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Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
131ST LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1308, L.D. 2046, “An Act to Continue Allowing the Department of Corrections to Accept Placement of Certain Defendants Found Incompetent to Stand Trial”

Amend the bill by striking out the title and substituting the following:

'An Act Regarding the Placement of Certain Defendants Found Incompetent to Stand Trial'

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting the following:

'Sec. 1. 34-A MRSA §3069-C, sub-§3, ¶B, as enacted by PL 2021, c. 259, §1, is amended by enacting at the end a new first blocked paragraph to read:

A court must terminate placement of a defendant in a mental health unit of a correctional facility if, after a hearing held pursuant to this paragraph, it determines by clear and convincing evidence that the mental health unit of a correctional facility in which the defendant is placed is not the least restrictive placement appropriate for the defendant.

Sec. 2. 34-A MRSA §3069-C, sub-§6, as enacted by PL 2021, c. 259, §1, is amended to read:

6. Sunset. This section is repealed on July 1, ~~2024~~ 2027.

Sec. 3. Stakeholder group; report. The Department of Health and Human Services shall convene a stakeholder group to examine issues related to certain defendants found incompetent to stand trial who are placed in a mental health unit of a Department of Corrections facility in accordance with the Maine Revised Statutes, Title 34-A, section 3069-C. The stakeholder group must develop a process and procedure for safely and effectively placing certain defendants found incompetent to stand trial, who pose a health or safety risk to Department of Health and Human Services personnel and patients, in the least restrictive setting possible. The process and procedure developed must ensure that a defendant's due process rights are maintained and protected. The stakeholder group must

COMMITTEE AMENDMENT

1 also determine and identify any resources required to establish this process and procedure.
2 The membership of the stakeholder group must include, at a minimum, the Commissioner
3 of Corrections or the commissioner's designee, a criminal defense attorney licensed in this
4 State and a representative of a statewide organization that advocates for civil liberties.

5 On or before January 1, 2027, the Department of Health and Human Services shall
6 submit to the joint standing committee of the Legislature having jurisdiction over criminal
7 justice and public safety matters a report outlining the process and procedures developed,
8 including recommended legislation. After reviewing the report, the committee may report
9 out legislation relating to the report to the 133rd Legislature in 2027.

10 **Sec. 4. Review; report.** By January 1, 2027, the Department of Health and Human
11 Services and the Department of Corrections shall jointly submit a report to the joint
12 standing committee of the Legislature having jurisdiction over criminal justice and public
13 safety matters regarding the number, circumstances and outcomes of the placement of
14 defendants found incompetent to stand trial and placed in a mental health unit of a
15 correctional facility pursuant to the Maine Revised Statutes, Title 34-A, section 3069-C.
16 The report must include the number of defendants transferred to a mental health unit, the
17 average length of stay, the number of defendants transferred to other facilities, which must
18 be organized by type of facility, the impact on the mental health and criminal justice
19 systems and any other relevant data. After reviewing the report, the committee may report
20 out legislation to the 133rd Legislature in 2027 to address issues raised by the report and
21 to repeal or amend the sunset provision in Title 34-A, section 3069-C, subsection 6.'

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

24 SUMMARY

25 This amendment, which is the minority report of the committee, replaces the bill and
26 changes the title but maintains its emergency status. It stipulates that when a defendant
27 found incompetent to stand trial who is placed in a mental health unit of a correctional
28 facility petitions a court for return to placement in a less restrictive setting, after a hearing
29 on that petition the court must return the defendant to a less restrictive setting if it finds by
30 clear and convincing evidence that the mental health unit of a correctional facility in which
31 the defendant is placed is not the least restrictive placement appropriate for the defendant.
32 The amendment also extends the sunset of the laws governing placement of certain
33 defendants found incompetent to stand trial in a mental health unit of a correctional facility
34 by 3 years to July 1, 2027.

35 The amendment also requires the Department of Health and Human Services to
36 establish a stakeholder group consisting of, at a minimum, the Commissioner of
37 Corrections or the commissioner's designee, a criminal defense attorney licensed in this
38 State and a representative of a statewide organization that advocates for civil liberties to
39 develop a process and procedure for safely and efficiently placing certain defendants found
40 incompetent to stand trial who pose a health or safety risk to Department of Health and
41 Human Services personnel and patients in the least restrictive setting possible. This process
42 must ensure that the due process rights of the defendant are protected. The stakeholder
43 group must submit a report by January 1, 2027 establishing a process and procedure,
44 including any necessary legislation, to the joint standing committee of the Legislature

1 having jurisdiction over criminal justice and public safety matters, which may report out
2 legislation relating to the report to the 133rd Legislature in 2027.

3 The amendment also reestablishes a reporting requirement from the Department of
4 Health and Human Services and the Department of Corrections regarding the number,
5 circumstances and outcomes of the placement of defendants found incompetent to stand
6 trial and placed in a mental health unit of a correctional facility. This report must be
7 submitted to the committee by January 1, 2027, and the committee may report out
8 legislation based on this report to the 133rd Legislature in 2027 and may repeal or amend
9 the sunset provision of July 1, 2027.

10 **FISCAL NOTE REQUIRED**
11 **(See attached)**