

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out all of section 1 and inserting the following:

‘**Sec. 1. 34-A MRSA §1406** is enacted to read:

§ 1406. Minimum standards governing the humane treatment of special management prisoners

The commissioner shall ensure that special management prisoners are treated in accordance with the minimum standards for humane treatment established in this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Serious mental illness" means schizophrenia, bipolar disorder, schizoaffective disorder, major depression or any other psychiatric condition that is recognized by a statewide association of psychiatric physicians that would tend to cause a prisoner's emotional stability to deteriorate if confined in a special management unit for an extended period.

B. "Special management prisoner" means a prisoner housed in a special management unit.

C. "Special management unit" means a high-security unit within a prison facility that houses a prisoner assigned by the commissioner to a high-risk management status, an administration segregation status or a disciplinary segregation status.

2. Special management unit criteria for prisoners with serious mental illness.

A prisoner determined to be suffering from a serious mental illness may not be confined in a special management unit. Prisoners confined in a special management unit must be evaluated by a licensed mental health professional in private within 48 hours of placement and at least every 7 days thereafter. Such evaluations must be conducted in person, not through a cell door, with audio privacy and must assess the current mental status and condition of the prisoner and the current risk of suicide or other self-harming behavior and include a review of the prisoner's inpatient and outpatient treatment history. A prisoner determined to suffer from a serious mental illness at the time of an evaluation must be removed from the special management unit within 7 days. If the prisoner is subsequently transferred to a psychiatric or mental health unit or a hospital, the commissioner shall ensure that the prisoner is held in conditions that do not violate this section.

3. Limitation on confinement; rights to a hearing. A prisoner may not remain confined in a special management unit for more than 45 consecutive calendar days unless it is determined by a hearing that within the previous 45 days the prisoner has committed or attempted to commit a sexual assault, an escape from confinement or an act of serious physical violence or that housing the prisoner in the general population of a correctional facility would pose an immediate and unacceptable risk to the safety of staff or other prisoners. The hearing must be conducted by a panel of at least 3 persons appointed by the commissioner, one of whom must be a clinician representing the mental health staff at

the facility in which the prisoner is housed. At such hearings, the department has the burden of proof by a preponderance of the evidence. The following provisions apply to a hearing conducted under this subsection:

A. The commissioner shall provide written notice to the prisoner at least 72 hours before the hearing. That written notice must set forth the factual basis for the continued placement in the special management unit and must provide notice that the prisoner has the right to appear in person at the hearing, the right to submit evidence in the prisoner's defense, the right to call relevant witnesses and the right to be represented at the hearing by an attorney if secured and paid for by the prisoner;

B. The commissioner shall make an audiovisual recording of the hearing and shall maintain all records of the hearing, including the audiovisual record and all written records, until at least 120 days after the release of the prisoner from incarceration;

C. The panel conducting the hearing shall issue a written decision within 5 days after the hearing and provide a copy of that decision to the prisoner, including the reasons for the decision;

D. If the panel authorizes the commissioner to continue holding the prisoner for longer than 45 days in the special management unit based on a finding of one of the conditions in this subsection, the decision of the panel must include guidance to the prisoner as to what the prisoner must do to gain release from the special management unit and inform the prisoner that the panel must review its decision every 30 days to determine if the prisoner should continue to be housed in the special management unit; and

E. A prisoner may appeal a decision of the panel under paragraph C to the chief administrative officer after notice of the decision is received by the prisoner. The chief administrative officer shall respond in writing to an appeal within 7 days. A decision by the chief administrative officer on an appeal or a failure by the chief administrative officer to issue a decision within 7 days is a final agency action as defined in Title 5, section 8002, and the prisoner is entitled to judicial review of that decision under the provisions of Title 5, chapter 375, subchapter 7.

4. Other disciplinary restrictions. A special management prisoner's access to food, medical or sanitary facilities, mail or legal assistance may not be restricted.

5. Listing of special management prisoners. The commissioner shall maintain a current list of all special management prisoners that includes the date of confinement in the special management unit, the date of the last review, the date of the last mental health evaluation, the reasons for placement in the special management unit and, in cases when the prisoner has been housed in that unit for more than 60 days, a written statement of the criteria relied upon to support that extended confinement. The commissioner shall provide the board of visitors for each correctional facility appointed under section 3001A, the State Board of Corrections and the joint standing committee of the Legislature having jurisdiction over corrections matters with a copy of that list on a quarterly basis.

6. Annual review. The State Board of Corrections shall annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management

prisoners complies with this section. The State Board of Corrections shall include its findings under this subsection in the annual report to the joint standing committee of the Legislature having jurisdiction over corrections matters required by section 3001A.'

SUMMARY

This amendment is one of 2 committee minority amendments and establishes minimum standards for the humane treatment of special management prisoners of the Department of Corrections. As defined in this amendment, a "special management prisoner" is a prisoner assigned to disciplinary, high-risk or administrative segregation and confined in a special management unit. The amendment amends the definition of "severe mental illness" to mean schizophrenia, bipolar disorder, schizoaffective disorder, major depression or any other psychiatric condition that is recognized by a statewide association of psychiatric physicians that would tend to cause the prisoner's emotional stability to deteriorate if confined in a special management unit for an extended period.

The amendment amends the provision addressing special management unit criteria for persons with serious mental illness by adding the requirement that evaluations must be conducted with audio privacy.

The minimum standards established in the amendment include limiting a prisoner's confinement to a special management unit to 45 days unless it is determined at a hearing that within the previous 45 days the prisoner has committed or attempted to commit a sexual assault, an escape from confinement, an act of serious physical violence or that housing the prisoner in the general population of a correctional facility would pose an immediate and unacceptable risk to the safety of staff or other prisoners. At hearings, the department has the burden of proof by a preponderance of the evidence. The amendment prohibits the confinement of prisoners with serious mental illness to a special management unit and requires that a special management prisoner determined to be suffering from serious mental illness be removed from the special management unit within 7 days. The amendment strikes language that addresses corporal punishment and restrictions on transferring prisoners out of state.

The amendment also authorizes the calling of relevant witnesses and having an attorney at hearings, but requires that these be secured and paid for by the prisoner. The amendment requires panel review of a placement decision every 30 days instead of every 7 days and specifies that appeals are made to the chief administrative officer of the facility and not to the Commissioner of Corrections. The amendment also clarifies that holding a prisoner for more than 45 days must be based on a finding as outlined in the Maine Revised Statutes, Title 34-A, section 1406, subsection 3.

The amendment also requires the Commissioner of Corrections to maintain a current list of all special management prisoners and, when the prisoner has been retained for more than 60 days in one or more of the units of the special management unit, to also retain a written statement of the criteria relied upon to support that extended confinement. The commissioner shall provide the boards of visitors, the State Board of Corrections and the joint standing committee of the Legislature having jurisdiction over corrections matters with a copy of that list on a quarterly basis.

The amendment further requires the State Board of Corrections to annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management

prisoners complies with the law. The State Board of Corrections is required to include its findings in its annual report to the joint standing committee of the Legislature having jurisdiction over corrections matters.

The amendment maintains the requirement of the bill that the Commissioner of Corrections review the status of all special management prisoners in the State to determine whether prisoners confined to special management units should remain in those units and to ensure that prisoners held in special management units more than 45 days receive a hearing. The commissioner is also required to review all policies in effect on the effective date of the bill relating to special management prisoners and update those policies as necessary to conform to the law.