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Date: (Filing No. S-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
SENATE
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to S.P. 169, L.D. 440, Bill, “An Act To Create a Secure, Therapeutic Mental Health Unit”

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

'Sec. 1. 15 MRSA §101-D, sub-§4, as amended by PL 2013, c. 265, §1, is further amended to read:

4. Commitment for observation. The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in a secure, therapeutic mental health unit established pursuant to Title 34-B, chapter 3, subchapter 6 if placement in the unit is determined by the court to be appropriate for the defendant and for the purpose of observation pursuant to this section. If the Commissioner of Health and Human Services determines that the defendant's placement in that unit is contraindicated, the commissioner shall so advise the court and the court may order that the defendant be placed in a state mental health institute as defined in Title 34-B, section 3801, subsection 9, in an appropriate alternative institution that is appropriate for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection. If the State Forensic Service determines that observation of the defendant will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9 and the defendant is incarcerated, the observation may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation. If the observation is to take place in a correctional facility, the court may not commit the defendant to the custody of the Commissioner of Health and Human Services.

A. If the State Forensic Service determines that observation of the defendant in a secure, therapeutic mental health unit, in a state mental health institute, in an appropriate alternative institution that is appropriate for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially

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1 enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3
2 or 9, the State Forensic Service shall so advise the court. The State Forensic Service
3 may make this determination based upon consultation with the defendant’s attorney
4 and the attorney for the State and the court and upon such other information as it
5 determines appropriate. In addition, the State Forensic Service may include such a
6 determination in a report to the court that recommends further evaluation of the
7 defendant.

8 B. Upon a determination by the State Forensic Service under paragraph A, a court
9 having jurisdiction in a criminal case may commit the defendant to the custody of the
10 Commissioner of Health and Human Services for placement in a secure, therapeutic
11 mental health unit, in a state mental health institute, in an appropriate alternative
12 institution that is appropriate for the care and treatment of people with mental illness
13 or in an appropriate residential program that provides care and treatment for persons
14 who have intellectual disabilities or autism for observation for a period not to exceed
15 60 days. If the State Forensic Service requires additional time for observation, it
16 shall communicate its request and the reasons for that request to the court and to
17 counsel for the parties. The court shall accommodate a party's request to be heard on
18 the issue of whether an extension should be granted and may extend the commitment
19 for up to an additional 90 days. Unless the defendant objects, an order under this
20 paragraph must authorize the secure, therapeutic mental health unit, state mental
21 health institute, institution or residential program where the defendant is placed by
22 the Commissioner of Health and Human Services to provide treatment to the
23 defendant. When further observation of the defendant is determined no longer
24 necessary by the State Forensic Service, the commissioner shall report that
25 determination to the court and the court shall terminate the commitment. If the
26 defendant had been incarcerated prior to the commitment for observation and if,
27 during the period of observation, the defendant presents a substantial risk of causing
28 bodily injury to staff or others that cannot be managed in an appropriate state mental
29 health institute, in an institution for the care and treatment of people with mental
30 illness or in an appropriate residential program that provides care and treatment for
31 persons who have intellectual disabilities or autism, the commissioner ~~may return the~~
32 ~~defendant to the correctional facility~~ shall commit the defendant to a secure,
33 therapeutic mental health unit. The commissioner shall report the risk management
34 issues to the court. Upon receiving the report, the court shall review the report and
35 may enter any order authorized by this section, including termination of the
36 commitment.

37 ~~C. If the court has provided for remand to a correctional facility following the~~
38 ~~commitment under paragraph B, the correctional facility shall execute the remand~~
39 ~~order upon advice from the Commissioner of Health and Human Services that~~
40 ~~commitment is determined no longer necessary.~~

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

43 A. Commit the defendant to the custody of the Commissioner of Health and Human
44 Services for placement in a secure, therapeutic mental health unit established in Title
45 34-B, chapter 3, subchapter 6 if placement in the unit is determined to be appropriate
46 for the defendant by the court. If the Commissioner of Health and Human Services

1 determines the defendant's placement in that unit is contraindicated, the
2 commissioner shall so advise the court and the court may order that the defendant be
3 placed in a state mental health institute as defined in Title 34-B, section 3801,
4 subsection 9 or an appropriate alternative program that is appropriate for observation,
5 care and treatment of people with mental illness or persons with intellectual
6 disabilities or autism. An appropriate program may be in an institution for the care
7 and treatment of people with mental illness, an intermediate care facility for persons
8 who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home,
9 a residential care facility, an assisted living facility, a hospice, a hospital, an intensive
10 outpatient treatment program or any program specifically approved by the court. At
11 the end of 30 days or sooner, and again in the event of recommitment, at the end of
12 60 days and 180 days, the State Forensic Service or other appropriate office of the
13 Department of Health and Human Services shall forward a report to the
14 Commissioner of Health and Human Services relative to the defendant's competence
15 to stand trial and its reasons. The Commissioner of Health and Human Services shall
16 without delay file the report with the court having jurisdiction of the case. The court
17 shall hold a hearing on the question of the defendant's competence to stand trial and
18 receive all relevant testimony bearing on the question. If the State Forensic Service's
19 report or the report of another appropriate office of the Department of Health and
20 Human Services to the court states that the defendant is either now competent or not
21 restorable, the court shall within 30 days hold a hearing. If the court determines that
22 the defendant is not competent to stand trial, but there does exist a substantial
23 probability that the defendant will be competent to stand trial in the foreseeable
24 future, the court shall recommit the defendant to the custody of the Commissioner of
25 Health and Human Services for placement in a secure, therapeutic mental health unit
26 if placement in the unit is determined by the court to be appropriate for the defendant.
27 If the Commissioner of Health and Human Services determines the defendant's
28 placement in that unit is contraindicated, the commissioner shall so advise the court
29 and the court may order that the defendant be placed in a state mental health institute
30 or an appropriate alternative program that is appropriate for observation, care and
31 treatment of people with mental illness or persons with intellectual disabilities or
32 autism. An appropriate program may be in an institution for the care and treatment of
33 people with mental illness, an intermediate care facility for persons who have
34 intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a
35 residential care facility, an assisted living facility, a hospice, a hospital, an intensive
36 outpatient treatment program or any program specifically approved by the court.
37 When a person who has been evaluated on behalf of the court by the State Forensic
38 Service or other appropriate office of the Department of Health and Human Services
39 is committed into the custody of the Commissioner of Health and Human Services
40 under this paragraph, the court shall order that the State Forensic Service or other
41 appropriate office of the Department of Health and Human Services share any
42 information that it has collected or generated with respect to the person with the state
43 mental health institute, institution or residential program in which the person is
44 placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or
45 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the
46 defendant is not competent to stand trial and there does not exist a substantial
47 probability that the defendant can be competent in the foreseeable future, the court
48 shall dismiss all charges against the defendant and, unless the defendant is subject to

1 an undischarged term of imprisonment, order the Commissioner of Health and
2 Human Services to commence proceedings pursuant to Title 34-B, chapter 3,
3 subchapter 4. If the defendant is charged with an offense other than an offense under
4 Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the
5 court determines that the defendant is not competent to stand trial and there does not
6 exist a substantial probability that the defendant can be competent in the foreseeable
7 future, the court shall dismiss all charges against the defendant and, unless the
8 defendant is subject to an undischarged term of imprisonment, notify the appropriate
9 authorities who may institute civil commitment proceedings for the individual. If the
10 defendant is subject to an undischarged term of imprisonment, the court shall order
11 the defendant into execution of that sentence and the correctional facility to which the
12 defendant must be transported shall execute the court's order; or

13 **Sec. 3. 15 MRSA §103, first ¶**, as amended by PL 2011, c. 542, Pt. A, §10, is
14 further amended to read:

15 When a court accepts a negotiated plea of not criminally responsible by reason of
16 insanity or when a defendant is found not criminally responsible by reason of insanity by
17 jury verdict or court finding, the judgment must so state. In those cases the court shall
18 order the person committed to the custody of the Commissioner of Health and Human
19 Services to be placed in a secure, therapeutic mental health unit established pursuant to
20 Title 34-B, chapter 3, subchapter 6, if placement in the unit is determined by the court to
21 be appropriate for the defendant. If the Commissioner of Health and Human Services
22 determines the person's placement in that unit is contraindicated, the commissioner shall
23 so advise the court and the court may order that the defendant be placed in a state mental
24 health institute as defined in Title 34-B, section 3801, subsection 9 or an appropriate
25 alternative institution that is appropriate for the care and treatment of persons with mental
26 illness or in an appropriate residential program that provides care and treatment for
27 persons who have intellectual disabilities or autism for care and treatment. Upon
28 placement in the state mental health institution, appropriate institution or residential
29 program and in the event of transfer from one institution or residential program to another
30 of persons committed under this section, notice of the placement or transfer must be
31 given by the commissioner to the committing court.

32 **Sec. 4. 34-A MRSA §3069-A, sub-§§1 and 2**, as enacted by PL 2013, c. 434,
33 §5, are amended to read:

34 **1. Eligible inmates.** The commissioner may transfer from a jail to a correctional
35 facility or, by agreement with the Commissioner of Health and Human Services, to a
36 secure, therapeutic mental health unit established pursuant to Title 34-B, chapter 3,
37 subchapter 6 an adult inmate who the chief administrative officer of the Riverview
38 Psychiatric Center confirms is eligible for admission to a state mental health institute
39 under Title 34-B, section 3863, but for whom no suitable bed is available, for the purpose
40 of providing to the inmate mental health services in a mental health unit of a correctional
41 facility or a secure, therapeutic mental health unit that provides intensive mental health
42 care and treatment. The commissioner may not transfer pursuant to this section a person
43 who has been found not criminally responsible by reason of insanity. The commissioner
44 may return an inmate transferred pursuant to this subsection back to the sending facility.

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

3 **2. Evaluation.** The commissioner may transfer from a jail to a correctional facility
4 or, by agreement with the Commissioner of Health and Human Services, to a secure,
5 therapeutic mental health unit established pursuant to Title 34-B, chapter 3, subchapter 6
6 an adult inmate whom the court orders to be examined or further evaluated by the State
7 Forensic Service under Title 15, section 101-D, subsection 1, 2, 3 or 9 if the State
8 Forensic Service determines that the jail where the inmate is incarcerated cannot provide
9 an appropriate setting for the examination but that a mental health unit in a correctional
10 facility or a secure, therapeutic mental health unit can provide an appropriate setting for
11 the examination. The commissioner shall return an inmate transferred pursuant to this
12 subsection back to the sending facility upon the completion of the examination ordered,
13 including any further evaluation ordered, unless the commissioner transferred the inmate
14 for another reason in addition to the examination.

15 **Sec. 5. 34-A MRSA §3069-B, sub-§1, ¶B,** as enacted by PL 2013, c. 434, §6, is
16 amended to read:

17 B. There is not sufficient security at a state mental health institute to address the
18 likelihood of serious harm; ~~and~~

19 **Sec. 6. 34-A MRSA §3069-B, sub-§1, ¶B-1** is enacted to read:

20 B-1. There is not a suitable bed available at a secure, therapeutic mental health unit
21 established pursuant to Title 34-B, chapter 3, subchapter 6; and

22 **Sec. 7. 34-B MRSA §1207, sub-§1, ¶B,** as repealed and replaced by PL 2015, c.
23 329, Pt. A, §21, is repealed and the following enacted in its place:

24 B. Information may be disclosed as may be applicable to the department if necessary
25 to carry out the statutory functions of the department; the provisions of chapter 3,
26 subchapter 4 or subchapter 6; the provisions of section 1931; the purposes of section
27 3608; the purposes of Title 5, section 19506; the purposes of United States Public
28 Law 99-319, dealing with the investigatory function of the independent agency
29 designated with advocacy and investigatory functions under United States Public
30 Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and
31 hearing pursuant to Title 15, section 393, subsection 4-A; the provision of therapeutic
32 mental health care by the Department of Health and Human Services pursuant to
33 chapter 3, subchapter 6; or the provision of mental health services by the department
34 pursuant to Title 34-A, section 3031, 3069-A or 3069-B.

35 This paragraph is repealed August 1, 2017;

36 **Sec. 8. 34-B MRSA §1207, sub-§1, ¶B-3,** as amended by PL 2015, c. 329, Pt.
37 A, §22, is further amended to read:

38 B-3. Information may be disclosed if necessary to carry out the statutory functions of
39 the department; the hospitalization provisions of chapter 3, subchapter 4; the
40 provisions of section 1931; the purposes of section 3608; the purposes of Title 5,
41 section 19506; the purposes of United States Public Law 99-319, dealing with the
42 investigatory function of the independent agency designated with advocacy and

1 investigatory functions under United States Public Law 88-164, Title I, Part C or
2 United States Public Law 99-319; ~~or~~ the investigation and hearing pursuant to Title
3 15, section 393, subsection 4-A; or the provision of therapeutic mental health care by
4 the Department of Health and Human Services pursuant to chapter 3, subchapter 6.
5 This paragraph takes effect August 1, 2017;

6 **Sec. 9. 34-B MRSA §3863, sub-§2-A**, as amended by PL 2007, c. 319, §9, is
7 further amended to read:

8 **2-A. Custody agreement.** A state, county or municipal law enforcement agency
9 may meet with representatives of those public and private health practitioners and health
10 care facilities that are willing and qualified to perform the certifying examination required
11 by this section in order to attempt to work out a procedure for the custody of the person
12 who is to be examined while that person is waiting for that examination. Any agreement
13 must be written and signed by and filed with all participating parties. In the event of
14 failure to work out an agreement that is satisfactory to all participating parties, the
15 procedures of section 3862 and this section continue to apply.

16 As part of an agreement the law enforcement officer requesting certification may transfer
17 protective custody of the person for whom the certification is requested to another law
18 enforcement officer, a health officer if that officer agrees or the chief administrative
19 officer of a public or private health practitioner or health facility or the chief
20 administrative officer's designee. Any arrangement of this sort must be part of the written
21 agreement between the law enforcement agency and the health practitioner or health care
22 facility. In the event of a transfer, the law enforcement officer seeking the transfer shall
23 provide the written application required by this section.

24 ~~A~~ Except for placement in a secure, therapeutic mental health unit established pursuant to
25 chapter 3, subchapter 6, a person with mental illness may not be detained or confined in
26 any jail or local correctional or detention facility, whether pursuant to the procedures
27 described in section 3862, pursuant to a custody agreement or under any other
28 circumstances, unless that person is being lawfully detained in relation to or is serving a
29 sentence for commission of a crime.

30 **Sec. 10. 34-B MRSA c. 3, sub-c. 6** is enacted to read:

31 **SUBCHAPTER 6**

32 **SECURE, THERAPEUTIC MENTAL HEALTH UNIT**

33 **§3910. Secure, therapeutic mental health unit**

34 The department shall establish one or more secure, therapeutic mental health units in
35 accordance with this subchapter.

36 **§3911. Definitions**

37 As used in this subchapter, unless the context otherwise indicates, the following
38 terms have the following meanings.

1 **1. Eligible person or person.** "Eligible person" or "person" means a person who
2 meets the criteria to be ordered to a secure, therapeutic mental health unit by a court
3 pursuant to Title 15, section 101-D, subsection 4; section 101-D, subsection 5, paragraph
4 A; or section 103 or transferred from a jail pursuant to Title 34-A, section 3069-A,
5 subsection 1 or 2.

6 **2. Secure, therapeutic mental health unit or unit.** "Secure, therapeutic mental
7 health unit" or "unit" means the secure, therapeutic mental health unit established
8 pursuant to section 3912.

9 **§3912. Unit establishment**

10 The department shall enter into an agreement with one or more sheriffs of one or
11 more county jails or a regional jail to establish one or more secure, therapeutic mental
12 health units within the county jail or regional jail for the purposes of providing
13 observation, mental health evaluation for the purposes of determining competency or
14 criminal responsibility, risk assessments and therapeutic mental health care for eligible
15 persons.

16 **1. Staffing.** The department shall provide:

17 A. Full staffing for a unit for the purposes of operation of the unit, observation,
18 evaluation, treatment, risk assessment, therapeutic care and health care of persons in
19 the unit, security for the unit and transportation of persons to and from the unit. Staff
20 must be dedicated to the unit and trained to provide health care and mental health
21 treatment and care and patient management and security in a mental health treatment
22 environment. The agreement between the department and a sheriff must require staff
23 training appropriate to the unit and the persons placed in the unit by court order.
24 Staff training must be provided by a nongovernmental advocacy organization for
25 persons with mental illness or by the private entity that contracts to provide
26 therapeutic mental health care under paragraph B; and

27 B. Therapeutic mental health care that meets or exceeds the accreditation or quality
28 standards for mental health services as established by a national organization
29 involved with accreditation for mental health services in a facility that provides the
30 services in paragraph A. The department shall contract with a private entity to
31 provide therapeutic mental health care.

32 **2. Sight and sound separation.** The persons in a unit must be separated by sight
33 and sound from the general jail population at all times.

34 **3. Admittance to a unit.** An eligible person who is ordered to a unit by a court
35 under Title 15, section 101-D or 103 must be placed into the unit unless there is not a
36 suitable bed in the unit available for the person.

37 **4. Federal certification.** The department and the county sheriff for the county in
38 which a unit is located shall work to obtain and maintain for the unit any federal
39 certification that is required for the unit or that is available on a voluntary basis and
40 through which federal funding may be secured for the unit.

41 **Sec. 11. Report of Department of Health and Human Services.** By January
42 15, 2017, the Department of Health and Human Services, after consultation with the

1 county sheriff of a county in which a secure, therapeutic mental health unit established
2 pursuant to the Maine Revised Statutes, Title 34-B, chapter 3, subchapter 6 is located,
3 shall submit for each unit a report to the joint standing committee of the Legislature
4 having jurisdiction over criminal justice matters regarding the operations of the unit. The
5 report must include the following information regarding the unit: the average daily
6 population of the unit, the average daily staffing patterns, the average length of stay in the
7 unit, a description of services provided and the number of persons placed in the unit. The
8 report must also include recommendations regarding the reallocation of resources for the
9 unit; the design of the unit; the provisions of forensic services at the Riverview
10 Psychiatric Center and the unit; and the transfer provisions of Title 34-A, sections 3069,
11 3069-A and 3069-B.'

12 SUMMARY

13 This amendment is the minority report of the committee. The amendment does the
14 following.

15 1. It retains the provisions of the bill that establish a secure, therapeutic mental health
16 unit for defendants undergoing court-ordered assessments to determine their competency
17 to stand trial or their criminal culpability, to provide therapeutic care for forensic patients
18 and to provide care for jail inmates who meet the criteria for involuntary civil
19 commitment under the Maine Revised Statutes, Title 34-B, chapter 3. The amendment
20 directs the Department of Health and Human Services to establish one or more units.

21 2. It adds to the laws governing the placement process a requirement for a
22 determination by a court that a secure, therapeutic mental health unit is appropriate for
23 the defendant.

24 3. It assigns responsibility for operation of a secure, therapeutic mental health unit to
25 the Commissioner of Health and Human Services and allows contracts with multiple jails
26 for multiple secure, therapeutic mental health units. It specifies that staffing must be
27 dedicated to the units, that staff must be trained, who may provide the training, that a unit
28 must be separated from the general jail population at all times and that the Department of
29 Health and Human Services and the county sheriff for the county in which a unit is
30 located must work to obtain and maintain any federal certification that is required or
31 available and through which funding may be secured for the unit.

32 4. It directs the Department of Health and Human Services, by January 15, 2017,
33 after consultation with the county sheriff of a county in which a secure, therapeutic
34 mental health unit is located, to submit a report to the joint standing committee of the
35 Legislature having jurisdiction over criminal justice matters regarding the operations of
36 the units. The report must include data on population, length of stay, staffing and
37 services. The report must also include recommendations regarding the reallocation of
38 resources for the units, the designs of the units, the provisions of forensic services at the
39 Riverview Psychiatric Center and the units and the transfer provisions of Title 34-A,
40 sections 3069, 3069-A and 3069-B.