

Janet T. Mills  
Governor

Jeanne M. Lambrew, Ph.D.  
Commissioner



Maine Department of Health and Human Services  
Substance Abuse and Mental Health Services  
11 State House Station  
41 Anthony Avenue  
Augusta, Maine 04333-0011  
Tel.: (207) 287-2595; Fax: (207) 287-9152  
TTY: Dial 711 (Maine Relay)

January 10, 2020

Senator Geoff Gratwick, Chair  
Representative Patricia Hymanson, Chair  
Joint Standing Committee on Health and Human Services  
100 State House Station  
Augusta, Maine 04333-0100

Senator Gratwick, Representative Hymanson, and Members of the Joint Standing Committee on Health and Human Services:

Please find the attached report pursuant to Resolve 2019, Chapter 43, which directed the Department of Health and Human Services (DHHS) to explore the development of a behavioral health unit at the Cumberland County Jail. DHHS staff, Cumberland County Sheriff Kevin Joyce, and Representative Richard Farnsworth agree there is a need for additional services for criminal justice involved individuals with mental illness. The attached report outlines Sheriff Joyce's proposal and DHHS' recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Monahan Pollard'.

Jessica Monahan Pollard, PhD, Director  
Office of Substance Abuse and Mental Health Services  
Department of Health and Human Services

**Report to the Legislature pursuant to Resolve 2019, Chapter 43, L. D. 239  
January 10, 2020**

**Introduction and Background**

The 129<sup>th</sup> Maine State Legislature directed the Department of Health and Human Services (DHHS) to explore the development of a behavioral health unit at the Cumberland County Jail (CCJ). The intended purpose of this proposed unit was for determination of competency of inmates to stand trial. The DHHS and the Cumberland County Sheriff's Office were directed to submit a joint report and recommendations, including recommended legislation, resulting from the directive to the Joint Standing Committee on Health and Human Services.

**Cumberland County Sherriff's Office Proposal**

On January 3, 2020, DHHS staff and Representative Richard Farnsworth went to CCJ to meet with representatives of Cumberland County Sherriff's Office and tour the proposed location of the behavioral health unit. The DHHS staff included:

Dr. Sarah Miller, State Forensic Service  
Dr. Debra Baeder, State Forensic Service  
Laura Fisher, Riverview Psychiatric Center  
Dr. Matthew Davis, Riverview Psychiatric Center  
Stephanie George-Roy, Riverview Psychiatric Center  
Kathryn Temple, Office of Substance Abuse and Mental Health Services

Sheriff Kevin Joyce proposed leasing a currently empty jail pod (up to 88 beds, split into 2 half-pods) to DHHS to alleviate bed space concerns at Riverview Psychiatric Center (RPC) for incarcerated defendants who have been court ordered to undergo an evaluation of their competence to stand trial. He proposed DHHS staff the pod for the behavioral health program, and the Sheriff's Office would provide support services (e.g., meals, access to library and recreation, emergency response backup) through a contract with DHHS. Sheriff Joyce's stated position is that he does not want to burden Cumberland County taxpayers with the responsibility or liability associated with running a mental health program within the jail, but rather was willing to lease the physical space to DHHS to provide those services.

**Commentary**

The DHHS and the Sheriff's Office agree there is a need for additional beds and services for individuals with mental illness who are involved in the criminal justice system. The following comments outline opportunities and barriers related to Sherriff Joyce's proposal.

1. Physical plant

Barrier: The CCJ pod physical plant is generally consistent with other jail settings; however, it is vastly different from the requirements of a licensed mental health facility in Maine. Without major structural renovations, the physical location would not be able to meet licensing regulations and standards to be licensed as a mental health facility. For example, there are significant ligature risks, an exposed 2<sup>nd</sup> floor balcony, and non-compliant bedroom size.

Background Data: DHHS has identified a need for additional forensic mental health services to be provided in a secure setting. There are, at times, wait lists to receive court ordered inpatient level of services, and these wait times cause further delays, both for other recipients of DHHS services and for other agencies (e.g., court dockets).

Opportunity: The CCJ pod could be run as a jail based therapeutic setting rather than a mental facility located within a jail. DHHS currently contracts for other services in jail settings. An ideal jail based behavioral health unit would be one component of a comprehensive system designed to offer the most appropriate services in the most appropriate setting to all criminal justice involved individuals.

2. Population served

Barrier: Sheriff Joyce proposes using the CCJ pod for incarcerated defendants undergoing court ordered evaluations of competence to stand trial; however, only a small portion of court ordered evaluations are ordered to be conducted in an inpatient setting and, of those, only a small portion are evaluations of competence to stand trial.

Background Data: The State Forensic Service (SFS) conducted over 1300 court ordered evaluations in 2019. Only a small fraction of all SFS evaluations are ordered to be conducted in an inpatient setting (see table below for prior year data). Inpatient evaluations cover a wide range of referral questions, only one of which is competence to stand trial. Defendants evaluated by SFS display a wide range of functioning, from healthy and high functioning to acutely mentally ill. For this reason, the process of determining appropriate level of care for inpatient evaluations is essential to provide the highest quality of care in a timely manner.

State Forensic Service Referrals by Year (Incarcerated Defendants Only)

| Year | Inpatient Evaluations<br># (% of total annual referrals) | IST Evaluations<br># (% of total annual referrals) |
|------|--|--|
| 2015 | 107 (11%)  | 72 (7%)  |
| 2016 | 82 (7%)  | 143 (13%)  |
| 2017 | 99 (8%)  | 115 (10%)  |
| 2018 | 130 (10%)  | 124 (10%)  |

Opportunity: A jail based behavioral health unit could be another resource to assist in triaging individuals referred for inpatient stays to the most appropriate level of care. It would be essential for individuals referred for other inpatient evaluations (not just competence to stand trial) be eligible for placement in the jail pod. Equally relevant are the inpatient beds needed for individuals found Incompetent to Stand Trial (IST). DHHS acknowledges placement of individuals with an IST finding in jail would constitute a change of practice for Maine, and other stakeholders should be consulted in the planning phases.

3. Level of care determinations

Barrier: None identified.

Background Data: Currently, RPC Admissions Office coordinates admissions for court ordered inpatient evaluations, individuals found IST, jail transfers, civil psychiatric admissions, and individuals found Not Criminally Responsible (NCR). Court ordered inpatient evaluations and jail transfers can be housed at RPC, DDPC, or the Intensive Mental Health Unit (IMHU) at Maine State Prison. Individuals found IST can be housed at RPC or DDPC.

Opportunity: To be most effective, a behavioral health jail pod would need to be part of the continuum of care for all incarcerated individuals needing mental health evaluation or treatment. Ideally, RPC, DDPC, IMHU, and a new jail pod would be eligible to accept admission of individuals based on their identified level of care needs. Level of care determinations would include, but not necessarily be limited to, clinical factors, nature of the criminal charges, risk of harm to self or others, risk of elopement, and level of anticipated cooperation with treatment. Judges would continue to be able to specify a required level of care at the time of the court order based on all available information, including recommendations from SFS (either a consultation or prior outpatient evaluation). In addition, the system would need to be fluid enough such that treatment providers could recommend and implement changes to an individual's level of care under certain circumstances. Level of care determinations are to be individualized based on a variety of factors, not simply their legal status.

### **Recommendations**

The DHHS overall recommendation is that if a jail based behavioral health unit is created, it must be part of a comprehensive system of care for incarcerated individuals with behavioral health needs. In order to effectively utilize such a unit, if one were to be created, DHHS offers the following recommendations:

1. Current statute allows for inpatient evaluations to take place at the individual's current correctional setting. This language would need to be amended to include transfer to a different correctional setting.
2. The court order forms signed by judges would require substantial updating in order to most accurately represent updated statutory language, including the ability to remand individuals back to the sending institution once the inpatient evaluation is complete in order to reduce delays of new referrals coming in.
3. Any new statute would need to allow individuals found IST to be eligible for the jail based unit. The statute pertaining to the IMHU would need to be amended to accept individuals found IST.
4. A new jail based unit would require the necessary staffing to request and implement orders for involuntary medications over the person's objection.
5. Because the facility would not be eligible to become a licensed mental health institution, providers would not be able to bill for services. There would be significant fiscal impact, which would need to be incorporated into any proposed legislation.
6. Statutory language should ensure there are no barriers to communication between relevant parties.