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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. 590, L.D. 785, “An Act To Change the Standard for Assessing Risk of Serious Harm”

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

**'An Act To Change the Standard for Taking a Person into Protective Custody'**

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

**'Sec. 1. 34-B MRSA §3862, sub-§1**, as amended by PL 2019, c. 411, Pt. C, §5 and affected by Pt. D, §3, is further amended to read:

**1. Law enforcement officer's power.** If a law enforcement officer has probable cause to believe that a person may be mentally ill and that due to that condition the person ~~presents a threat of imminent and substantial physical harm to that person or to other persons~~ poses a likelihood of serious harm as defined in section 3801, subsection 4-A, paragraph A, B or C, or if a law enforcement officer knows that a person has an advance health care directive authorizing mental health treatment and the officer has probable cause to believe that the person lacks capacity, the law enforcement officer:

- A. May take the person into protective custody; and
- B. If the law enforcement officer does take the person into protective custody, shall deliver the person immediately for examination by a medical practitioner as provided in section 3862-A or 3863 or, for a person taken into protective custody who has an advance health care directive authorizing mental health treatment, for examination as provided in Title 18-C, section 5-803, subsection 4 to determine the individual's capacity and the existence of conditions specified in the advance health care directive for the directive to be effective.

When formulating probable cause, the law enforcement officer may rely upon information provided by a 3rd-party informant if the officer confirms that the informant has reason to believe, based upon the informant's recent personal observations of or conversations with a person, that the person may be mentally ill and that due to that condition the person

**COMMITTEE AMENDMENT**

1 ~~presents a threat of imminent and substantial physical harm to that person or to other~~  
2 ~~persons~~ poses a likelihood of serious harm as defined in section 3801, subsection 4-A,  
3 paragraph A, B or C.'

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

### 6 SUMMARY

7 This amendment is the majority report. It replaces the bill.

8 This amendment revises the standard for a law enforcement officer to take a person  
9 into protective custody. Current law is based on the law enforcement officer's having  
10 probable cause to believe that a person may be mentally ill and, because of that condition,  
11 presents a threat of imminent and substantial physical harm to that person or to another  
12 person. This amendment changes that standard to the law enforcement officer's having  
13 probable cause to believe the person is mentally ill and, due to that condition, the person  
14 poses a likelihood of serious harm as defined in the Maine Revised Statutes, Title 34-B,  
15 section 3801, subsection 4-A, paragraph A, B or C.

16 Title 34-B, section 3801, subsection 4-A defines "likelihood of serious harm." For the  
17 purposes of this amendment, "likelihood of serious harm" can be established under  
18 subsection 4-A, paragraph A by a substantial risk of physical harm to the person as  
19 manifested by recent threats of, or attempts at, suicide or serious self-inflicted harm; under  
20 paragraph B by a substantial risk of physical harm to other persons as manifested by recent  
21 homicidal or violent behavior or by recent conduct placing others in reasonable fear of  
22 serious physical harm; or under paragraph C by a reasonable certainty that the person will  
23 suffer severe physical or mental harm as manifested by recent behavior demonstrating an  
24 inability to avoid risk or to protect the person adequately from impairment or injury.  
25 Paragraph D does not apply in the situation covered by this amendment.