



127th MAINE LEGISLATURE

SECOND REGULAR SESSION-2016

Legislative Document

No. 1577

H.P. 1070

House of Representatives, January 28, 2016

An Act To Increase the Availability of Mental Health Services

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R. B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SANDERSON of Chelsea. (GOVERNOR'S BILL)
Cosponsored by Senator CYRWAY of Kennebec and
Representatives: ESPLING of New Gloucester, FREDETTE of Newport, LONG of Sherman,
MAKER of Calais, PICCHIOTTI of Fairfield, POULIOT of Augusta, TIMBERLAKE of
Turner, Senator: ROSEN of Hancock.

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

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

4 A. Commit the defendant to the custody of the Commissioner of Health and Human
5 Services for placement in an appropriate program for observation, care and treatment
6 of people with mental illness or persons with intellectual disabilities or autism. An
7 appropriate program may be in an institution for the care and treatment of people
8 with mental illness, an intermediate care facility for persons who have intellectual
9 disabilities or autism, a crisis stabilization unit, a nursing home, a residential care
10 facility, an assisted living facility, a hospice, a hospital, an intensive outpatient
11 treatment program or any program specifically approved by the court. An
12 appropriate program may be in a mental health unit of a correctional facility if, based
13 upon a consensus recommendation of a panel, the Commissioner of Health and
14 Human Services or the commissioner's designee determines that there is a therapeutic
15 treatment advantage to placing the person in a mental health unit of a correctional
16 facility. Placement of a person in a mental health unit of a correctional facility must
17 be reviewed by the Commissioner of Health and Human Services or the
18 commissioner's designee at least every 6 months and may not continue beyond 6
19 months unless, based upon a subsequent review and consensus recommendation of a
20 panel, the Commissioner of Health and Human Services or the commissioner's
21 designee determines that there is a therapeutic treatment advantage to the continued
22 placement of the person in a mental health unit of a correctional facility. At the end
23 of 30 days or sooner, and again in the event of recommitment, at the end of 60 days
24 and 180 days, the State Forensic Service or other appropriate office of the
25 Department of Health and Human Services shall forward a report to the
26 Commissioner of Health and Human Services relative to the defendant's competence
27 to stand trial and its reasons. The Commissioner of Health and Human Services shall
28 without delay file the report with the court having jurisdiction of the case. The court
29 shall hold a hearing on the question of the defendant's competence to stand trial and
30 receive all relevant testimony bearing on the question. If the State Forensic Service's
31 report or the report of another appropriate office of the Department of Health and
32 Human Services to the court states that the defendant is either now competent or not
33 restorable, the court shall within 30 days hold a hearing. If the court determines that
34 the defendant is not competent to stand trial, but there does exist a substantial
35 probability that the defendant will be competent to stand trial in the foreseeable
36 future, the court shall recommit the defendant to the custody of the Commissioner of
37 Health and Human Services for placement in an appropriate program for observation,
38 care and treatment of people with mental illness or persons with intellectual
39 disabilities or autism. An appropriate program may be in an institution for the care
40 and treatment of people with mental illness, an intermediate care facility for persons
41 who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home,
42 a residential care facility, an assisted living facility, a hospice, a hospital, an intensive
43 outpatient treatment program or any program specifically approved by the court. An
44 appropriate program may be in a mental health unit of a correctional facility if, based
45 upon a consensus recommendation of a panel, the Commissioner of Health and
46 Human Services or the commissioner's designee determines that there is a therapeutic

1 treatment advantage to placing the person in a mental health unit of a correctional
2 facility. Placement of a person in a mental health unit of a correctional facility must
3 be reviewed by the Commissioner of Health and Human Services or the
4 commissioner's designee at least every 6 months and may not continue beyond 6
5 months unless, based upon a subsequent review and consensus recommendation of a
6 panel, the Commissioner of Health and Human Services or the commissioner's
7 designee determines that there is a therapeutic treatment advantage to the continued
8 placement of the person in a mental health unit of a correctional facility. When a
9 person who has been evaluated on behalf of the court by the State Forensic Service or
10 other appropriate office of the Department of Health and Human Services is
11 committed into the custody of the Commissioner of Health and Human Services
12 under this paragraph, the court shall order that the State Forensic Service or other
13 appropriate office of the Department of Health and Human Services share any
14 information that it has collected or generated with respect to the person with the
15 institution or residential program in which the person is placed. If the defendant is
16 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section
17 506-A, 802 or 803-A and the court determines that the defendant is not competent to
18 stand trial and there does not exist a substantial probability that the defendant can be
19 competent in the foreseeable future, the court shall dismiss all charges against the
20 defendant and, unless the defendant is subject to an undischarged term of
21 imprisonment, order the Commissioner of Health and Human Services to commence
22 proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is
23 charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or
24 Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant
25 is not competent to stand trial and there does not exist a substantial probability that
26 the defendant can be competent in the foreseeable future, the court shall dismiss all
27 charges against the defendant and, unless the defendant is subject to an undischarged
28 term of imprisonment, notify the appropriate authorities who may institute civil
29 commitment proceedings for the individual. If the defendant is subject to an
30 undischarged term of imprisonment, the court shall order the defendant into
31 execution of that sentence and the correctional facility to which the defendant must
32 be transported shall execute the court's order. As used in this paragraph, "panel"
33 means a panel consisting of at least 3 psychiatrists or psychologists, in any
34 combination, each of whom is not currently involved in the person's diagnosis and
35 treatment; or

36 **Sec. 2. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further
37 amended to read:

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

40 When a court accepts a negotiated plea of not criminally responsible by reason of
41 insanity or when a defendant is found not criminally responsible by reason of insanity by
42 jury verdict or court finding, the judgment must so state. In those cases the court shall
43 order the person committed to the custody of the Commissioner of Health and Human
44 Services to be placed in an appropriate institution for the care and treatment of persons
45 with mental illness or in an appropriate residential program that provides care and

1 treatment for persons who have intellectual disabilities or autism for care and treatment.
2 An appropriate institution may be a mental health unit of a correctional facility if, based
3 upon a consensus recommendation of a panel, the Commissioner of Health and Human
4 Services or the commissioner's designee determines that there is a therapeutic treatment
5 advantage to placing the person in a mental health unit of a correctional facility.
6 Placement of a person in a mental health unit of a correctional facility must be reviewed
7 by the Commissioner of Health and Human Services or the commissioner's designee at
8 least every 6 months and may not continue beyond 6 months unless, based upon a
9 subsequent review and consensus recommendation of a panel, the Commissioner of
10 Health and Human Services or the commissioner's designee determines that there is a
11 therapeutic treatment advantage to the continued placement of the person in a mental
12 health unit of a correctional facility. Upon placement in the appropriate institution or
13 residential program and in the event of transfer from one institution or residential
14 program to another of persons committed under this section, notice of the placement or
15 transfer must be given by the commissioner to the committing court.

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

21 As used in this section, "not criminally responsible by reason of insanity" has the
22 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or
23 verdict in this State under former section 102; under a former version of Title 17-A,
24 section 39; under former Title 17-A, section 58; or under former ~~section 17-B~~, chapter
25 149, section 17-B of the Revised Statutes of 1954. As used in this section, "panel" means
26 a panel consisting of at least 3 psychiatrists or psychologists, in any combination, each of
27 whom is not currently involved in the person's diagnosis and treatment.

28 **Sec. 3. 34-A MRSA §3069-A, sub-§1**, as enacted by PL 2013, c. 434, §5, is
29 amended to read:

30 **1. Eligible inmates.** The commissioner may transfer from a jail to a correctional
31 facility an adult inmate who the chief administrative officer of the Riverview Psychiatric
32 Center confirms is eligible for admission to a state mental health institute under Title
33 34-B, section 3863, but for whom no suitable bed is available, for the purpose of
34 providing to the inmate mental health services in a mental health unit of a correctional
35 facility that provides intensive mental health care and treatment. ~~The commissioner may~~
36 ~~not transfer pursuant to this section a person who has been found not criminally~~
37 ~~responsible by reason of insanity.~~ The commissioner may return an inmate transferred
38 pursuant to this subsection back to the sending facility.

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

41 **Sec. 4. 34-A MRSA §3069-B, sub-§1**, as enacted by PL 2013, c. 434, §6, is
42 amended to read:

