

**OFFICE OF POLICY AND LEGAL ANALYSIS  
BILL ANALYSIS**

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**TO:** Members, Joint Standing Committee on Criminal Justice and Public Safety

**FROM:** Jane Orbeton, Legislative Analyst

**DATE:** April 10, 2021

**LD:** 769, An Act To Increase the Availability of Mental Health Services for a Defendant Who Has Been Found Incompetent To Stand Trial

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**Summary**

This bill authorizes the Commissioner of Corrections to accept the placement of an adult defendant in the intensive mental health unit (IMHU) at the Maine State Prison when that person has been found incompetent to stand trial and committed to the custody of the Commissioner of Health and Human Services for mental health treatment to restore competency provided certain conditions are met.

**Standard for competency**

The standard for competency to stand trial, was most recently set forth in *State v. Travis Gerrier*, 2018 ME 160, by the Maine Supreme Judicial Court. In *State v. Travis Gerrier* the Supreme Court traced the law on competency back to Article 1, section 6 of the Maine Constitution, which reads “In all criminal prosecutions, the accused shall have a right to be heard by himself and his counsel, or either, at the election of the accused.” The Court then explained “In order to safeguard this constitutional right, the defendant must be capable of understanding the nature and object of the charges and proceedings against him, of comprehending his own condition in reference thereto, and of conducting in cooperation with his counsel his defense in a rational and reasonable manner. *Thursby v. State*, 223 A.2d 62, 66 (Me. 1966)

**Treatment in the intensive mental health unit at Maine State Prison**

Title 34-A controls the authority of the Commissioner of DOC to accept persons into the intensive mental health unit (IMHU) at the State Prison. Persons who may be accepted include:

1. A defendant from a jail or correctional facility who meets the standards for involuntary commitment but for whom no suitable bed is available at Riverview Psychiatric Center (34-A MRSA §3069-A); and
2. A defendant who has been ordered committed to the custody of the Commissioner of DHHS for examination for competency who poses a likelihood of serious harm to others, and security at Riverview is insufficient, and there is no less restrictive alternative placement (34-A §3069-B).

This bill proposes to authorize another type of person to be accepted at the IMHU: A person (1) who has a mental illness, who has been found incompetent and has been ordered committed to the custody of the Commissioner of DHHS for treatment to restore competency and with regard

to whom it is more probable than not that the person poses a likelihood of serious harm to others as a result of mental illness, and (2) security at Riverview is insufficient, and (3) there is no less restrictive alternative placement (proposed new 34-A §3069-C).

A person who has been found by a court not criminally responsible by reason of insanity may not be accepted at the IMHU.

## **Testimony**

### **Proponents:**

1. Dr. Debra Baeder, Clinical Director of the Office of Behavioral Health in DHHS, spoke in support of the bill and provided written testimony. Dr. Baeder stressed that some persons found incompetent to stand trial exhibit highly aggressive and predatory violence toward staff and patients and are very difficult to clinically manage and clinically treat. Their presence in Riverview may require the closing of other beds, thereby decreasing capacity at Riverview. The option is a locked room would be in violation of hospital licensing standards. DHHS is asking that the Commissioner of DOC have authority to accept into the IMHU persons being treated to restore competency, then transferring the person back to Riverview when they can be safely reintegrated into Riverview.
3. Dr. Matthew Davis, clinical director at Riverview, and Rodney Bouffard, superintendent at Riverview, testified and submitted written testimony. Dr. David and Superintendent Bouffard stated that their support is founded on providing access to care and patient and staff safety. Dr. Davis testified that for some persons being treated to restore competency the IMHU better fits their needs due to staffing ratios, the physical environment, the Riverview hospital licensing standards, and the ability to provide at the IMHU a highly structured environment. Dr. Davis and Superintendent Bouffard argued for authority for the Commissioner of DOC to accept for treatment in the IMHU patients for restoration to competency treatment who exhibit highly dangerous behavior, particularly those prone to predatory/instrumental aggression and violence.
4. District Attorney Marianne Lynch, representing the Maine Prosecutors Association, spoke in support of the bill but only if the person being treated at the IMHU to restore competency is not housed with the general prison population. DA Lynch mentioned the struggles that the State has had providing sufficient capacity for mental health treatment.
5. Hannah Longley, representing the NAMI Maine, submitted testimony in support of the bill, speaking of the importance of mental health treatment services.

### **Opponents:**

1. Tina Nadeau, representing the Maine Association of Criminal Defense Lawyers (MACDL) testified and submitted written testimony in opposition. MACDL questions why the State does not seek to solve the problem of treating person who have mental illness and who are dangerous by establishing a facility or branch of Riverview. MACDL argues that persons who are incompetent to stand trial should be getting mental health services in a hospital not held in prison.
2. Simonne Maline, Executive Director of the Consumer Council System of Maine, spoke against the bill and provided written testimony. Executive Director Maline testified in support of providing a new treatment unit at Riverview to increase capacity and described how Lower Saco Unit could be renovated to better serve patients. Executive Director Maline brought to the

attention of the committee LD 1577, the 2016 bill that resembled this bill and that was not passed.

3. Michael Kebede, representing the ACLU, spoke against the bill and provided written testimony. Mr. Kebede stated that transferring to the IMHU people receiving mental health treatment to restore competency would threaten constitutional rights and undermine the fundamental principles of the criminal justice system.

#### **Neither for nor against:**

1. Kevin Vovoydich, representing Disability Rights Maine, spoke neither for nor against the bill and submitted written testimony. With regard to the condition necessary for placement, that it is more probable than not that the person poses a likelihood of serious harm to others as a result of mental illness, Mr. Vovoydich stressed that “more probable than not” is an incorrect standard to apply and that the standard should be “clear and convincing evidence.” Mr. Vovoydich noted the duty of the State to provide restoration mental health treatment to persons found incompetent to stand trial and asked, if the committee moves this proposal forward, to proceed with extreme caution, imposing a report back after a few years and possibly an automatic sunset.

2. John Pelletier, representing the Criminal Law advisory Commission (CLAC), submitted testimony neither for nor against the bill. Mr. Pelletier noted that some CLAC members favor the bill as a way to provide mental health services to persons found incompetent to stand trial who are languishing in jails for weeks or months before a psychiatric treatment bed becomes available. Thus the bill reduces or eliminates inappropriate jail stays. Mr. Pelletier also mentioned CLAC members who oppose the bill since for a person found incompetent to stand trial the State lacks authority to impose any punishment and transfer to a prison is inappropriate. These CLAC members suggest that the State bears the responsibility to expand mental health treatment resources to add capacity for hospital level treatment.

#### **Notes/Issues**

**The conditions for IMHU placement** for a person to be examined for competency under current law and the conditions for treatment to restore competency under the bill differ.

- **Examination to determine competency:** In 34-A, §3069-B the court must find that the person who is to be examined for competency has a mental illness *and as a result poses a likelihood of serious harm to others*; (2) that the security at the state mental health institute is insufficient to address the likelihood of serious harm; and (3) there is no less restrictive alternative to placement in the IMHU.
- **Treatment to restore competency:** In proposed 34-A, §3069-C the court must find that: (1) the person has a mental illness *and as a result it is more probable than not that the person poses a likelihood of serious harm to others*; (2) that the security at the state mental health institute is insufficient to address the likelihood of serious harm; and (3) there is no less restrictive alternative to placement in the IMHU.

#### **INFORMATION REQUESTED:**

1. Information was requested on the legal definition of incompetent to stand trial. See above.
2. Information was requested on the training provided to correctional officers that is relevant to the correctional officer’s work with a person with mental illness