

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-FOUR

—
H.P. 1308 - L.D. 2046

An Act Regarding the Placement of Certain Defendants Found Incompetent to Stand Trial

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

Sec. 1. 34-A MRSA §3069-D is enacted to read:

§3069-D. Placement of defendants found incompetent to stand trial

1. Acceptance of placement. The commissioner may accept the placement of an adult defendant, referred to in this section as "the defendant," in a mental health unit of a correctional facility whom a court, after hearing, finds by clear and convincing evidence is incompetent to stand trial and whom the court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, subsection 5 if, in addition to the findings required under Title 15, section 101-D, subsection 5, the court finds that:

A. The defendant is at risk of causing serious harm by engaging in interpersonal violence that is not primarily driven by symptoms of a major mental illness or other disability;

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

C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

2. Treatment; transfer. The department shall provide services and treatment consistent with the requirements of Title 15, section 101-D, subsection 5 to a defendant accepted for treatment in a mental health unit of a correctional facility under subsection 1. The department may not transfer to another unit of a correctional facility a defendant accepted for treatment in a mental health unit of a correctional facility under subsection 1.

3. Termination of placement. Termination of placement is governed by this subsection.

A. The commissioner may terminate the placement of a defendant accepted pursuant to this section if the commissioner determines that the likelihood of serious harm posed

by the defendant has decreased or the security at a state mental health institute has increased or for any other reason.

B. At any time after 90 days of placement in a mental health unit of a correctional facility, except not within 60 days of resolution of a prior petition under this paragraph, the defendant may petition the court for return to placement in a less restrictive setting on the grounds that the criteria for placement under subsection 1 no longer exist. If a petition is filed under this paragraph, the court shall hold a hearing and issue a decision maintaining or terminating the placement.

4. Disclosure of information. With respect to a defendant who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to accepting placement of the defendant under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

5. Application of other laws. All other applicable provisions of law governing defendants found incompetent to stand trial apply to defendants accepted for placement under this section.

6. Repeal. This section is repealed November 1, 2027.

Sec. 2. Stakeholder group; report. The Department of Health and Human Services shall convene a stakeholder group to examine issues related to certain defendants found incompetent to stand trial who are placed in a mental health unit of a Department of Corrections facility in accordance with the Maine Revised Statutes, Title 34-A, section 3069-C. The stakeholder group must develop a process and procedure for safely and effectively placing certain defendants found incompetent to stand trial, who pose a health or safety risk to Department of Health and Human Services personnel and patients, in the least restrictive setting possible. The process and procedure developed must ensure that a defendant's due process rights are maintained and protected. The stakeholder group must also determine and identify any resources required to establish this process and procedure. The membership of the stakeholder group must include, at a minimum, the Commissioner of Corrections or the commissioner's designee, a criminal defense attorney licensed in this State and a representative of a statewide organization that advocates for civil liberties.

On or before January 1, 2027, the Department of Health and Human Services shall submit to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters a report outlining the process and procedures developed, including recommended legislation. After reviewing the report, the committee may report out legislation relating to the report to the 133rd Legislature in 2027.

Sec. 3. Review; report. By January 1, 2027, the Department of Health and Human Services and the Department of Corrections shall jointly submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the number, circumstances and outcomes of the placement of defendants found incompetent to stand trial and placed in a mental health unit of a correctional facility pursuant to the Maine Revised Statutes, Title 34-A, section 3069-C. The report must include the number of defendants transferred to a mental health unit, the average length of stay, the number of defendants transferred to other facilities, which must be organized by type of facility, the impact on the mental health and criminal justice systems and any other relevant data. After reviewing the report, the committee may report

out legislation to the 133rd Legislature in 2027 to address issues raised by the report and to repeal or amend the sunset provision in Title 34-A, section 3069-C, subsection 6.