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Testimony of the Dorothea Dix Psychiatric Center and
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Maine Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

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*

Hearing Date: April 14, 2025

Senator Ingwersen, Representative Meyer, and members of the Joint Standing Committee on Health and Human Services. My name is Dr. Dan Potenza, and I serve as the Medical Director of the Dorothea Dix Psychiatric Center in Bangor, one of two psychiatric hospitals operated by the Maine Department of Health and Human Services (DHHS). I am here today to testify 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*.

This bill proposes amendments to 15 MRSA §§101-D(4)(B) and -D(5)(B) that would require the “immediate placement” of adult defendants who are ordered to the Commissioner of DHHS’s custody pursuant to a “commitment for observation” or “incompetent to stand trial” order. The bill expressly excludes county or regional jails as placement options. For individuals who are placed pursuant to a “commitment for observation” order under § 101-D(B)(4), and who then present a substantial risk of causing bodily injury to staff or other persons that cannot be managed at the placement, the bill further amends the statute to change the location to which the individual may return. Instead of returning the individual to the correctional facility where they were located prior to placement, the Commissioner may return the individual to a state correctional facility. Finally, the bill amends 15 MRSA § 101-D(10) to specify that the transfer of an individual placed in the Commissioner’s custody under -D(4) and -D(5) must take place within 30 days of the order being transmitted to the State Forensic Service absent an extraordinary circumstance.

By way of background, 15 MRSA § 101-D governs mental examinations of adult defendants. Pending certain conditions, a court may order an individual – prior to trial, adjudication, or conviction – to be committed to the Commissioner’s custody for placement pursuant to a “commitment for observation” or “incompetent to stand trial” order. Upon receipt of such an order for observation or restoration purposes, the Commissioner carefully assesses which placement options are suitable for the particular individual. This placement often, but not always, is made at one of the two state psychiatric hospitals: Dorothea Dix Psychiatric Center (DDPC) and Riverview Psychiatric Center (RPC). Other placement options may include facilities identified by DHHS’s Office of Behavioral Health or Office of Aging and Disability Services.

The court's order is not a sentence to a mental health facility as suggested in the bill title. Nor does the order, or current statute, authorize the Commissioner to make placement decisions at county or regional jails.

The amended language in this bill to require the "immediate" placement of individuals committed to the Commissioner's custody under this statute poses significant concerns for the two state psychiatric hospitals. Both psychiatric hospitals, as well as other identified Office of Behavioral Health and Office of Aging and Disability Services placements, would be challenged to accept individuals immediately upon entry of a court order. Placement of any person at a state psychiatric hospital involves a complex admission process which includes an assessment of person's needs, the hospital's capacity to treat those needs, and the ability to do so in a manner that is both safe for patients and staff. For individuals subject to commitment orders under 15 MRSA §§ 101-D(4) and -D(5), the two state hospitals must ensure a psychiatric hospital is the most appropriate and available setting for care and treatment of the individual, and this is done by reviewing documentation from the individual's current setting (which could be a county or regional jail), assessing current clinical presentation, and ensuring the individual has complied with critical medical clearance to safely be received at the hospital. By requiring an "immediate" placement, the hospitals would not have the opportunity to ensure that individuals are being placed appropriately consistent with their medical needs. Further, the immediate placement language of this bill creates safety risks as it fails to consider the accepting facility's capacity (including staffing, bed availability, overall patient acuity, etc.) for the safe and effective care and treatment of the individual. Notably, individuals subject to orders under 15 MRSA §§ 101-D(4) and -D(5) are sometimes facing elevated and violent charges. If this bill passes, both RPC and DPPC will potentially risk endangering the lives of patients and staff if the Commissioner is required to immediately place individuals at the state hospitals without careful consideration and planning around the hospitals' security capabilities.

This bill would also have a negative impact on the ability of the state psychiatric hospitals to provide essential treatment and care to patients in need of hospitalization pursuant to the hospitalization procedures outlined in Title 34-B. The immediate placement language in this bill would result in both psychiatric hospitals displacing Title 34-B admissions, resulting in individuals in need of psychiatric inpatient treatment lingering in emergency departments longer than intended, stressing the already limited community resources. Over time, RPC and DDPC would be reduced or have a completely diminished capacity to respond to referrals by the nonstate community hospitals seeking to transfer patients with more complex needs to a state hospital, and ultimately reducing state hospital services could impact CMS certification and our ability to draw down federal funds.

Another concern with the bill is the language that would prevent the hospitals from returning an individual subject to a "commitment for observation" order to the correctional facility where the individual was previously incarcerated, when the individual presents a substantial risk of harm that cannot safely be managed at DDPC or RPC. Under current law, the hospitals are judicious when exercising the Commissioner's option to return an individual to the prior location of incarceration which is most often the county jail. Changes to this bill would limit this option to "returning" the individual to "a state correctional facility" (e.g., the Maine State Prison) regardless of whether the individual was previously incarcerated there. The hospitals are concerned with the viability of this option, which means the hospitals could be put in an untenable position of having an unsafe individual remain at the hospital. The Department of Corrections has jurisdiction over "state correctional facilities" and can speak about what laws

and policies would govern when a pre-trial defendant may be placed at a state correctional facility versus a county or regional jail.

As for the proposed change to 15 MRSA § 101-D(10), the Committee should be aware that the DHHS regularly reviews and prioritizes all “commitment for observation” and “incompetent to stand trial” orders placing pre-trial defendants in the Commissioner’s custody for placement. When it is determined that placement of the individual will be at DDPC or RPC, both hospitals strive to, and most often meet, the 30-day requirement without any notification to the court of extraordinary circumstances.

Thank you for your time and attention. I would be happy to answer any questions you may have and to make myself available for questions at the work session.