

Forensic Mental Health Services Oversight Committee
(Public Law 2013, Chapter 434, Section 12)
Meeting November 12, Room 436 State House, 10am to 3pm
AGENDA

1. Welcome and introductions of members of the Forensic Mental Health Services Oversight Committee (FMHSOC), state agency staff, interested parties and members of the public
Senate Chair, Senator Stan Gerzofsky and House Chair, Representative Drew Gattine
2. Review of Public Law 2013, Chapter 434
Staff of Office of Policy and Legal Analysis, Curtis Bentley and Jane Orbeton

Duties. The committee shall oversee expansion of the Mental Health Unit at the Maine State Prison, as provided in this Act. The committee shall review and consider for the purpose of making recommendations the following:

- A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation;
- B. The addition of new staff and training of staff at the Maine State Prison;
- C. Decision-making authority related to admissions, release and transfer to and from the Mental Health Unit;
- D. Eligibility standards;
- E. Due process safeguards for placement and treatment decisions; and
- F. Impact on resources and population of Riverview Psychiatric Center and county jails.

3. Brief history of the provision of forensic mental health services in Maine
Attorney General Janet Mills
4. Review of the relationship of the newly expanded mental health unit at the Maine State Prison to the requirements imposed by the AMHI consent decree regarding the provision of mental health services in Maine
Court Master the Honorable Daniel Wathen
Attorney General Janet Mills
5. Information requests and planning for future meetings of FMHSOC

Forensic Mental Health Services Oversight Committee

(Public law 2013, chapter 434, section 12)

1. Establishment. The Forensic Mental Health Services Oversight Committee, referred to in this section as "the committee," is established to oversee the provision of mental health services to persons receiving services as forensic patients in correctional facilities in the State.

2. Appointment; chairs; convening; meetings. The committee consists of 9 members, including 5 members from the political party holding the most seats in the Legislature and 4 members from the political party holding the 2nd most seats in the Legislature. The President of the Senate shall appoint 4 members of the Senate. The first named member of the Senate serves as Senate chair. The Speaker of the House of Representatives shall appoint 5 members of the House of Representatives. The first named member of the House of Representatives serves as House chair. All appointments must be made no later than 30 days following the effective date of this section. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. When the appointment of all members has been completed, the chairs shall call the first meeting of the committee. If 30 days or more after the effective date of this section a majority but not all of the appointments have been made, the chairs may request authority for the committee to meet and conduct its business and the Legislative Council may grant that authority. The committee is authorized to meet up to 4 times.

3. Duties. The committee shall oversee expansion of the Mental Health Unit at the Maine State Prison, as provided in this Act. The committee shall review and consider for the purpose of making recommendations the following:

- A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation;
- B. The addition of new staff and training of staff at the Maine State Prison;
- C. Decision-making authority related to admissions, release and transfer to and from the Mental Health Unit;
- D. Eligibility standards;
- E. Due process safeguards for placement and treatment decisions; and
- F. Impact on resources and population of Riverview Psychiatric Center and county jails.

4. Cooperation. The Department of Corrections, the State Board of Corrections, the Department of Health and Human Services, the judicial branch and the Office of the Attorney General shall provide to the committee all assistance and information necessary to its oversight duties.

5. Compensation. Members of the committee are entitled to receive compensation at the legislative per diem rate and reimbursement of necessary expenses for attendance at authorized meetings of the committee.

6. Report. Notwithstanding Joint Rule 353, the committee shall submit its recommendations, including any proposed legislation, by January 15, 2014 for introduction to the Second Regular Session of the 126th Legislature for legislative action.

7. Staff assistance. The Legislative Council shall provide staffing services to the committee.

Outline of Transfer Provisions of Public Law 2013, Chapter 434 (LD 1515)

Section 5 of the law enacts 34-A section 3069-A. (Commissioner of Corrections may transfer from jail an adult eligible for emergency involuntary commitment and an adult for whom a Court has ordered evaluation or examination for competency, insanity or other mental conditions.)

Allows the Commissioner to transfer from a jail to a correctional facility for the purposes of providing mental health services an adult who the Superintendent of the Riverview Psychiatric Center confirms is eligible for admission to Riverview under emergency involuntary commitment but for whom no bed is available at Riverview.

- The Commissioner of Corrections may return a person to the sending facility.

Allows the Commissioner to transfer from a jail to a correctional facility an adult who the Court has ordered examined or evaluated by the State Forensic Service for (1) competency, (2) insanity or other abnormal condition of the mind, (3) other mental conditions, or (4) any mental conditions for post-sentencing purposes.

- The State Forensic Service must have determined that the jail cannot provide an appropriate setting for evaluation and the correctional facility can.
- The Commissioner must return a person upon completion of any examination or evaluation unless the person was transferred for another reason.

Section 6 of the law enacts 34-A section 3069-B. (Commissioner of Corrections may accept for observation the transfer of an adult from the Riverview Psychiatric Center if the Court has ordered evaluation for competency, insanity or other mental conditions and ordered the transfer.)

Allows the Commissioner of Corrections to accept into mental health unit of a correctional facility for observation an adult whom the Court has committed to Commissioner of Health and Human Services for (1) competency, (2) insanity or other abnormal condition of the mind, (3) other mental conditions, or (4) other mental conditions for post-sentencing purposes.

- The Court must have determined that the person has a mental illness and as a result of the illness poses a likelihood of serious harm to others, and Riverview lacks sufficient security to address the likelihood of serious harm and there is no less restrictive alternative.
- The Court must have ordered the evaluation or examination and must have ordered the transfer.
- The Commissioner of Corrections may terminate the placement if the likelihood of serious harm has decreased or the security at Riverview has increased or for any other reason.

**The Very Short Outline of the Warren Mental Health Unit
and Transfer Provisions**

The mental health unit will serve:

- (1) Prisoners from the Maine State Prison in need of mental health services (The Commissioner of Corrections had this authority prior to PL 2013, Chapter 434),
- (2) Prisoners transferred from the jails who meet the criteria for emergency involuntary mental health commitment to Riverview but no bed is available,
- (3) Prisoners transferred from the jails for whom a Court has ordered a psychiatric evaluation or examination and the jail cannot provide an appropriate setting for the evaluation or examination, and
- (4) Patients from Riverview Psychiatric Hospital for whom a Court has ordered a psychiatric evaluation or examination and has ordered a transfer because as a result of mental illness the persons poses a likelihood of serious harm to others and Riverview lacks sufficient security to address the likelihood of serious harm and there is no less restrictive alternative.

APPROVED
SEPTEMBER 6, 2013
BY GOVERNOR

CHAPTER
434
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

H.P. 1087 - L.D. 1515

An Act To Increase the Availability of Mental Health Services

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation authorizes the Commissioner of Corrections to transfer an adult jail inmate to a correctional facility for the purpose of providing the inmate with mental health services, and to accept placement of certain adult defendants in a mental health unit of a correctional facility; and

Whereas, it is critically important to implement this authority as soon as possible in order to increase the availability of mental health services; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §101-D, sub-§5, as amended by PL 2013, c. 265, §2, is further amended to read:

5. Finding of incompetence; custody; bail. If, after hearing upon motion of the attorney for the defendant or upon the court's own motion, the court finds that any defendant is incompetent to stand trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial and may either:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for appropriate 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 appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, 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 living situation program specifically approved by the court. 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. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services for appropriate 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 appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism,~~ 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 living situation program specifically approved by the court. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order

the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, 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 approved by the Department of Health and Human Services or an intensive outpatient treatment program or ~~a living situation~~ any program specifically approved by the court or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

Sec. 2. 34-A MRSA §1001, sub-§11-B is enacted to read:

11-B. Likelihood of serious harm. "Likelihood of serious harm" means a:

A. Substantial risk of physical harm to a person, as manifested by that person's recent threats of, or attempts at, suicide or serious self-inflicted harm;

B. 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; or

C. Reasonable certainty that a person will suffer severe physical or mental harm as manifested by that person's recent behavior demonstrating an inability to avoid risk or to protect the person's self adequately from impairment or injury.

This subsection is repealed August 1, 2017.

Sec. 3. 34-A MRSA §1001, sub-§12-A is enacted to read:

12-A. 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. This subsection is repealed August 1, 2017.

Sec. 4. 34-A MRSA §3049 is enacted to read:

§3049. Involuntary medication of person with mental illness

1. Grounds for involuntary medication. A person with mental illness residing in a mental health unit of a correctional facility that provides intensive mental health care and treatment may be given medication for the mental illness without the consent of the person if, upon application by the chief administrative officer of the facility, the Superior Court of the county in which the correctional facility is located finds by clear and convincing evidence that:

- A. The person is a person with mental illness;
- B. As a result of the mental illness, the person poses a likelihood of serious harm;
- C. The medication has been recommended by the facility's treating psychiatrist as treatment for the person's mental illness;
- D. The recommendation for the medication has been supported by a professional who is qualified to prescribe the medication and who does not provide direct care to the person;
- E. The person lacks the capacity to make an informed decision regarding medication;
- F. The person is unable or unwilling to consent to the recommended medication;
- G. The need for the recommended medication outweighs the risks and side effects;
and
- H. The recommended medication is the least intrusive appropriate treatment option.

For purposes of this subsection, "intensive mental health care and treatment" means daily on-site psychiatric treatment services, daily on-site group and individual mental health treatment and other therapeutic programs and 24-hour on-call psychiatric coverage and includes, as authorized in accordance with this section, the ability to order and administer involuntary medication for treatment purposes.

2. Rights prior to involuntary medication. Except as provided in this section, a person who is the subject of an application for an order permitting involuntary medication pursuant to this section must be provided, before being medicated, a court hearing at which the person has the following rights.

- A. The person is entitled, at least 7 days before the hearing, to written notice of the hearing and a copy of the application for an order permitting involuntary medication, including the specific factual basis for each of the grounds set out in subsection 1.
- B. The person is entitled to be present at the hearing.
- C. The person is entitled to be represented by counsel.
- D. The person is entitled to present evidence, including by calling one or more witnesses.
- E. The person is entitled to cross-examine any witness who testifies at the hearing.
- F. The person is entitled to appeal to the Supreme Judicial Court any order by the Superior Court permitting involuntary medication.

3. Court hearing. Except as provided in this section, the following applies to the court hearing.

A. The Superior Court may, in its discretion, grant a continuation of the hearing for up to 10 days for good cause shown.

B. The Maine Rules of Evidence apply.

C. The Supreme Judicial Court may adopt such rules of court procedure as it determines appropriate.

D. If the person is indigent, costs of counsel and all other costs, including all costs on appeal, must be provided by the Maine Commission on Indigent Legal Services as in other civil cases.

E. The Superior Court may, in its discretion, subpoena any witness and, if the person is indigent, the witness fees must be provided by the Department of Health and Human Services.

F. The hearing must be electronically recorded and, if an appeal is brought and the person is indigent, the transcript fee must be provided by the Department of Health and Human Services.

G. The order and the application for the order, the hearing, the record of the hearing and all notes, exhibits and other evidence are confidential.

4. Ex parte order. When there exists an imminent likelihood of serious harm, the Superior Court may enter an ex parte order permitting involuntary medication. An application for the ex parte order must include all the information otherwise required under this section, as well as the specific factual basis for the belief that the likelihood of serious harm is imminent. The ex parte order and the application for the ex parte order, the proceeding, any record of the proceeding and all notes, exhibits and other evidence are confidential. If the court enters an ex parte order permitting involuntary medication, a hearing conforming with the requirements of subsections 2 and 3 must be held within 10 days.

5. Court order. If the Superior Court finds by clear and convincing evidence that each of the grounds set out in subsection 1 has been met, the court may grant the application for involuntary medication, as requested or as may be modified based upon the evidence, and may authorize the correctional facility's chief administrative officer to permit qualified health care staff to order and administer medication for treatment of the mental illness, as well as laboratory testing and medication for the monitoring and management of side effects.

6. Periodic review. Involuntary medication of a person under this section may continue only with periodic reviews consisting of subsequent hearings conforming with the requirements of subsections 2 and 3 to take place at least once every 120 days.

7. Medication by consent. This section does not preclude giving medication for a mental illness when either the person to receive the medication or the person's legal guardian, if any, consents to the medication.

8. Repeal. This section is repealed August 1, 2017.

Sec. 5. 34-A MRSA §3069-A is enacted to read:

§3069-A. Transfer of jail inmates for mental health services

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

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

2. Evaluation. The commissioner may transfer from a jail to a correctional facility an adult inmate whom the court orders to be examined or further evaluated by the State Forensic Service under Title 15, section 101-D, subsection 1, 2, 3 or 9 if the State Forensic Service determines that the jail where the inmate is incarcerated cannot provide an appropriate setting for the examination but that a mental health unit in a correctional facility can provide an appropriate setting for the examination. The commissioner shall return an inmate transferred pursuant to this subsection back to the sending facility upon the completion of the examination ordered, including any further evaluation ordered, unless the commissioner transferred the inmate for another reason in addition to the examination.

3. Disclosure of information. With respect to an adult inmate who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to a transfer of the inmate under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

4. Application of other laws. All other applicable provisions of law governing inmates, whether detained pending a trial or other court proceeding or sentenced, apply to inmates transferred under this section.

5. Discretion. Nothing in this section or in any other provision of law requires the commissioner to transfer an adult inmate from a jail to a correctional facility or precludes the commissioner from transferring an adult inmate from a jail to a correctional facility at any time for any other reason at the commissioner's discretion.

6. Repeal. This section is repealed August 1, 2017.

Sec. 6. 34-A MRSA §3069-B is enacted to read:

§3069-B. Placement of defendants for observation

1. Acceptance of placement. The commissioner may accept the placement of an adult defendant in a mental health unit of a correctional facility that provides intensive mental health care and treatment for observation whom a court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, subsection 4 if, in addition to the findings required under Title 15, section 101-D, subsection 4, the court, after hearing, finds by clear and convincing evidence that:

A. The defendant is a person with mental illness and, as a result of the defendant's mental illness, the defendant poses a likelihood of serious harm to others;

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 commissioner may not accept the placement of a person who has been found not criminally responsible by reason of insanity.

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

2. Termination of placement. The commissioner may terminate the placement of a defendant accepted pursuant to this section if the commissioner determines that the likelihood of serious harm posed by the defendant has decreased or the security at a state mental health institute has increased or for any other reason.

3. Disclosure of information. With respect to an adult defendant who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to accepting placement of the defendant under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

4. Application of other laws. All other applicable provisions of law governing defendants committed for observation apply to defendants accepted for placement under this section.

5. Discretion. Nothing in this section or in any other provision of law requires the commissioner to accept the placement of a defendant who is committed for observation.

6. Repeal. This section is repealed August 1, 2017.

Sec. 7. 34-B MRSA §1207, sub-§1, ¶B, as repealed and replaced by PL 2009, c. 415, Pt. A, §20, is amended to read:

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy

and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B. This paragraph is repealed August 1, 2017;

Sec. 8. 34-B MRSA §1207, sub-§1, ¶B-3 is enacted to read:

B-3. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A. This paragraph takes effect August 1, 2017;

Sec. 9. Report of Department of Health and Human Services and Department of Corrections. By January 15, 2015, the Department of Health and Human Services shall, in collaboration with the Department of Corrections, submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the operations of a mental health unit within a correctional facility. The report must include the following information regarding the mental health unit: the average daily population of the unit, the average daily staffing patterns, the average length of stay in the unit, a description of services provided and the number of persons placed in the unit pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A and 3069-B. The report must also include any recommendations for reallocation of resources or the redesign of services of the mental health unit, the forensic services provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A, sections 3069-A and 3069-B.

Sec. 10. Report of the Department of Corrections. By January 15, 2015, the Department of Corrections shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of applications submitted and orders granted pursuant to the Maine Revised Statutes, Title 34-A, section 3049.

Sec. 11. Report of the Department of Health and Human Services. The Department of Health and Human Services shall prepare a plan regarding how to fully assess for brain injury or suspected brain injury persons who enter into the custody of the department under the Maine Revised Statutes, Title 15, section 101-D or section 103. The plan must include how the department will meet the needs of persons who have traumatic or acquired brain injuries. By January 15, 2015, the department shall report on its plan to the joint standing committee of the Legislature having jurisdiction over criminal justice matters.

Sec. 12. Forensic Mental Health Services Oversight Committee.

1. Establishment. The Forensic Mental Health Services Oversight Committee, referred to in this section as "the committee," is established to oversee the provision of mental health services to persons receiving services as forensic patients in correctional facilities in the State.

2. Appointment; chairs; convening; meetings. The committee consists of 9 members, including 5 members from the political party holding the most seats in the Legislature and 4 members from the political party holding the 2nd most seats in the Legislature. The President of the Senate shall appoint 4 members of the Senate. The first named member of the Senate serves as Senate chair. The Speaker of the House of Representatives shall appoint 5 members of the House of Representatives. The first named member of the House of Representatives serves as House chair. All appointments must be made no later than 30 days following the effective date of this section. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. When the appointment of all members has been completed, the chairs shall call the first meeting of the committee. If 30 days or more after the effective date of this section a majority but not all of the appointments have been made, the chairs may request authority for the committee to meet and conduct its business and the Legislative Council may grant that authority. The committee is authorized to meet up to 4 times.

3. Duties. The committee shall oversee expansion of the Mental Health Unit at the Maine State Prison, as provided in this Act. The committee shall review and consider for the purpose of making recommendations the following:

- A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation;
- B. The addition of new staff and training of staff at the Maine State Prison;
- C. Decision-making authority related to admissions, release and transfer to and from the Mental Health Unit;
- D. Eligibility standards;
- E. Due process safeguards for placement and treatment decisions; and
- F. Impact on resources and population of Riverview Psychiatric Center and county jails.

4. Cooperation. The Department of Corrections, the State Board of Corrections, the Department of Health and Human Services, the judicial branch and the Office of the Attorney General shall provide to the committee all assistance and information necessary to its oversight duties.

5. Compensation. Members of the committee are entitled to receive compensation at the legislative per diem rate and reimbursement of necessary expenses for attendance at authorized meetings of the committee.

6. **Report.** Notwithstanding Joint Rule 353, the committee shall submit its recommendations, including any proposed legislation, by January 15, 2014 for introduction to the Second Regular Session of the 126th Legislature for legislative action.

7. **Staff assistance.** The Legislative Council shall provide staffing services to the committee.

Sec. 13. Addressing concerns of federal Department of Health and Human Services. The Department of Health and Human Services shall report at each meeting of the Joint Standing Committee on Health and Human Services held from September 2013 to December 2013 and any time the committee requests to the Joint Standing Committee on Health and Human Services regarding the issues raised in the report issued by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services in 2013, including:

1. **Lower Saco Unit.** The plan to recertify the Lower Saco Unit at the Riverview Psychiatric Center; and

2. **Model.** The plan to implement a recovery and rehabilitation model at the Riverview Psychiatric Center.

The report must address the hiring and training of staff and any other necessary structural changes that must be implemented in order to correct the issues raised in the 2013 report.

The Department of Health and Human Services shall provide a report on the issues outlined in this section to the Joint Standing Committee on Appropriations and Financial Affairs prior to December 1, 2013.

Sec. 14. Appropriations and allocations. The following appropriations and allocations are made.

CORRECTIONS, DEPARTMENT OF

Correctional Medical Services Fund 0286

Initiative: Provides funds for contracted clinical staff to staff a mental health unit at the Maine State Prison effective February 15, 2014.

GENERAL FUND	2013-14	2014-15
All Other	\$1,381,771	\$0
GENERAL FUND TOTAL	\$1,381,771	\$0

CORRECTIONS, DEPARTMENT OF	2013-14	2014-15
DEPARTMENT TOTALS		

GENERAL FUND	\$1,381,771	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>\$1,381,771</u>	<u>\$0</u>

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Departmentwide 0640

Initiative: Reduces funding from salary savings. Notwithstanding any other provision of law, the State Budget Officer shall calculate the amount of savings in this Act that applies to each General Fund account in the Department of Health and Human Services and shall transfer the amounts by financial order upon approval of the Governor. These transfers are considered adjustments to appropriations in fiscal year 2013-14.

GENERAL FUND	2013-14	2014-15
Personal Services	(\$1,382,521)	\$0
GENERAL FUND TOTAL	<u>(\$1,382,521)</u>	<u>\$0</u>

**HEALTH AND HUMAN SERVICES,
DEPARTMENT OF (FORMERLY DHS)
DEPARTMENT TOTALS**

	2013-14	2014-15
GENERAL FUND	(\$1,382,521)	\$0
DEPARTMENT TOTAL - ALL FUNDS	<u>(\$1,382,521)</u>	<u>\$0</u>

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Provides funds for indigent legal services.

GENERAL FUND	2013-14	2014-15
All Other	\$750	\$0
GENERAL FUND TOTAL	<u>\$750</u>	<u>\$0</u>

**INDIGENT LEGAL SERVICES, MAINE
COMMISSION ON
DEPARTMENT TOTALS**

	2013-14	2014-15
GENERAL FUND	\$750	\$0

DEPARTMENT TOTAL - ALL FUNDS	\$750	\$0
SECTION TOTALS	2013-14	2014-15
GENERAL FUND	\$0	\$0
SECTION TOTAL - ALL FUNDS	\$0	\$0

Sec. 15. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 15, section 101-D, subsection 5 takes effect October 9, 2013.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

History of Forensic Services at Riverview Psychiatric Center

The first unit labeled as a forensic Unit at AMHI opened in February of 1978. Prior to that forensic clients were scattered throughout the rest of the hospital units with the exception of a maximum security unit that opened in the 1970's. The maximum security unit held individuals that came from the jails and prison. In April of 1987, the forensic unit expanded from the original unit of eight beds to twenty-seven beds. Those clients who were not criminally responsible continued to be mixed into the rest of the population reserving the forensic unit for evaluations, restoration, and jail transfers. In the mid 1990's a second forensic unit was opened. The second unit held a mix of civil and forensic clients but as the population grew it slowly became all forensic clients.

In June of 2004, Riverview Psychiatric Center opened with a total of forty-four forensic beds. In the fall of 2011, there was a spike of forensic referrals. That mixed with the growing number of NCR clients prompted the hospital to start moving the forensic clients onto the civil units in January of 2012. That trend has continued and presently on any day there are more forensic than civil clients in the hospital.

The categories of forensic clients that Riverview currently serves are those court ordered for evaluation for competency, those court ordered for restoration of competency, and those found not criminally responsible. There are presently eighty-seven not criminally responsible clients under the custody of the commissioner. Thirty-four of them reside at Riverview and the rest are served in the community in a variety of living situations. Over the past twelve years, there has been a net gain of five new NCRs annually. The average length of stay of an NCR client at Riverview varies but can range from three years up to twenty years.

Under a recent change in statute, those that are court ordered to Riverview for restoration can stay for up to 180 days. There are currently twelve clients at Riverview for restoration. Evaluations for those court ordered to Riverview have to be completed in 30 days. The State Forensic Service can request an additional 30 days from the court. There are currently seven clients at Riverview for evaluation. The average length of stay is twenty-seven days. Due to the increase in court ordered forensic referrals, Riverview has been unable to take many jail transfers from the county jails or Maine State Prison. In FY 13 Riverview admitted eighteen jail transfers and none so far in FY 14.

4. No jurisdiction, powers, duties or authority of Law Court. The Superior Court does not have and may not exercise the jurisdiction, powers, duties or authority of the Supreme Judicial Court sitting as the Law Court.

R.S.1954, c. 145, § 5; 1959, c. 242, § 15; 1963, c. 402, § 23; 1975, c. 387, § 3; 1979, c. 127, § 114, eff. April 23, 1979; 1985, c. 179; 1999, c. 781, § ZZZ-9, eff. Jan. 1, 2001; 2005, c. 64, § 1.

Historical and Statutory Notes.

2005 Legislation
Laws 2005, c. 64, § 1, in subsec. 2, substituted subsection 1 and substituted "Rule 36" for "Rule 37F"; and added pars. G to I.

CHAPTER 3
SEARCH WARRANTS

§ 55. Search warrants; issuance by district judge or justice of the peace

United States Supreme Court
S.Ct. 946, 591 U.S. 326, 148 L.Ed.2d 838, on remand 296 Ill.Dec. 442, 381 Ill.App.3d 1151, 835 N.E.2d 476.

Search and seizure, drug possession, refusal to allow defendant to enter residence without police officer until search warrant obtained, see Illinois v. McArthur, U.S.Ill.2001, 121

Notes of Decisions

Authority to issue warrant 3.5
defendant's residence was authorized under Maine law to issue the warrant, since the Chief Justice of the Maine Supreme Judicial Court, acting pursuant to statutory authority, had expressly authorized the Justices of the Superior Court to sit as Judges of the District Court. U.S. v. Cameron, D.Me.2009, 652 F.Supp.2d 74. Searches and Seizures 103.1

3.5. Authority to issue warrant
Although Maine statute and rule of criminal procedure authorized only a judge of the District Court or justice of the peace to issue a search warrant, the Maine Superior Court Justice who issued search warrant for defen-

CHAPTER 5
MENTAL RESPONSIBILITY FOR CRIMINAL CONDUCT

Section 101-B. Repealed.
101-C. Access to records by persons or entities performing examinations or evaluations.
101-D. Mental examination of persons accused of crime.
103. Commitment following acceptance of negotiated insanity plea or following verdict or finding of insanity.

Section 103-A. Commitment affected by certain sentences.
104-A. Release and discharge, hearing, payment of fees.
104-B. Failure of patient to return.

§ 101-B. Repealed. Laws 2009, c. 268, § 1
Historical and Statutory Notes
The repealed section, which related to mental examination and observation of persons accused of crime, was derived from:
R.S.1954, c. 149, § 17-A.
Laws 1963, c. 311, § 3.
Laws 1965, c. 394.

§ 101-B. Repealed. Laws 2009, c. 268, § 1
Historical and Statutory Notes
Laws 1967, c. 402, § 1.
Laws 1969, c. 279.
Laws 1969, c. 504, § 24-C.
Laws 1971, c. 269.
Laws 1973, c. 53 (P. & S.L.).
Laws 1973, c. 547, § 1 to 3.

Laws 1975, c. 230, § 1.
Laws 1975, c. 506, §§ 1, 2.
Laws 1975, c. 718, § 1.
Laws 1977, c. 201, §§ 1 to 3.
Laws 1977, c. 311, § 1.
Laws 1977, c. 354, § 71-A.
Laws 1979, c. 663, § 84.
Laws 1983, c. 580, §§ 2, 3.
Laws 1985, c. 630, §§ 1, 2.
Laws 1985, c. 796, §§ 2, 3.
Laws 1987, c. 402, §§ A, 107, A, 109.
Laws 1987, c. 758, § 11.
Laws 1989, c. 621, §§ 1 to 5.

§ 101-C. Access to records by persons or entities performing examinations or evaluations

1. Written demand for records. When a person or entity has been ordered to perform an examination or evaluation pursuant to section 101-D, and the person to be examined has sought the examination, joined in a request or order for the examination or has entered a plea of not criminally responsible by reason of insanity, that person may make written demand upon any individual, partnership, association, corporation, institution or governmental entity to produce the records or copies of the records, in whatever medium preserved, of the subject of the examination or evaluation.

2. Production of records. Any such entity from whom records are demanded pursuant to subsection 1 shall produce the records or copies of the records forthwith. The production shall be made notwithstanding any other law. No entity, or employee or agent of the entity, may be criminally or civilly responsible for furnishing any records in compliance with this section.

3. Confidentiality of records. Records provided under this section shall be confidential and shall not be disseminated by any person other than upon order of the court pursuant to a petition for release under section 104-A or pursuant to an involuntary commitment proceeding under Title 34-B, section 886A.

4. Definition. "Records" means information about a person, in whatever medium preserved. It includes, but is not limited to, medical histories, social histories, military histories, government histories, educational histories, drug and alcohol treatment histories, criminal record histories, penal institution histories and documentation pertaining to diagnosis or treatment.

5. Failure to produce records. Any person who is required to produce records by this section and intentionally or knowingly fails to do so within 20 days of the service of the written request upon him, may be subject to civil contempt for his failure to comply with the request.

1987, c. 402, § A, 109, eff. June 24, 1987; 1989, c. 621, § 6; 1989, c. 878, § H-3, eff. April 20, 1990; 2009, c. 268, § 2.

Historical and Statutory Notes

2009 Legislation
Laws 2009, c. 268, § 2, in subsec. 1, substituted "section 101-D" for "section 101-B".

§ 101-D. Mental examination of persons accused of crime

1. Competency to proceed. The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State

Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency to proceed to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court's order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate any party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination will be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

2. **Insanity; abnormal condition of the mind.** The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 89 and abnormal condition of the mind under Title 17-A, section 38.

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination.

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

(3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's

abnormal condition of mind pursuant to the Maine Rules of Criminal Procedure, Rule 16A(a).

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A.

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Criminal Procedure, Rule 16A(a).

3. **Mental condition relevant to other issues.** The court may for good cause shown order that the defendant be examined to evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it pertains to those issues. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State.

B. If the defendant is incarcerated the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above it shall communicate its request and the

reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant an extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

4. **Commitment for observation.** The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an evaluation ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant.

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment.

C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary.

5. **Finding of incompetence; custody; bail.** If, after hearing upon motion of the attorney for the defendant or upon the court's own motion, the court finds that any defendant is incompetent to stand trial, the court shall continue the case until such time as the defendant is determined by the court to be competent to stand trial and may either:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation, care and treatment. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and one year, the State Forensic Service shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case.

The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation, care and treatment. When a person who has been evaluated on behalf of the court by the State Forensic Service is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence involuntary commitment proceedings pursuant to Title 34-B, chapter 3, subchapter 4 or chapter 5, subchapter 3. If the defendant is charged with offenses not listed in the previous sentence and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at a state mental hospital or mental health facility approved by the Department of Health and Human Services or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

6. **Examiners.** Evaluation of a defendant by the State Forensic Service pursuant to this section must be performed by a licensed psychologist or a psychiatrist. The State Forensic Service may determine whether an examination will be performed by a licensed psychologist or a psychiatrist unless the court has designated the specialty of the examiner in its order.

7. **Competence; proceedings.** Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant must be in accordance with the rules of criminal procedure.

8. **No release during commitment period; violation.** A person ordered or committed for examination, observation, care or treatment pursuant to this section may not be released from the designated institution during the period of examination. An individual responsible for or permitting the release of a person ordered committed pursuant to this section for examination, observation, care or treatment from the designated institution commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

9. **Examination after sentencing.** If the issue of insanity, competency, abnormal condition of mind or any other issue involving the mental condition of the defendant is raised

after sentencing, the court may for cause shown order the convicted person to be examined by the State Forensic Service. If at the time an examination order is entered by the court the sentenced person is in execution of a sentence of imprisonment imposed for any criminal conduct, the time limits and bail provisions of this section do not apply. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.

2009, c. 268, § 3; 2011, c. 464, §§ 1, 2; 2011, c. 542, §§ A-8, A-9, eff. March 20, 2012.

Historical and Statutory Notes

2011 Legislation

Laws 2011, c. 464, § 1, rewrote subsec. 5, par. A, which formerly read:

"A. Commit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or mental retardation for observation, care and treatment. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and one year, the State Forensic Service shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of people with mental illness or mental retardation for observation, care and treatment. When a person who has been evaluated on behalf of the court by the State Forensic Service is committed into the custody of the Commissioner of the Department of Human Services under this paragraph, the court shall order that the State Forensic Service share any information that it has collected or generated with respect to the person with the institution in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defen-

United States Supreme Court

Due process, mentally ill defendants, involuntary administration of antipsychotic drugs, competency to stand trial, see Sell v. U.S., 2008, 123 S.Ct. 2174.

Presumption of competence, defendant's burden to establish incompetence by clear and convincing evidence, due process, see Cooper v. Oklahoma, 1996, 116 S.Ct. 1373, 134 L.Ed.2d 498.

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

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the care and treatment of persons with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for care and treatment. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

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

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

R.S.1954, c. 149, § 17-C; 1963, c. 311, § 3; 1991, c. 493, § 2; 1995, c. 286, § 1; R.R.1995, c. 2, § 27; 2001, c. 354, § 3; 2003, c. 689, § B-7, eff. July 1, 2004; 2005, c. 263, § 1; 2009, c. 268, § 4; 2011, c. 542, § A-10, eff. March 20, 2012.

Historical and Statutory Notes

2003 Legislation

Laws 2003, ch. 689, § B-7 provides:

"Sec. B-7. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words 'Commissioner of Human Services' or 'Commissioner of Behavioral and Developmental Services' appear or reference is made to either of these positions with reference to the duties transferred to the Commissioner of Health and Human Services as set forth in this Act, they are amended to read or mean, as the case may be, 'Commissioner of Health and Human Services.' The Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes."

2005 Legislation

Laws 2005, c. 263, § 1 rewrote the section, which read:

"§ 103. Commitment of persons acquitted on basis of mental disease or defect

"When a respondent is found not criminally responsible by reason of mental disease or mental defect the verdict and judgment must so state: In that case the court shall order the

person committed to the custody of the Commissioner of Health and Human Services to be placed in an appropriate institution for the mentally ill or the mentally retarded for care and treatment. Upon placement in the appropriate institution and in the event of transfer from one institution to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court."

2009 Legislation

Laws 2009, c. 268, § 4, in the first paragraph, in the second sentence substituted "care and treatment of persons with mental illness or mental retardation" for "mentally ill or the mentally retarded", and inserted the second paragraph.

2011 Legislation

Laws 2011, c. 542, § A-10, in the first paragraph, substituted "in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism" for "mental retardation"; in the third sentence, added "or residential program" following "institution" twice.

17-A § 37

Note 10

commit theft as distinguished from urge to satisfy generalized bodily need for sleep. *State v. Williams* (1978) Me., 387 A.2d 27. Criminal Law ☞ 570(1)

Even though defendant, in prosecution for assault and battery, armed assault and battery, and armed robbery, failed to make appropriate objection at trial to trial court's instruction to jury placing burden of proof with respect to defense of involuntary intoxication on defendant, such issue was nevertheless saved for appeal where defendant

submitted to trial justice written request for instruction in regard to involuntary intoxication, substance of which was that State must prove beyond reasonable doubt absence of involuntary intoxication as positively related to defendant's allegedly criminal behavior, and where trial justice knew that what he told jurors was diametrically opposed to formulation in defendant's written request and thus had opportunity to correct error. *State v. Rice* (1977) Me., 379 A.2d 140. Criminal Law ☞ 1044.2(1)

CRIMINAL CODE

Title 17-A

§ 38. Mental abnormality

Evidence of an abnormal condition of the mind may raise a reasonable doubt as to the existence of a required culpable state of mind.

1981, c. 324, § 14.

Historical and Statutory Notes

Derivation:

Laws 1963, c. 311, § 3.
Laws 1975, c. 499, § 1.

Laws 1975, c. 740, §§ 23, 24.
Former 15 M.R.S.A. § 102.
Former 17-A M.R.S.A. § 58.

Cross References

Interstate Compact on the Mentally Disordered Offender, see 15 M.R.S.A. § 2301 et seq.
Mental examination and observation of persons accused of crime, see 15 M.R.S.A. § 101-B.

Law Review and Journal Commentaries

Mental abnormality in Criminal Code. 33 Me. L.Rev. 35 (1981). hazards of subjective self-defense and the merits of partial excuse. 45 Case W.Res.L.Rev. 185 (1995).

Nonconfrontational killings and the appropriate use of battered child syndrome testimony: The

Library References

Criminal Law ☞48.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 99 to 108.

Research References

Treatises and Practice Aids

1 Criminal Law Defenses § 22, Failure of Proof Defenses.
1 Criminal Law Defenses § 64, Mental Disease or Defect Negating an Offense Element.

2 Substantive Criminal Law § 9.2, Partial Responsibility.
Wharton's Criminal Law § 107, Diminished Responsibility.

United States Supreme Court

Battered child syndrome, murder prosecutions, prior injury evidence and instructions, see *Estelle v. McGuire*, U.S. Cal.1991, 112 S.Ct. 475, 502 U.S. 62, 116 L.Ed.2d 385, on remand 956 F.2d 923.

AMHI Consent Decree
Appropriations Committee Presentation
by the Office of the Attorney General
February 5, 2009

Overview

The Consent Decree arose from the settlement of litigation on behalf of people who were patients at the Augusta Mental Health Institute (“AMHI”) on or after January 1, 1988 (“class members”) related to conditions at AMHI that resulted in patient deaths. The Consent Decree, a court order incorporating a 303 paragraph Settlement Agreement, established obligations to improve conditions at AMHI; to reduce the size of AMHI to 70 civil patients; to assure individualized planning for class members; and to develop, fund, recruit, and support resources to serve people with mental illness in the community.

The Consent Decree was written in 1990, when there were 350 patients at AMHI – today, there are about 48 civil and 44 forensic (criminal related) patients at Riverview. Under the Consent Decree, every class member has a right to an individualized support plan coordinated and monitored by a community support worker. In contrast to the MaineCare program, the Decree does not describe any financial or clinical eligibility requirements for individuals, other than “assessed need.”

The Consent Decree requires the Department of Health and Human Services (“DHHS”):

- to create a plan to satisfy requirements of the Consent Decree;
- not to deprive non-class members of services solely because they are not class members; and
- to take “all necessary steps and exert good faith efforts to obtain adequate funding from the Legislature.”

Class/Non-class Members

Originally, the only requirement for non-class members was that, as the Settlement Agreement said, “in meeting class members’ identified needs, defendants shall not deprive non-class members of services solely because they were not members of the class.”

Two years after the Consent Decree was signed, the Legislature enacted a law saying that it was the intent of the Legislature to apply the principles of the Consent Decree to all persons with severe and prolonged mental illness, and that the individualized planning process under the Consent Decree would be available to non-class members “to the extent possible and within available resources.” 34-B M.R.S.A. § 1217.

In 1994, the Superior Court noted that the plaintiffs “are a separate and distinct class. The [Consent Decree] applies to them; it mandates changes in the way they receive services.” *Bates v. Davenport*, CV 89-88, Me. Super. Ct., Ken. Cty, Sept. 7, 1994; 1994 Me. Super. LEXIS 465 (emphasis in original). But, in 2004, the Maine Law Court interpreted the Consent Decree under

the Americans with Disabilities Act to require the State “to provide the same community mental health services to qualifying non-class members as are required for class members.” *Bates v. DHHS*, 2004 ME 154, ¶68.

The Department’s Consent Decree Plan, approved by the Court Master in 2006, defined “qualified non-class members” to mean anyone deemed eligible for community support services under section 17 of the MaineCare rules. The scope of the state’s financial responsibility to serve individuals who might not meet the financial criteria for MaineCare, however, was left unclear.

The Court Master resolved this ambiguity in October 2008 by concluding that DHHS should fund “mental health services included in the State’s Medicaid Plan (i.e. community integration, ACT, daily living supports, skills development, outpatient services, medication management and residential treatment) for all persons who are clinically eligible, even though they may be financially ineligible for MaineCare.” The Court Master noted that his conclusion would not prevent “the imposition of a fee for service on non-MaineCare eligible qualified non-class members and class members who meet reasonable income thresholds that may be established.”

Funding the Consent Decree

The Consent Decree is interpreted as if it were a contract between the plaintiff class and DHHS. In 1994, the Superior Court ruled specifically that the Decree does not bind the Governor. It also does not bind the Legislature.

Under paragraph 268 of the Decree, the DHHS Commissioner must “prepare budget requests which are reasonably calculated to meet the terms of [the] Agreement...and take all necessary steps and make good faith efforts to obtain adequate funding from the Legislature.”

Insufficient funding of services, if it affected DHHS’ ability to comply with the requirements of the Consent Decree, could affect the determination of compliance and delay termination of the decree, or lead to a finding that DHHS is in contempt. In fact, the Court has recently undertaken an inquiry to determine whether DHHS should be held in contempt for failure to obtain adequate funding of the community mental health system. In August 2008 the Court appointed Elizabeth Jones to “assess in a detailed manner the funding of the adult mental health system for FY 2007-2008 and thereafter.” Her report is due to the Court later this month.

The Legislature’s Role in System Design

The Legislature is legally free to propose and enact statutes that redefine the scope and coverage of the publicly funded mental health system.

If legislative changes to the mental health system make compliance with the Consent Decree impossible, DHHS would have to return to court, describe the changes that make compliance impossible, and seek changes to the Consent Decree to conform to legislative priorities. The legal standard for making changes to the Consent Decree is set by the U. S. Supreme Court in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992).

17-A § 37

Note 10

commit theft as distinguished from urge to satisfy generalized bodily need for sleep. *State v. Williams* (1978) Me., 387 A.2d 27. Criminal Law ⅉ 570(1)

Even though defendant, in prosecution for assault and battery, armed assault and battery, and armed robbery, failed to make appropriate objection at trial to trial court's instruction to jury placing burden of proof with respect to defense of involuntary intoxication on defendant, such issue was nevertheless saved for appeal where defendant

CRIMINAL CODE

Title 17-A

submitted to trial justice written request for instruction in regard to involuntary intoxication, substance of which was that State must prove beyond reasonable doubt absence of involuntary intoxication as positively related to defendant's allegedly criminal behavior, and where trial justice knew that what he told jurors was diametrically opposed to formulation in defendant's written request and thus had opportunity to correct error. *State v. Rice* (1977) Me., 379 A.2d 140. Criminal Law ⅉ 1044.2(1)

§ 38. Mental abnormality

Evidence of an abnormal condition of the mind may raise a reasonable doubt as to the existence of a required culpable state of mind.

1981, c. 324, § 14.

Historical and Statutory Notes

Derivation:

Laws 1963, c. 311, § 3.
Laws 1975, c. 499, § 1.

Laws 1975, c. 740, §§ 23, 24.
Former 15 M.R.S.A. § 102.
Former 17-A M.R.S.A. § 58.

Cross References

Interstate Compact on the Mentally Disordered Offender, see 15 M.R.S.A. § 2301 et seq.
Mental examination and observation of persons accused of crime, see 15 M.R.S.A. § 101-B.

Law Review and Journal Commentaries

Mental abnormality in Criminal Code. 33 Me. L.Rev. 35 (1981).

Nonconfrontational killings and the appropriate use of battered child syndrome testimony: The

hazards of subjective self-defense and the merits of partial excuse. 45 Case W.Res.L.Rev. 185 (1995).

Library References

Criminal Law ⅉ 48.
Westlaw Topic No. 110.
C.J.S. Criminal Law §§ 99 to 108.

Research References

Treatises and Practice Aids

1 Criminal Law Defenses § 22, Failure of Proof Defenses.
1 Criminal Law Defenses § 64, Mental Disease or Defect Negating an Offense Element.

2 Substantive Criminal Law § 9.2, Partial Responsibility.
Wharton's Criminal Law § 107, Diminished Responsibility.

United States Supreme Court

Battered child syndrome, murder prosecutions, prior injury evidence and instructions, see *Estelle*

v. McGuire, U.S. Cal. 1991, 112 S.Ct. 475, 502 U.S. 62, 116 L.Ed.2d 385, on remand 956 F.2d 923.

Ch. 2

deemed to be legally sufficient to raise a reasonable doubt as to defendant's having acted with a culpable state of mind at issue, i.e., intentionally or knowingly. *State v. Sommer* (1979) Me., 409 A.2d 666. Criminal Law ⇨ 570(1)

6. Findings

Where record is devoid of existence of any prior mental and psychological problem affecting defendant, trial justice as fact finder is entitled to draw his own ultimate conclusions based on his own observation of defendant and on absence throughout proceedings of any indication in defendant's conduct of the presence of mental incompetence.

State v. Boone (1982) Me., 444 A.2d 438. Criminal Law ⇨ 740

Validity of findings in murder prosecution that trial court was satisfied beyond reasonable doubt that voluntary conduct on part of defendant caused death of victim and that acts of defendant were intentional was not impaired because there was expert testimony that defendant's condition of mind was abnormal where testimony was of such nature that, at most, it could only permit fact-finder to entertain reasonable doubt; it could not compel presiding justice, as rational fact-finder, to have reasonable doubt. *State v. Page* (1980) Me., 415 A.2d 574. Criminal Law ⇨ 494

§ 39. Insanity

1. A defendant is not criminally responsible by reason of insanity if, at the time of the criminal conduct, as a result of mental disease or defect, the defendant lacked substantial capacity to appreciate the wrongfulness of the criminal conduct.

2. As used in this section, "mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect.

3. Lack of criminal responsibility by reason of insanity is an affirmative defense. 1981, c. 324, § 14; 1985, c. 796, § 5; 2005, c. 263, §§ 5, 6.

Historical and Statutory Notes

Laws 1985, c. 796, § 5, in the first sentence of subsec. 1, deleted "either lacked substantial capacity to conform his conduct to the requirements of the law, or" following "he"; and in the first sentence of subsec. 2, substituted "only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality" for "any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs the processes and capacity of a person to control his actions".

Laws 2005, c. 263, § 5 rewrote subsec. 1, which read:

"1. A defendant is not criminally responsible if, at the time of the criminal conduct, as a result of

mental disease or defect, he lacked substantial capacity to appreciate the wrongfulness of his conduct. The defendant shall have the burden of proving, by a preponderance of the evidence, that he lacks criminal responsibility as described in this subsection."

Laws 2005, c. 263, § 6 added subsec. 3.

Derivation:

Laws 1963, c. 311, § 3.

Laws 1975, c. 499, § 1.

Laws 1975, c. 740, §§ 23, 24.

Former 15 M.R.S.A. § 102.

Former 17-A M.R.S.A. § 58.

Cross References

Interstate Compact on the Mentally Disordered Offender, see 15 M.R.S.A. § 2301 et seq.

Law Review and Journal Commentaries

Burden of proof, mental disease or defect. 15 Me.L.Rev. 107 (1963).

Burden of proof and insanity defense after *Mulaney v. Wilbur*. 28 Me.L.Rev. 435 (1977).

Mens rea and insanity. 28 Me.L.Rev. 500 (1977).

Mental abnormality in Criminal Code. 33 Me.L.Rev. 35 (1981).