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Testimony of Representative Sophie Warren Presenting
L.D. 428, An Act Regarding the State Forensic Service
Before the Joint Standing Committee on Criminal Justice and Public Safety

Good afternoon, Chair Beebe-Center, Chair Hasenfus and respected colleagues of the Joint Standing Committee on Criminal Justice and Public Safety. Thank you for the opportunity to present L.D. 428, An Act Regarding the State Forensic Service.

This bill presents a simple solution to a simple but frustrating problem that continues to have real and painful consequences for some of the most vulnerable individuals in our justice system.

This proposal came to me directly from an attorney working within the public defense system. This attorney recently represented an indigent, incarcerated client who was ultimately found to be incompetent to stand trial due to co-occurring acute mental health conditions, conditions that left the client unable to understand the nature or consequences of his actions. Despite the clarity provided by the forensic evaluation, the client remained in jail for more than **two weeks longer than necessary** due solely to delays in receiving the State Forensic Service report by mail.

One particularly heartbreaking aspect of this case is that the client, had he been competent, and been competent to plead guilty, would have served no more than two weeks in total for the charge he faced. Instead, he ended up incarcerated for **more than double that time** not because of anything he did, but because he could not appreciate the reality of his actions, and the legal system was forced to wait on the postal service to recognize and respond appropriately to his condition.

Currently, once a report is generated by a State Forensic Service evaluator and reviewed, it is mailed physically via regular U.S. mail to the judge or justice who ordered the evaluation. From there, it must be mailed again to counsel or picked up at the clerk's office. As we are all too aware, the U.S. Postal Service has faced ongoing service delays in recent years, and this bottleneck in the process unnecessarily slows the delivery of vital information.

LD 428 offers a clear, modern solution. It would require that the SFS transmit its reports to the court electronically, allowing the court to share them electronically with counsel. To be clear, I have spoken with attorneys who have received notice of a report being sent by email, and

one attorney who received a report by email alongside an email to a court. A hard copy would still be mailed for recordkeeping purposes, but the bill ensures that email becomes the standard method for timely delivery. This would eliminate unnecessary wait times and prevent the kind of outcome I just described where a vulnerable individual remains incarcerated longer than necessary simply because a document is stuck in transit. This would of course provide for additional savings in our incarceration system for these such individuals, as well as the additional fees and labor costs on our public legal defense system.

This is a small but meaningful change. It aligns with both technological capability and common sense. It respects due process, protects individuals with serious mental health needs, and ensures that our system can respond to mental health evaluations with the urgency they demand.

I was fortunate to hear back from a representative for the SFS at the end of last week. I want to express my understanding they have some technical concerns with the bill as-written. I would be more than happy to work with a representative for the SFS, our judicial branch, your committee analyst, and members of this committee to facilitate a remedy that would address the needs outlined in this bill consistent with the nuances of our courts.

For all of these reasons, I respectfully urge this Committee to vote Ought to Pass on LD 428. Thank you again for your time, consideration and attention to this important matter. I would be happy to answer any questions.

New Title: An Act to Require Electronic Notice of Mental Examination Records

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

Sec. 1. 15 MRSA §101-C, sub-§6 is enacted to read:

6. Method of production. Any record sent by regular mail to person or entity pursuant to subsection 1 must also be sent by electronic means, if feasible, that same day as the record is mailed to that same person or entity.

Sec. 2. 15 MRSA §101-D, sub-§1, paragraph A is amended to read:

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency to proceed to the court. The State Forensic Service shall send the report to the court by electronic means and regular mail. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney by electronic means and regular mail and to the attorney for the State. Any report sent by regular mail pursuant to this paragraph must also be sent by electronic means on that same day as the record is mailed.

Sec. 3. 15 MRSA §101-D, sub-§1, paragraph C is amended to read:

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The State Forensic Service shall send any further report to the court by electronic means and regular mail. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State by electronic means and regular mail. Any record sent by regular mail pursuant to this paragraph must also be sent by electronic means on that same day as the record is mailed.

Sec. 4. 15 MRSA §101-D, sub-§2, ¶A, sub-¶1 is amended to read:

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. The State Forensic Service shall send the report to the court by electronic means and regular mail. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination. Any report sent by regular mail pursuant to this subparagraph must also be sent by electronic means on that same day as the record is mailed.

Sec. 5. 15 MRSA §101-D, sub-§2, ¶A, sub-¶2 is amended to read:

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney by electronic means and regular mail and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State. Any report sent by regular mail pursuant to this subparagraph must also be sent by electronic means on that same day as the record is mailed.

Sec. 6. 15 MRSA §101-D, sub-§2, ¶D is amended to read:

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The State Forensic Service shall send any further report to the court by electronic means and regular mail. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney by electronic means and regular mail and, unless the defendant had objected to the order for examination, to the attorney for the State. Any report sent by regular mail pursuant to this paragraph must also be sent by electronic means on that same day as the record is mailed.

Sec. 7. 15 MRSA §101-D, sub-§3, ¶A is amended to read:

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it

pertains to those issues. The State Forensic Service shall send this report to the court by electronic means and regular mail. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney by electronic means and regular mail and to the attorney for the State. Any report sent by regular mail pursuant to this paragraph must also be sent by electronic means on that same day as the record is mailed.

SUMMARY

This amendment replaces the bill and amends Maine Revised Statutes Title 15, section 101-C and Title 15, section 101-D by requiring any reports produced by the State Forensic Service under these sections are sent to the court by electronic means and regular mail. The court must also provide the defendant or the defendant's attorney and the attorney for the state these records by electronic means and regular mail. Any report sent by regular mail under these sections must be sent by electronic means on the same day the record is mailed.