial, committed the defendant to the custody of the Commissioner of the Department of Health and Human Services under 15 MRS §101-D(5), and additional criteria are met. The additional criteria, which must be proven by clear and convincing evidence, are as follows:

- A. The defendant is at risk of causing serious harm by engaging in interpersonal violence that is not primarily driven by symptoms of major mental illness or other disability;
- B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; and
- C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

The provision allowing the transfer of a defendant found incompetent to stand trial is located in the Maine Revised Statutes, Title 34-A, section §3069-C, and consideration of that provision begins after an individual has been committed to the custody of the Commissioner of the Department of Health and Human Services (DHHS) under 15 MRS §101-D(5). Under §101-D(5), the Commissioner of DHHS is granted authority to determine placement “in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism.” The provision under 34 MRS §3069-C adds one additional option for placement in circumstances where the individual is at risk of causing serious harm by engaging in interpersonal violence – a mental health unit of a correctional facility. Placement in a mental health unit of a correctional facility is contingent upon a court finding that each of the applicable criteria under paragraphs A, B, and C have been met by clear and convincing evidence and acceptance of the individual by the Commissioner of the Department of Corrections.

The process established under 34 MRS §3069-C is a legal process that requires the Commissioner of Health and Human Services to petition a court for the authority to make the transfer and allows for legal counsel representing the individual found incompetent to stand trial the full opportunity to participate and advocate for the best interests of their client.

Upon acceptance of an individual pursuant to 34 MRS §3069-C the Department of Corrections is responsible for providing services and treatment consistent with the requirements of Title 15, section 101-D, subsection 5. The individual may not be transferred to any other unit of a correctional facility. After 90 days of placement in a mental health unit of a correctional facility, the defendant may petition the court for return to placement in a less restrictive setting on the grounds that the criteria for placement no longer exist.

This joint report of the Department of Corrections and Department of Health and Human Services addresses the number, circumstances, and outcomes of the placement of defendants found incompetent to stand trial and placed in the mental health unit of a correctional facility pursuant to the Maine Revised Statutes, Title 34-A, §3069-C. The Department of Corrections operates the Intensive Mental Health Unit (IMHU) at the Maine State Prison, which is the only qualifying mental health unit of a correctional facility under this statute, and the only facility in Maine that is capable of safely housing the individuals to which this statute applies.

General Statistics

- Overview of Incompetent to Stand Trial findings: Between October 18, 2021, and December 15, 2023, 130 orders of Incompetence to Stand Trial were issued pursuant to 15 MRS §101-D(5). Three of those orders were subsequently vacated. Of the remaining 127 orders, 102 resulted in the individual being committed to the Commissioner of the Department of Health and Human Services (DHHS) and placed in a facility for competence restoration. During this time frame, four individuals had more than one finding of Incompetence to Stand Trial that led to a commitment to the Commissioner of DHHS; there were 98 unique individuals admitted a total of 101 times (one of the individuals with two Incompetent to Stand Trial orders were at the same time from two different jurisdictions). Of those 101 placements, 99 led to an initial placement in a State hospital (i.e., Riverview Psychiatric Center in Augusta or Dorothea Dix Psychiatric Center in Bangor). The remaining two placements were directly admitted to the Intensive Mental Health Unit (IMHU). Additionally, as of 12/15/23, two individuals have Incompetent to Stand Trial orders with a commitment to the Commissioner of DHHS, but they have not yet been placed.
- Utilization of transfer process: Since 34-A MRS §3069-C became effective, four individuals have been placed at the Intensive Mental Health Unit pursuant to that section. All four were charged with felony offenses, and three of the four were charged with violent offenses. One additional motion for placement in the IMHU pursuant to §3069-C was filed during this time frame but was ultimately dismissed. One individual filed a motion to terminate the placement pursuant to §3069-C(3)(B), which was denied by a Judge after a hearing.
- Intensive Mental Health Unit transfer: One individual remained in county jail pending the hearing authorizing IMHU placement pursuant to §3069-C. One individual had the hearing pursuant to §3069-C on the same day of the finding of Incompetence to Stand Trial pursuant to 15 MRS §101-D(5). The other two individuals were initially admitted to a State hospital where they awaited a hearing to authorize IMHU placement.
- Time to initial placement: The wait time from an initial finding of Incompetent to Stand Trial to placement in the IMHU for competence restoration ranged from 0 days to 158 days, with a median of 21 days.
- Restoration of competence: Three of the four individuals were restored to competence and able to proceed with their legal case. Their length of stay in the IMHU pursuant to a §3069-C order ranged from 24 days to 176 days. All three discharged from the IMHU directly to the community; two went to independent living and one went to a recovery

residence. The fourth individual has been recommended as being restored to competence but has yet to be scheduled for a court hearing to make a legal determination whether they have been restored to competence. The individual has been placed in the IMHU for more than 340 days.

Narrative Summary

Since 34-A MRS § 3069-C became effective, only four individuals (approximately 3% of all orders for competence restoration) were placed in the Intensive Mental Health Unit (IMHU) pursuant to this statute. None of the individuals had incident reports for violence during their placement in the IMHU, and one individual had a single non-violent informal incident report for medication diversion. Three of the four individuals were restored to competence after being placed in the IMHU and were discharged to community settings. The one remaining individual is no longer in need of competence restoration services but has not yet had a legal finding of competence issued by the court.

Two of the individuals were initially placed at a State hospital for competence restoration before being transferred to the IMHU. During that time, these two individuals required a disproportionate amount of hospital resources in order to manage their behavior. For example, one patient, pretrial for violent charges, engaged in seriously concerning behaviors at both State hospitals. The individual told the clinical team that they enjoyed the idea of hurting people, made threats that something was going to happen, and reported ongoing thoughts of killing other people. As a result, not only was this patient placed on the hospital's six-bed high-intensity Special Care Unit, but hospital leadership was so concerned about the patient's aforementioned statements and threats that they removed *all* the other patients from that unit to minimize the number of vulnerable targets this patient would have access to. In effect, this one patient consumed six hospital beds prior to the patient's transfer to the IMHU.

In addition to effectively occupying multiple beds, placing an individual whose safety needs exceed the State hospitals' capacity also does the individual in need to treatment and competence restoration a disservice. The above example highlights this. The hospital had to utilize all its resources not to provide treatment *per se* for this patient (i.e., the patient was restricted to the Special Care Unit and could not partake in group therapy to restore competence), but instead to maximize its security measures in attempt to maintain a safe environment. As the IMHU is better equipped to manage these security challenges, their focus can instead be to provide direct treatment, thereby restoring competence in a timelier manner and allowing defendants to resolve legal charges.

Overall, placement in the IMHU for competence restoration has been used sparingly and less frequently than even the initial conservative estimates. Despite the small numbers of individuals placed in the IMHU, utilizing this option has resulted in significant enhancement of resource allocation for the State hospitals, increasing bed availability for other individuals needing treatment. Finally, placement in the IMHU resulted in those individuals being restored to competence and resolving their legal case.

DHHS and DOC continue to work together to identify and collaborate on opportunities for improvement to this process. Consideration of changes that could improve efficiency of care for patients while protecting important due process rights, such as timeliness of court review, are frequently under discussion. While the departments do not have specific legislative recommendations at this time, we look forward to continued collaboration with the Legislature on how to ensure this rarely-tapped but critical authority can best serve the health and safety of defendants found incompetent to stand trial in Maine.