

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 sections 1 and 2 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**Sec. 1. 15 MRSA §101-D, sub-§5, ¶A**, as amended by PL 2013, c. 434, §1 and affected by §15, is repealed.

**Sec. 2. 15 MRSA §101-D, sub-§5, ¶¶A-1 and A-2** are enacted to read:

A-1. 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. An appropriate program may be in a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. 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 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. An appropriate program may be in a mental health unit of a correctional facility if, based upon a consensus recommendation of a

panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. 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. As used in this paragraph, "panel" means a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of whom is not currently involved in the person's diagnosis and treatment.

This paragraph is repealed August 1, 2017;

A-2. 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 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. 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.

This paragraph is effective August 1, 2017; or

**Sec. 3. 15 MRSA §101-D, sub-§5, ¶B**, as amended by PL 2013, c. 434, §1 and affected by §15, is further amended to read:

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 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 AA-1 until August 1, 2017 or A-2 beginning August 1, 2017, as applicable.

**Sec. 4. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further amended to read:

**§ 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 or residential program 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, section 17-B of the Revised Statutes of 1954.

**1. Additional placement option.** An appropriate institution under this section may be a mental health unit of a correctional facility if, based upon a consensus recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to placing the person in a mental health unit of a correctional facility. Placement of a person in a mental health unit of a correctional facility must be reviewed by the Commissioner of Health and Human Services or the commissioner's designee at least every 6 months and may not continue beyond 6 months unless, based upon a subsequent review and consensus

recommendation of a panel, the Commissioner of Health and Human Services or the commissioner's designee determines that there is a therapeutic treatment advantage to the continued placement of the person in a mental health unit of a correctional facility. As used in this subsection, "panel" means a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of whom is not currently involved in the person's diagnosis and treatment.

This subsection is repealed August 1, 2017.'

Amend the bill in section 4 in subsection 1 in the first paragraph in the 2nd line (page 4, line 2 in L.D.) by inserting after the following: "defendant" the following: 'or person who has been found not criminally responsible by reason of insanity'

Amend the bill in section 4 in subsection 1 by striking out all of paragraph A (page 4, lines 8 and 9 in L.D.) and inserting the following:

‘A. The defendant or person who has been found not criminally responsible by reason of insanity is a person with mental illness and, as a result of the defendant's or person's mental illness, the defendant or person poses a likelihood of serious harm to others;’

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

## SUMMARY

The bill provides that, under certain circumstances, the Commissioner of Health and Human Services or the commissioner's designee may determine that a mental health unit at a correctional facility is an appropriate institution or program for the placement of persons who have been determined to be not competent to stand trial or not criminally responsible by reason of insanity. This amendment, which is the minority report of the committee, establishes a repeal date of August 1, 2017 for the 2 provisions that provide this placement option to the Commissioner of Health and Human Services, at which time the law will revert to the previous version of statute, which does not offer such an option.