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**JUDICIARY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
130TH LEGISLATURE  
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 552, L.D. 747, “An Act Regarding Civil Mental Health Evaluations of Former Criminal Defendants”

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

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

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. 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 placement in an appropriate program for observation, care and treatment of people with

**COMMITTEE AMENDMENT**

1 mental illness or persons with intellectual disabilities or autism. An appropriate  
2 program may be in an institution for the care and treatment of people with mental  
3 illness, an intermediate care facility for persons who have intellectual disabilities or  
4 autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted  
5 living facility, a hospice, a hospital, an intensive outpatient treatment program or any  
6 program specifically approved by the court. When a person who has been evaluated  
7 on behalf of the court by the State Forensic Service or other appropriate office of the  
8 Department of Health and Human Services is committed into the custody of the  
9 Commissioner of Health and Human Services under this paragraph, the court shall  
10 order that the State Forensic Service or other appropriate office of the Department of  
11 Health and Human Services share any information that it has collected or generated  
12 with respect to the person with the institution or residential program in which the  
13 person is placed. ~~If the defendant is charged with an offense under Title 17-A, chapter  
14 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that  
15 the defendant is not competent to stand trial and there does not exist a substantial  
16 probability that the defendant can be competent in the foreseeable future, the court shall  
17 dismiss all charges against the defendant and, unless the defendant is subject to an  
18 undischarged term of imprisonment, order the Commissioner of Health and Human  
19 Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If  
20 the defendant is charged with an offense other than an offense under Title 17-A, chapter  
21 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that  
22 the defendant is not competent to stand trial and there does not exist a substantial  
23 probability that the defendant can be competent in the foreseeable future, the court shall  
24 dismiss all charges against the defendant and, unless the defendant is subject to an  
25 undischarged term of imprisonment, notify the appropriate authorities who may  
26 institute civil commitment proceedings for the individual. If the defendant is subject  
27 to an undischarged term of imprisonment, the court shall order the defendant into  
28 execution of that sentence and the correctional facility to which the defendant must be  
29 transported shall execute the court's order; or~~

30 **Sec. 2. 15 MRSA §101-D, sub-§5-A** is enacted to read:

31 **5-A. Finding of nonrestorability.** If the court determines that the defendant is not  
32 competent to stand trial and there does not exist a substantial probability that the defendant  
33 can be competent in the foreseeable future, the court shall dismiss all charges against the  
34 defendant and, unless the defendant is subject to an undischarged term of imprisonment,  
35 the court may notify the appropriate authorities who may institute civil commitment  
36 proceedings for the individual. If the defendant is subject to an undischarged term of  
37 imprisonment, the court shall order the defendant into execution of that sentence, and the  
38 correctional facility to which the defendant is transported shall execute the court's order.'

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

## 41 SUMMARY

42 This amendment is the majority report. It replaces the bill, but still addresses  
43 circumstances in which a defendant has been determined to be incompetent to stand trial  
44 and there does not exist a substantial probability that the defendant will be competent in  
45 the foreseeable future. This amendment reorganizes the current law to create a new

1 subsection that focuses on just the cases in which competency is not restorable in the  
2 foreseeable future.

3 In such cases, the court must dismiss the charges and the next step is determined by  
4 whether the defendant is subject to an undischarged term of imprisonment. If the defendant  
5 is not subject to an undischarged term of imprisonment, regardless of the charges that were  
6 dismissed, the court may notify the appropriate authorities who may institute civil  
7 commitment proceedings. If the defendant is subject to an undischarged term of  
8 imprisonment, the court must order the defendant into execution of that sentence and the  
9 correctional facility to which the defendant is transported must execute the court's order.