

## MEMO

TO: Committee on Criminal Justice and Public Safety

FROM: Criminal Law Advisory Commission (CLAC)

RE: L.D. 769

Date: April 4, 2021

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CLAC members are divided on the merits of LD 769, which would authorize the Commissioner of DOC to accept for treatment at a DOC mental health facility a person that a court had found not competent to stand trial and has committed to the custody of the Commissioner of DHHS for treatment.

Some CLAC members favor this requirement as an expansion of resources available to treat people who have been found not competent to stand trial. A Superior Court Justice with extensive experience in this area points out that despite the requirement in the law that a person found not competent be committed to DHHS for treatment, such people often remain in jail for weeks or even months after commitment before a psychiatric bed becomes available. This circumstance results from a lack of sufficient psychiatric resources to promptly receive and treat people found not competent. Accordingly, a number of CLAC members favor the bill as an expansion of resources that will reduce or eliminate these inappropriate jail stays.

Other CLAC members object to housing a person found not competent to stand trial in a prison setting, even for treatment purposes. Note that when a person is not competent to stand trial, the requirements of due process deprive the State of any authority to subject the person to trial or punishment. Given that the State lacks authority to impose any punishment on an incompetent person, a number of CLAC members oppose the transfer of such a person into the custody of DOC for treatment in a prison. Regarding the lack of resources to promptly treat these individuals in a psychiatric hospital, these members suggest that the State bears the responsibility to expand these resources and are concerned that the bill would allow the State to avoid this responsibility.