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TESTIMONY OF

SAM PRAWER, DIRECTOR OF GOVERNMENT AFFAIRS MAINE DEPARTMENT OF CORRECTIONS

April 14, 2025

In Opposition to:

LD 1416, An Act to Require the Department of Health and Human Services to Immediately Take Custody of Persons Sentenced to Mental Health Facilities That May Not Include County or Regional Jails

Senator Ingwersen, Representative Meyer and distinguished members of the Joint Standing Committee on Health and Human Services, I am Sam Prawer, Director of Government Affairs at the Maine Department of Corrections (DOC) providing testimony today in opposition to LD 1416, An Act to Require the Department of Health and Human Services to Immediately Take Custody of Persons Sentenced to Mental Health Facilities That May Not Include County or Regional Jails.

Maine Department of Corrections' interest in this proposal stems primarily from the consequences of not allowing a defendant to be returned to a county jail after having been removed from the jail for observation by the State Forensic Service. While the department can understand the desire that such defendants not be returned to a county jail, our team anticipates that this will result in a substantial increase in requests that such individuals be transferred to the custody of the Department of Corrections. The reasons for this concern are explained below.

Section 1 of the bill, amending the provisions of 15 MRSA § 101-D(4)(B), applies in situations where a defendant is committed to the Department of Health and Human Services (DHHS) for placement in a mental health facility so that they may be better observed by the State Forensic Service in order for it to perform an evaluation needed in a criminal case. Under current law, if the defendant had been incarcerated prior to the commitment to DHHS and that person presents a substantial risk of causing bodily injury to the mental health facility's staff or others during the period of observation, the Commissioner of Health and Human Services may return the defendant to the place where they had been incarcerated prior to the commitment to DHHS. The amendment under Section 1 of the bill would prohibit that when the place of prior incarceration was a jail - which is generally the case since such defendants are typically pre-trial.

In circumstances where a defendant would be too great a risk to remain in a mental health facility and is prohibited from returning to the jail by statute, DHHS would have to turn to the Department of Corrections to take custody of these individuals. The relevant legal authority for this process exists under 34-A MRSA § 3069-B. Additionally, Section 2 of the bill prohibits a defendant found incompetent to stand trial from returning to the jail in similar circumstances, leaving DOC placement as the only viable option in the state for defendants who would be too great a risk to remain in a mental health facility. The relevant legal authority for that process exists under 34-A MRSA § 3069-D.

When transferred to DOC custody under these provisions, individuals reside in the Intensive Mental Health Unit (IMHU) at the Maine State Prison. The IMHU is a specialized unit designed to provide appropriate psychiatric care with a level of security that cannot otherwise be provided in a hospital setting. Our IMHU team utilizes a multidisciplinary approach that is consistent with the kind of psychiatric care provided in a hospital, utilizing individualized and tailored interventions to address reported competence-related deficits. Staff who work in the IMHU (Correctional Acuity Specialists) have



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specialized training to provide appropriate levels of care and security for this particular population. The IMHU is the only qualifying mental health unit of a correctional facility under the relevant statutory provisions – meaning that a defendant transferred to DOC custody under these provisions may not be placed in any other unit or correctional facility.

The department's primary concern is that LD 1416 will substantially increase the number of requests to transfer such persons to DOC custody, and because there will be nowhere else in the state that can safely house the individuals for whom these requests are submitted, there will be an increased pressure on DOC to accept them, even though acceptance of such defendants is, by statute, at the discretion of the Commissioner of Corrections. This situation will put a significant strain on DOC resources such as staff, mental health services, and facility management. While the department currently has the resources it needs to properly manage the IMHU and deliver an exceptional level of care, our team simply could not take on responsibility for every defendant committed to DHHS custody under 15 MRSA §§ 101-D(4)(B) and 5(A) that would have otherwise been returned to a jail. Even if the department were provided resources to hire additional staff and expand the scope of our contract with our healthcare provider, the IMHU has limited bed space and infrastructure and we would require substantial resources to expand the facility space where such individuals could be housed (likely requiring the construction of at least one additional IMHU).

The Department of Corrections is still working to evaluate the full scope of the fiscal impact that would result from this proposal, and although we cannot provide an approximate number at this time, it's important to understand that the DOC simply cannot absorb the added placements that would result from this proposal. For these reasons, the department respectfully presents this testimony in opposition to this proposal.

This concludes my testimony.

I am happy to answer any questions.

Sam Prawer
Director of Government Affairs
Maine Department of Corrections