



MAINE ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

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Senator Susan Deschambault
Representative Charlotte Warren
Committee on Criminal Justice & Public Safety
100 State House Station, Rm. 436
Augusta, ME 04333

RE: MACDL Testimony in Opposition to LD 769: An Act To Increase the Availability of Mental Health Services for a Defendant Who Has Been Found Incompetent To Stand Trial.

Dear Senator Deschambault, Representative Warren, and Members of the Committee on Criminal Justice & Public Safety,

MACDL opposes the proposals in LD 769. The bill title, having read the entire bill itself, seems incomplete. The real title of the bill should be *"An Act To Imprison Former Criminal Defendants Who Have Been Found Incompetent To Stand Trial and Who Have Not Been and Cannot Be Convicted of a Crime."* We cannot support this bill.

Why is the Department of Health and Human Services asking for this legislation, to hold and incarcerate incompetent people in Department of Correction facilities, rather than ask the State for money to establish and create a facility or branch of Riverview to address the issues it faces when having custody of people who are both mentally ill and who pose a serious risk of harm to themselves or others? Why is this the solution proposed to what is undoubtedly a very real and serious problem?

When a court determines that a criminal defendant is not competent to stand trial and that the defendant's competence is not likely to be restored, the court shall order, pursuant to Title 15, section 101-D, subsection 5, DHHS to commence involuntary commitment procedures against defendants who were previously charged with certain offenses prior to dismissal: Chapter 9 offenses (crimes against the person, including murder, manslaughter, and simple assault); Chapter 11 offenses (sex crimes); Chapter 13 offenses (kidnapping, criminal restraint); and the crime of Harassment, Arson, and Causing a Catastrophe. The client can be committed to the custody of DHHS for treatment and to secure them if there is a risk of imminent harm. The people who would qualify for this classification are very sick. They are hurting. And they need help.

I am sure you are going to hear testimony from DHHS and DOC about the wonderful facility at Maine State Prison, the Intensive Mental Health Unit, and how high-quality mental health services can be provided to people there. To the extent that the IMHU is necessary to address mental health issues of incarcerated people and to do so in a way that is an improvement on the purely carceral model of regular imprisonment, then it is important that incarcerated people have access to those services at Maine State Prison. (I also believe that the

medical staff at the IMHU are employees of a private company, and therefore not State of Maine employees, but look forward to learning more about that issue, as well.)

The point is this: incompetent former defendants are not convicted of any crime, nor are they facing any crime. We should not be authorizing the State to hold our people in a prison, no matter how therapeutic that part of the prison is made to be. This is a slippery slope that provides and justifies even more funding to DOC while not addressing the chronic underfunding and under-resourcing issues facing DHHS.

We do not want our clients to suffer. We do not want them in a place where they can do harm to themselves or anyone else. We also believe that they should not be housed in a prison because they suffer from mental illness so severe that the court has decided they cannot defend themselves against criminal charges.

There has to be a better way to care for people who suffer from mental illness. De facto incarceration is a dangerous and huge step backwards. If our clients require supervision and hospitalization, then they should be supervised and hospitalized—not incarcerated. Period.

Thank you for your attention to this matter and for allowing me to speak with you all today on this important issue. I would be happy to answer the questions of the Committee.

With appreciation,

A handwritten signature in blue ink, reading "Tina Heather Nadeau". The signature is fluid and cursive, with a large loop at the end.

Tina Heather Nadeau, Esq.
MACDL Executive Director