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Date: (Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1022, L.D. 1433, Bill, “An Act To Amend the Laws Governing Mental Responsibility for Criminal Conduct”

Amend the bill in section 1 in subsection 4 by striking out all of paragraph B (page 1, lines 26 to 44 and page 2, lines 1 to 6 in L.D.) and inserting the following:

'B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment. If the defendant had been incarcerated prior to the commitment for observation and if, during the period of observation, the defendant presents a substantial risk of causing bodily injury to staff or others that cannot be managed in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, the commissioner may return the defendant to the correctional facility. The commissioner shall report the risk management issues to the court. Upon receiving the report, the court shall review the report and may enter any order authorized by this section, including termination of the commitment.'

Amend the bill by striking out all of section 2 and inserting the following:

COMMITTEE AMENDMENT

1 **Sec. 2. 15 MRSA §101-D, sub-§5**, as amended by PL 2013, c. 21, §2, is further
2 amended to read:

3 **5. Finding of incompetence; custody; bail.** If, after hearing upon motion of the
4 attorney for the defendant or upon the court's own motion, the court finds that any
5 defendant is incompetent to stand trial, the court shall continue the case until such time as
6 the defendant is determined by the court to be competent to stand trial and may either:

7 A. Commit the defendant to the custody of the Commissioner of Health and Human
8 Services ~~to be placed in an~~ for appropriate placement for observation, care and
9 treatment in an institution for the care and treatment of people with mental illness ~~or~~
10 ~~in~~, an appropriate residential program that provides care and treatment for persons
11 who have intellectual disabilities or autism ~~for observation, care and treatment, an~~
12 intermediate care facility for persons who have intellectual disabilities or autism, a
13 crisis stabilization unit, a nursing home, a residential care facility, an assisted living
14 facility, a hospice, a hospital or any living situation specifically approved by the
15 court. At the end of 30 days or sooner, and again in the event of recommitment, at
16 the end of 60 days and ~~one year~~ 180 days, the State Forensic Service or other
17 appropriate office of the Department of Health and Human Services shall forward a
18 report to the Commissioner of Health and Human Services relative to the defendant's
19 competence to stand trial and its reasons. The Commissioner of Health and Human
20 Services shall without delay file the report with the court having jurisdiction of the
21 case. The court shall ~~without delay set a date for and~~ hold a hearing on the question
22 of the defendant's competence to stand trial and receive all relevant testimony bearing
23 on the question. If the State Forensic Service's report or the report of another
24 appropriate office of the Department of Health and Human Services to the court
25 states that the defendant is either now competent or not restorable, the court shall
26 within 30 days hold a hearing. If the court determines that the defendant is not
27 competent to stand trial, but there does exist a substantial probability that the
28 defendant will be competent to stand trial in the foreseeable future, the court shall
29 recommit the defendant to the custody of the Commissioner of Health and Human
30 Services ~~to be placed in an~~ for appropriate placement for observation, care and
31 treatment in an institution for the care and treatment of people with mental illness ~~or~~
32 ~~in~~, an appropriate residential program that provides care and treatment for persons
33 who have intellectual disabilities or autism ~~for observation, care and treatment, an~~
34 intermediate care facility for persons who have intellectual disabilities or autism, a
35 crisis stabilization unit, a nursing home, a residential care facility, an assisted living
36 facility, a hospice, a hospital or any living situation specifically approved by the
37 court. When a person who has been evaluated on behalf of the court by the State
38 Forensic Service or other appropriate office of the Department of Health and Human
39 Services is committed into the custody of the Commissioner of Health and Human
40 Services under this paragraph, the court shall order that the State Forensic Service or
41 other appropriate office of the Department of Health and Human Services share any
42 information that it has collected or generated with respect to the person with the
43 institution or residential program in which the person is placed. If the defendant is
44 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section
45 506-A, 802 or 803-A and the court determines that the defendant is not competent to
46 stand trial and there does not exist a substantial probability that the defendant can be
47 competent in the foreseeable future, the court shall dismiss all charges against the

1 defendant and, unless the defendant is subject to an undischarged term of
2 imprisonment, order the Commissioner of Health and Human Services to commence
3 proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is
4 charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or
5 Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant
6 is not competent to stand trial and there does not exist a substantial probability that
7 the defendant can be competent in the foreseeable future, the court shall dismiss all
8 charges against the defendant and, unless the defendant is subject to an undischarged
9 term of imprisonment, notify the appropriate authorities who may institute civil
10 commitment proceedings for the individual. If the defendant is subject to an
11 undischarged term of imprisonment, the court shall order the defendant into
12 execution of that sentence and the correctional facility to which the defendant must
13 be transported shall execute the court's order; or

14 B. Issue a bail order in accordance with chapter 105-A, with or without the further
15 order that the defendant undergo observation at ~~a state mental hospital or mental~~
16 ~~health facility~~ an institution for the care and treatment of people with mental illness,
17 an appropriate residential program that provides care and treatment for persons who
18 have intellectual disabilities or autism, an intermediate care facility for persons who
19 have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a
20 residential care facility, an assisted living facility, a hospice, a hospital approved by
21 the Department of Health and Human Services or a living situation specifically
22 approved by the court or by arrangement with a private psychiatrist or licensed
23 clinical psychologist and treatment when it is determined appropriate by the State
24 Forensic Service. When outpatient observation and treatment is ordered an
25 examination must take place within 45 days of the court's order and the State
26 Forensic Service shall file its report of that examination within 60 days of the court's
27 order. The State Forensic Service's report to the court must contain the opinion of the
28 State Forensic Service concerning the defendant's competency to stand trial and its
29 reasons. The court shall ~~without delay set a date for and~~ within 30 days hold a
30 hearing on the question of the defendant's competence to stand trial, which must be
31 held pursuant to and consistent with the standards set out in paragraph A.'

32 Amend the bill in section 4 in subsection 2 in the last line (page 4, line 8 in L.D.) by
33 inserting after the following: "section 103" the following: 'unless the court orders
34 otherwise'

35 Amend the bill by striking out all of section 5 and inserting the following:

36 '**Sec. 5. 15 MRSA §104-A, sub-§2**, as amended by PL 2005, c. 263, §3, is further
37 amended to read:

38 **2. Modified release treatment.** Any individual committed pursuant to section 103
39 may petition the Superior Court for the county in which that person is committed for a
40 release treatment program allowing the individual to be off institutional grounds ~~for a~~
41 ~~period of time, not to exceed 14 days at any one time~~ if the individual is monitored by a
42 multidisciplinary treatment team affiliated with the institution and meets face to face with
43 a team member at least every 14 days and with a team member qualified to prescribe
44 medication at least monthly. The petition must contain a report from the institutional
45 staff, including at least one psychiatrist, and the report must define the patient's present

1 condition; the planned treatment program involving absence from the institution; the
2 duration of the absence from the institution; the amount of supervision during the
3 absence; the expectation of results from the program change; and the estimated duration
4 of the treatment program before further change. This petition must be forwarded to the
5 court no later than 60 days prior to the beginning of the modified treatment program. If
6 the court considers that the individual being off the grounds, as described in the treatment
7 plan, is inappropriate, it shall notify the hospital that the plan is not approved and shall
8 schedule a hearing on the matter. The clerk of courts upon receipt of the proposed
9 treatment program shall give notice of the receipt of this program by mailing a copy to
10 the office of the district attorney that prosecuted the criminal charges for which the
11 person was committed under section 103, the offices of the district attorneys in whose
12 district the release petition was filed or in whose district release may occur and the
13 Attorney General who may file objections and request a hearing on the matter.
14 Representatives of the Attorney General and the office that prosecuted the person may
15 appear at any hearing on the matter. At the hearing, the court shall receive the testimony
16 of a member of the State Forensic Service who has examined the person, any independent
17 psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has
18 examined the person and any other relevant testimony. If the court does not respond
19 within 60 days to the proposed treatment plan and no objections and request for hearing
20 are filed by the district attorney or Attorney General, it may then be put into effect by the
21 administrator of the hospital on the assumption that the court approved the treatment plan.
22 The Commissioner of Health and Human Services shall inform the public safety officer
23 of the municipality or the sheriff's office of the county in which the person will spend any
24 unsupervised time under the release treatment program of that program.'

25 SUMMARY

26 This amendment makes the following changes to the bill.

27 1. The bill provides that, if a defendant has been incarcerated prior to commitment to
28 the custody of the Commissioner of Health and Human Services for observation to
29 determine the competency of the defendant to stand trial and during the period of
30 observation the defendant assaults another person and the risk of a subsequent assault
31 cannot be managed, the commissioner may return the defendant to the correctional
32 facility. This amendment provides that the defendant need only present a substantial risk
33 of causing bodily injury to staff or others instead of requiring an actual assault.

34 2. The bill requires a court to terminate a defendant's commitment to the custody of
35 the Commissioner of Health and Human Services after the commissioner notifies the
36 court that the defendant is being returned to a correctional facility because the defendant
37 assaulted another person and the risk of subsequent assaults cannot be managed. This
38 amendment removes the mandatory language and gives the court discretion in
39 determining what action should be taken regarding the defendant, including, but not
40 limited to, the termination of the defendant's commitment.

41 3. The amendment provides that if the State Forensic Service reports to the court that
42 a defendant is either now competent to stand trial or not restorable, the court must hold a
43 hearing on the matter within 30 days of the report. Current law provides that the court
44 must schedule such a hearing without delay.

