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## MEMORANDUM

**TO:** Joint Standing Committee on Criminal Justice and Public Safety  
**FROM:** Department of Health and Human Services (DHHS)  
**DATE:** May 4, 2021  
**RE:** Follow up to April 15 Memo re: LD 769

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Following the Committee's work session on LD 769 last month, the Department of Health and Human Services (DHHS) met with stakeholders Attorney Kevin Voyvodich from Disability Rights Maine, and Attorney John Pelletier, in his personal capacity, to discuss their feedback on the bill as proposed. We appreciate their time and feedback, and propose the following changes to the bill as drafted:

### **Clear and convincing standard**

In order to ensure this program is narrowly targeted to individuals who cannot receive safe care and/or endanger the safe care of others at a state hospital, and based on stakeholder feedback, we propose clarifying that the person is found incompetent to stand trial (IST) by clear and convincing evidence.

- Line 5 - §3069-C #1.- "...the court, after hearing, finds by clear and convincing evidence is incompetent to stand trial..."

### **Clarifying eligibility for transfer**

We appreciate Disability Right's request for clearer language as to whom this bill would apply. To address that, and to ensure this program is narrowly tailored, we propose the following replacement language:

- Lines 10-12 - §3069-C #1-A – The existing language would be struck. It would be replaced by "The defendant is a person at risk of interpersonal violence, violence which is not primarily driven by symptoms of a major mental illness or other disability."

### **Establish a process for petitioning for transfer back to state hospital**

With recognition of the importance of a patient's right to petition for transfer back to a state hospital should they not be satisfied with an ongoing placement decision, we propose the following language:

- Lines 17-20 - §3069-C #2 – The existing paragraph would be labeled A and then a new paragraph B "or...At any time after 60 days, the defendant may petition the Court asserting that the criteria for placement in a mental health unit of a correctional facility are no longer met and may be returned to a less restrictive setting. The court shall hold a hearing and issue a finding maintaining or terminating the placement at the mental health unit of a correctional facility. No subsequent petition may be filed sooner than 60 days after resolution of any prior petition."

### **Sunset Provision**

We appreciate that this would be a new process and that there should be a time at which, after substantive experience is gained, the Legislature would review this program to ensure it is meeting the goals of ensuring patient and staff safety at state hospitals and assisting in the expeditious competency restoration of those deemed IST.

- New paragraph §3069-C #5 – This section of statute (3609-C) will be reviewed after a study period of 5 years after implementation, at which point it will be maintained, amended, or struck. The Department of Health and Human Services will submit a report on the use of this policy, including number of clients transferred to the mental health unit of a correctional facility, average length of stay at that facility, and number of clients transferred back to a state hospital or other setting, impact on the mental health and criminal justice systems, and any other data or information deemed relevant by the Department. The report will be submitted to the committee with jurisdiction over criminal justice and public safety no later than January 30, 2027. Without action by the Legislature, this section will be repealed July 1, 2027.