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Testimony of the Office of Behavioral Health
Department of Health and Human Services

Before the Joint Standing Committee on Criminal Justice and Public Safety

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

Sponsored by: Representative Holly Stover
Hearing Date: April 9, 2021

Senator Deschambault, Representative Warren and Members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Dr. Debbie Baeder, Board Certified Forensic Psychologist and Clinical Director of the Office of Behavioral Health (OBH) in the Department of Health and Human Services. I am here today to introduce and speak in strong support of LD 769, An Act To Increase the Availability of Mental Health Services for a Defendant Who Has Been Found Incompetent To Stand Trial. The Department thanks Representative Stover for introducing this bill on our behalf.

LD 769 seeks to authorize the Commissioner of the Department of Corrections (DOC) to accept placement of an adult defendant in a mental health unit of a correctional facility when prior to trial the adult defendant has been found Incompetent to Stand Trial (IST), is committed to the custody of the Department of Health and Human Services, and that defendant's behavior is deemed too dangerous to safely manage at one of the State's psychiatric hospitals.

Defendants found IST who exhibit highly aggressive and predatory violence to staff and patients at Riverview Psychiatric Center are very difficult to behaviorally manage and therefore clinically treat. Given their relatively long lengths of stay and the high staffing requirements to safely manage their care, admitting these defendants often places a hold on other forensic and civil clients needing an admission to Riverview and/or Court-Ordered to be admitted. The ripple effects of admitting defendants with highly dangerous behaviors to Riverview include greater at-risk patient mixes, staff shortages due to injury, civil unit staffing disruptions, and Special Care Unit (SCU) bed vacancies due to IST clients with highly dangerous behaviors needing intensive staffing and low patient interaction. The ripple effects within the larger forensic system include longer wait times in jail for defendants awaiting an inpatient admission and longer times for legal case resolutions.

The number of defendants found IST and referred to state psychiatric facilities has grown somewhat since 2015, but generally represent a relatively small number of defendants when compared with all defendants for whom the competence question is raised. For example, 57 defendants were found IST in 2018. The average waiting time, almost always in jail, for a defendant found IST prior to inpatient hospital admission was approximately 16 days (pre-COVID). That wait time has increased significantly since the beginning of the pandemic.

Between 2015 and 2018, there were 345 documented incidents of verbal and/or physical aggression against either staff or peers, property destruction, self-injury, and attempted elopement perpetrated by 40 separate IST patients. That relatively low number of IST patients highlights the fact that a relatively small number of patients with dangerous behaviors can cause significant harm.

A significant gap in our current competence restoration services is the inability to both keep the inpatient admissions pipeline open *and* safely manage defendants with highly dangerous behaviors. Several other states have allowed defendants with highly dangerous behaviors found IST to be restored to competence either in jail, or on a specialty mental health/competence restoration unit within an incarcerated setting. For example, a jail-based, specialized competence restoration program in Atlanta, Georgia functions much like the operation of an inpatient forensic unit in a state psychiatric hospital. It was reported that in the seven years of their study period, the rate of dangerous incidents was much lower than rates reported by the state forensic hospital.

The Intensive Mental Health Unit (IMHU) at the Maine State Prison utilizes an approach which is consistent with a multidisciplinary hospital approach in terms of psychiatric care, a focus on recovery, individualized interventions, and tailored interventions to address the reported competence-related deficits. It is a unit separated from the general population and staffed by a contracted full-time team of mental health professionals. Specifically, mental health treatment at the IMHU aligns with the care provided at Riverview in that they employ a multidisciplinary team of providers including a psychiatrist, 2 psychologists, a nurse, a Unit Coordinator, behavioral health technicians, and an Intensive Case Manager to facilitate community reintegration. Individual and group treatment modalities are offered on a weekly basis. There is undeniably a higher level of security and specially trained correctional officers (e.g. mental health training, de-escalation training) are placed on the unit as well. Functionally, this separate Unit operates more similarly to a psychiatric unit than it does to a prison.

Currently, the IMHU statute prohibits placing defendants found IST at the IMHU. This bill would fill the gap in competence restoration services in Maine by allowing for the placement of pretrial defendants found IST with behaviors deemed too dangerous for placement at the state hospitals to be placed at the IMHU for competence restoration and treatment. This is envisioned as a multi-directional option, where individuals with behaviors that cannot be safely managed at Riverview can receive care and competence restoration at the IMHU until their behaviors are addressed to a point at which they can be safely reintegrated into the milieu at Riverview. It is proposed that placing an IST defendant at the IMHU would have both a judicial safeguard and require a clinical recommendation regarding the most appropriate placement.

Filling the gap in competence restoration services would complete a continuum of care for pretrial defendants in Maine found IST by the Court. The continuum of care would include community-based competence restoration and treatment for low-risk, amenable defendants; hospital-based restoration and treatment for defendants with exacerbated symptoms of major mental illness; and IMHU-based restoration and treatment for defendants deemed by a Court too dangerous for initial placement at Riverview. Movement between the levels of care allows treatment teams to meet the needs of these defendants at the most appropriate level of care and,

ultimately, in the least restrictive environment necessary. Having a fully functioning, multi-directional continuum of care for defendants found IST by the Court would significantly assist in diverting defendants from longer jail stays, properly triaging forensic admissions, ensuring treatment, improving safety, and effectively processing difficult criminal cases through to completion.

Thank you for your time and attention. Dr. Matt Davis and Superintendent Rod Bouffard will also be testifying to this bill from their perspectives at Riverview. I would be happy to answer any questions you may have and to make myself and other team members available for questions at the work session.