

The County of Cumberland is committed to providing quality services to all citizens equitably, in a responsive and caring manner.

COMMISSIONERS' MEETING VIA CONFERENCE CALL To Discuss Mental Health Legislation, LD1814

MINUTES

March 14, 2014

3.10.1.3 Emergency Meetings: An emergency meeting of the Board may be called at the Chair's discretion; if Commissioners are not able to physically attend, the communications and votes of such may be transmitted by any electronic device. A complete record of the meeting, the Chair's justification for such action, and a recorded roll call vote shall be expressed, vetted and read into the record of the next formal Board meeting.

County Commissioners held a conference call on Friday, March 14, 2014 at 2:30 PM. In attendance were Chair James E. Cloutier and the following Commissioners Neil D. Jamieson, Jr., Thomas S. Coward and Mark D. Grover. Commissioner Susan E. Witonis was not on the conference call. Also in attendance on the conference call were: Peter Crichton, County Manager, Alex Kimball, Finance Director, Kevin Joyce, Sheriff and Amy Fickett, PR Assistant.

The following notes were taken by Amy Fickett and Alex Kimball:

- Joyce: He indicated Stan Gerzofsky is interested in mental health plan because 1. Riverview hard to get into and 2. Recognized liability of staffing/operations issue with corrections officers which result in costs that undue budgets.
- Blue Ribbon Commission recommended psych ward for jail.
- Cloutier: Agency of state government shouldn't run pod in jail. Can't enthusiastically support this. BOC has supplemental money and strengthening support but not the history to back it. The only reason this bill supports Cumberland County is due to the proximity of MMC.
- Jamieson: This is good in theory, but what's fiscal responsibility to Cumberland County?

- Joyce: A while back, a suicide was interrupted. Inmate was put on 24/7 watch while waiting for bed at Riverview for 3 months. Riverview has 6 forensic beds, so always a back log. Acute crisis needs to go to Riverview. I was contacted by a company in Texas shortly after offering to turn open pod into place for mental health in the jail but negotiations fell through after numbers showed would need \$80/day to run pod in that manner. River has a supply and demand issue. I wrote the OpEd and Sen. Gerzofsky called immediately afterwards. He wants a Stage 3 forensic bed facility; I want Stage 1 (low hanging fruit). (See Sheriff Joyce's comments from email.)
- Grover: I support Kevin, but increasing the money for the lease would push the state to expand Riverview versus a long term lease agreement.
- Coward: How does BOC play into this? How do we write the lease/contract to roll up liability? Kennebec Jail was just contacted about a patient of Riverview's who is violent. What happens in the event an incident occurs? Would be on risk pool, but not prisoner? How do we go about protecting the county? Indemnification agreement with state.
- Cloutier: Some expression at meetings that BOC might get supplemental funding?
- Crichton: Westrum was doubtful that we would get supplemental.
- Coward: Group told Westrum not to expect very much.
- Cloutier: Should we provide this under current state of affairs in the BOC?
- Joyce: We should really just be for competency testing and not at all related.
- Kimball: Needs to be separate from BOC.
- Grover: Facility would require extra insurance for sure. People will eventually ask what is best for patient. This is not the best solution long term.
- Crichton: Many inmates would be state inmates?
- Joyce: Pre-trial.
- Crichton: Gerzofsky's motivations are a source of concern.
- Coward: More concern is this is for high-risk.
- Cloutier: This is trying to solve a state problem, not a county problem. Leasing space is fine, but beyond that, no. They need to resolve their own issues.
- Crichton: Not sure Mark Dion is a champion of the bill.
- Joyce: Gerzofsky wants to be the one that fixes Riverview. Dion might not be completely invested in the idea.

- Crichton: I've seen this movie before, not sure I like it.
- Cloutier: Common thread is glad to support initiative of the Sheriff to deal with patients that are waiting for screening, but not high-risk or just leasing it entirely. Otherwise, needs to be much more mature before we can continue. Also not a BOC activity.
- Joyce: Clarify that option #1 is or is not supported.
- Commissioners: Consensus was not to support proposed legislation.

The conference call meeting adjourned at 3:29 pm.

Attached to these Minutes is the legislative document No.1814 – An Act to Create a Secure, Therapeutic Mental Health Unit.

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Create a Secure, Therapeutic Mental Health Unit

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 15 MRSA §101-D, sub-§4, as amended by PL 2013, c. 265, §1, is further amended to read:

4. Commitment for observation. The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303 unless the Commissioner of Health and Human Services determines the defendant's placement in that unit is contraindicated, in which case the defendant may be placed in an appropriate alternative institution that is appropriate 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, as set forth in this subsection. If the State Forensic Service determines that observation of the defendant will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9 and the defendant is incarcerated, the observation may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation. ~~If the observation is to take place in a correctional facility, the court may not commit the defendant to the custody of the Commissioner of Health and Human Services.~~

A. If the State Forensic Service determines that observation of the defendant in the secure, therapeutic mental health unit or an appropriate alternative institution that is appropriate for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant.

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 the secure, therapeutic mental health unit unless the Commissioner of Health and Human Services determines the defendant's placement in that unit is contraindicated, in which case the defendant may be placed in an appropriate alternative institution that is appropriate 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~~ shall commit the defendant to the secure, therapeutic mental health unit. 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.

~~C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary.~~

Sec. 2. 15 MRSA §101-D, sub-§5, ¶A, as amended by PL 2013, c. 434, §1 and affected by §15, is further amended to read:

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for placement in the secure, therapeutic mental health unit established in Title 34-A, section 4303 unless the Commissioner of Health and Human Services determines the defendant's placement in that unit is contraindicated, in which case the defendant may be placed in an appropriate alternative program that is appropriate for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and 180 days, the State Forensic Service or other appropriate office of the Department of Health and Human Services shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human Services shall without delay file the report with the court having jurisdiction of the case. The court shall hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services for placement in the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303 unless the Commissioner of Health and Human Services determines the defendant's placement in that unit is contraindicated, in which case the defendant may be placed in an appropriate alternative

program that is appropriate for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

Sec. 3. 15 MRSA §103, first ¶, as amended by PL 2011, c. 542, Pt. A, §10, is further amended to read:

When a court accepts a negotiated plea of not criminally responsible by reason of insanity or when a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, the judgment must so state. In those cases the court shall order the person committed to the custody of the Commissioner of Health and Human Services to be placed in the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303 unless the Commissioner of Health and Human Services determines the person's placement in that unit is contraindicated, in which case the person may be placed in an appropriate alternative institution that is appropriate for the care and treatment of persons with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for care and treatment. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

Sec. 4. 34-A MRSA §3069-A, sub-§§1 and 2, as enacted by PL 2013, c. 434, §5, are amended to read:

1. Eligible inmates. The commissioner may transfer from a jail to a correctional facility an

adult inmate who the chief administrative officer of the Riverview Psychiatric Center confirms is eligible for admission to a state mental health institute under Title 34-B, section 3863, but for whom no suitable bed is available, for the purpose of providing to the inmate mental health services in a mental health unit of a correctional facility that provides intensive mental health care and treatment. The commissioner may not transfer pursuant to this section a person who has been found not criminally responsible by reason of insanity. The commissioner may return an inmate transferred pursuant to this subsection back to the sending facility.

For purposes of this subsection, "intensive mental health care and treatment" has the same meaning as in section 3049, subsection 1.

For purposes of this subsection, "state mental health institute" includes the secure, therapeutic mental health unit established pursuant to section 4303.

2. Evaluation. The commissioner may transfer from a jail to a correctional facility an adult inmate whom the court orders to be examined or further evaluated by the State Forensic Service under Title 15, section 101-D, subsection 1, 2, 3 or 9 if the State Forensic Service determines that the secure, therapeutic mental health unit does not have a suitable bed available or that the jail where the inmate is incarcerated cannot provide an appropriate setting for the examination but that a mental health unit in a correctional facility can provide an appropriate setting for the examination. The commissioner shall return an inmate transferred pursuant to this subsection back to the sending facility upon the completion of the examination ordered, including any further evaluation ordered, unless the commissioner transferred the inmate for another reason in addition to the examination.

Sec. 5. 34-A MRSA §3069-B, sub-§1, ¶B, as enacted by PL 2013, c. 434, §6, is amended to read:

B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; ~~and~~

Sec. 6. 34-A MRSA §3069-B, sub-§1, ¶B-1 is enacted to read:

B-1. There is not a suitable bed available at the secure, therapeutic mental health unit established pursuant to section 4303; and

Sec. 7. 34-A MRSA c. 3, sub-c. 10 is enacted to read:

SUBCHAPTER 10

SECURE, THERAPEUTIC MENTAL HEALTH UNIT

§ 4301. Secure, therapeutic mental health unit

The department shall establish a secure, therapeutic mental health unit in accordance with this subchapter.

§ 4302. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms having the following meanings.

1. Forensic patient. "Forensic patient" means a person who has been ordered by a court to undergo examination by the State Forensic Service under Title 15, section 101-D or a person committed under Title 15, section 103.

2. Likelihood of serious harm. "Likelihood of serious harm" means a substantial risk of physical harm to other persons, as manifested by a person's recent homicidal or other violent behavior or recent conduct placing others in reasonable fear of serious physical harm.

3. Person with mental illness. "Person with mental illness" means a person who has attained 18 years of age and has been diagnosed as having a psychiatric or other illness that substantially impairs that person's mental health. An intellectual disability as defined in Title 34-B, section 5001, subsection 3 or a personality disorder is not a psychiatric or other illness for purposes of this subsection.

4. Unit. "Unit" means the secure, therapeutic mental health unit established pursuant to section 4303.

§ 4303. Unit establishment

The department and the Commissioner of Health and Human Services shall enter into an agreement with either the sheriff of Cumberland County or the sheriff of Somerset County to establish a secure, therapeutic mental health unit within the county jail facilities of either Cumberland County or Somerset County for the purposes of providing risk assessments for forensic patients and therapeutic care for forensic patients and persons with mental illness who pose a likelihood of serious harm.

1. Security and mental health staff. The department shall provide:

A. Security for the unit and transportation of patients to and from the unit. Security staff must be dedicated to the unit and trained to provide security in a mental health hospital environment; and

B. Therapeutic mental health care that meets or exceeds the standards for mental health services in a correctional facility established by a national organization that has an accreditation program for correctional facilities that provide mental health treatment. The department, in consultation with the Department of Health and Human Services, may contract with a private entity to provide therapeutic mental health care at the unit or may enter into an agreement with the Department of Health and Human Services and the county jail to have the Department of Health and Human Services provide therapeutic mental health care.

2. Sight and sound separation. The population in the unit must be separated by sight and sound from the general jail population at all times. In the unit, forensic patients must be separated from persons who are involuntarily transferred to the unit pursuant to Title 34-B, section 3861, subsection 4 by sight and sound.

3. Admittance to the unit. A person who is ordered to undergo examination by the

State Forensic Service under Title 15, section 101-D or a person who is a patient at a state mental health institute for whom an order of involuntary transfer has been ordered under Title 34-B, section 3861, subsection 4 or an order of involuntary placement has been ordered under Title 34-B, section 3864, subsection 7-B who poses a likelihood of serious harm must be placed into the unit unless:

- A. The person is an inmate at a state correctional facility;
- B. The Department of Health and Human Services determines that the person's mental health condition contraindicates placement in the unit; or
- C. The department determines that there is not a suitable bed in the unit available for the person.

4. Federal certification. The department, the Department of Health and Human Services and the county sheriff for the county in which the unit is located shall work to obtain and maintain for the unit federal certification as a mental health hospital.

Sec. 8. 34-B MRSA §1207, sub-§1, ¶B, as amended by PL 2013, c. 434, §7, is further amended to read:

B. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of mental health services by the Department of Corrections pursuant to Title 34-A, section 3031, 3069-A or 3069-B or 4303. This paragraph is repealed August 1, 2017;

Sec. 9. 34-B MRSA §1207, sub-§1, ¶B-3, as enacted by PL 2013, c. 434, §8, is amended to read:

B-3. Information may be disclosed if necessary to carry out the statutory functions of the department; the hospitalization provisions of chapter 3, subchapter 4; the provisions of section 1931; the purposes of sections 3607-A and 3608; the purposes of Title 5, section 19506; the purposes of United States Public Law 99-319, dealing with the investigatory function of the independent agency designated with advocacy and investigatory functions under United States Public Law 88-164, Title I, Part C or United States Public Law 99-319; or the investigation and hearing pursuant to Title 15, section 393, subsection 4-A; or the provision of therapeutic mental health care by the Department of Corrections pursuant to Title 34-A, section 4303. This paragraph takes effect August 1, 2017;

Sec. 10. 34-B MRSA §3801, sub-§7-B, as amended by PL 2009, c. 651, §9, is further amended to read:

7-B. Psychiatric hospital. "Psychiatric hospital" means:

- A. A state mental health institute;

- B. A nonstate mental health institution; or
- C. A designated nonstate mental health institution.

For purposes of sections 3863 and 3864, "psychiatric hospital" includes the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303.

Sec. 11. 34-B MRSA §3861, sub-§4 is enacted to read:

4. Involuntary transfer. A patient at a state mental health institute who is an involuntarily committed patient under the provisions of this subchapter, who poses a likelihood of serious harm and for whom there is not security at the state mental health institute sufficient to address the likelihood of serious harm may be involuntarily transferred in conformance with the provisions of this subsection to a secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303.

A. If the patient's primary treating physician proposes a transfer of the patient to the secure, therapeutic mental health unit and the patient is unwilling or unable to comply with the proposed transfer, the patient's primary treating physician shall request in writing a clinical review of the proposed transfer by a clinical review panel. The request must be made to the superintendent of the state mental health institute or the superintendent's designee. The request must include the following information:

- (1) The name of the patient, the patient's diagnosis and the unit on which the patient is hospitalized;
- (2) The date that the patient was committed to the state mental health institute and the period of the court-ordered commitment;
- (3) A statement by the primary treating physician that the patient is unwilling or unable to give informed consent to the proposed involuntary transfer;
- (4) A description of how the proposed involuntary transfer is likely to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm;
- (5) A statement that the mental health condition of the patient does not contraindicate the proposed involuntary transfer; and
- (6) Documentation of consideration of any advance health-care directive given in accordance with Title 18-A, section 5-802 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

B. The provisions of this paragraph apply to the appointment, duties and procedures of the clinical review panel under paragraph A.

- (1) Within one business day of receiving a request under paragraph A, the superintendent of a

state mental health institute or the superintendent's designee shall appoint a clinical review panel of 2 or more licensed professional staff who do not provide direct care to the patient. At the time of appointment of the clinical review panel, the superintendent of a state mental health institute or the superintendent's designee shall notify the following persons in writing that the clinical review panel will be convened:

(a) The primary treating physician;

(b) The commissioner or the commissioner's designee;

(c) The patient's designated representative or attorney, if any;

(d) The State's designated federal protection and advocacy agency; and

(e) The patient. Notice to the patient must inform the patient that the clinical review panel will be convened and of the right to assistance from a lay advisor, at no expense to the patient, and the right to obtain an attorney at the patient's expense. The notice must include contact information for requesting assistance from a lay advisor, who may be employed by the institute, and access to a telephone to contact a lay advisor must be provided to the patient.

(2) Within 4 days of receiving a request under paragraph A and no less than 24 hours before the meeting of the clinical review panel, the superintendent of a state mental health institute or the superintendent's designee shall provide notice of the date, time and location of the meeting to the patient's primary treating physician, the patient and any lay advisor or attorney.

(3) The clinical review panel shall hold the meeting and any additional meetings as necessary, reach a final determination and render a written decision ordering or denying involuntary transfer to the secure, therapeutic mental health unit.

(a) At the meeting, the clinical review panel shall receive information relevant to the patient's mental health condition, review relevant portions of the patient's medical records, consult with the physician requesting the transfer, review with the patient that patient's reasons for refusing transfer, provide the patient and any lay advisor or attorney an opportunity to ask questions of anyone presenting information to the clinical review panel at the meeting and determine whether the requirements for ordering transfer have been met.

(b) All meetings of the clinical review panel must be open to the patient and any lay advisor or attorney, except that any meetings held for the purposes of deliberating,

making findings and reaching final conclusions are confidential and not open to the patient and any lay advisor or attorney.

(c) The clinical review panel shall conduct its review in a manner that is consistent with the patient's rights.

(4) The clinical review panel may approve a request for involuntary transfer and order the involuntary transfer if the clinical review panel finds, at a minimum:

(a) That the patient is unwilling to consent to transfer or lacks the capacity to make an informed decision regarding the proposed involuntary transfer;

(b) That the proposed involuntary transfer is likely to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm;

(c) That the mental health condition of the patient does not contraindicate the proposed involuntary transfer; and

(d) That the clinical review panel has considered any advance health-care directive given in accordance with Title 18-A, section 5-802 and any declaration regarding medical treatment of psychotic disorders executed in accordance with section 11001.

C. The provisions of this paragraph govern the rights of a patient who is the subject of a clinical review panel under paragraph A.

(1) The patient is entitled to the assistance of a lay advisor without expense to the patient. The patient is entitled to representation by an attorney at the patient's expense.

(2) The patient may review any records or documents considered by the clinical review panel.

(3) The patient may provide information orally and in writing to the clinical review panel and may present witnesses.

(4) The patient may ask questions of any person who provides information to the clinical review panel.

(5) The patient and any lay advisor or attorney may attend all meetings of the clinical review panel except for any private meetings authorized under paragraph B, subparagraph (3), division (b).

D. If the clinical review panel under paragraph A approves the request for involuntary transfer,

the clinical review panel shall enter an order for the involuntary transfer in the patient's records and immediately notify the superintendent of the state mental health institute. The order takes effect one business day from the date of entry of the order.

E. The order for involuntary transfer under this subsection remains in effect for 120 days or until the end of the period of commitment, whichever is sooner, or:

(1) Until the Commissioner of Corrections, in consultation with the Commissioner of Health and Human Services, determines that continued placement in the secure, therapeutic mental health unit is not likely to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm posed by the patient or that the mental health condition of the patient contraindicates the continued placement in the secure, therapeutic mental health unit;
or

(2) An alteration or stay of the order is entered by the Superior Court after reviewing the entry of the order by the clinical review panel on appeal under paragraph F.

F. The order of the clinical review panel at a state mental health institute is final agency action that may be appealed to the Superior Court in accordance with Rule 80C of the Maine Rules of Civil Procedure.

For purposes of this subsection, "likelihood of serious harm" has the same meaning as in Title 34-A, section 4302, subsection 2.

Sec. 12. 34-B MRSA §3863, sub-§2-A, as amended by PL 2007, c. 319, §9, is further amended to read:

2-A. Custody agreement. A state, county or municipal law enforcement agency may meet with representatives of those public and private health practitioners and health care facilities that are willing and qualified to perform the certifying examination required by this section in order to attempt to work out a procedure for the custody of the person who is to be examined while that person is waiting for that examination. Any agreement must be written and signed by and filed with all participating parties. In the event of failure to work out an agreement that is satisfactory to all participating parties, the procedures of section 3862 and this section continue to apply.

As part of an agreement the law enforcement officer requesting certification may transfer protective custody of the person for whom the certification is requested to another law enforcement officer, a health officer if that officer agrees or the chief administrative officer of a public or private health practitioner or health facility or the chief administrative officer's designee. Any arrangement of this sort must be part of the written agreement between the law enforcement agency and the health practitioner or health care facility. In the event of a transfer, the law enforcement officer seeking the transfer shall provide the written application required by this section.

AExcept for placement in the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303, a person with mental illness may not be detained or confined in any jail or local

correctional or detention facility, whether pursuant to the procedures described in section 3862, pursuant to a custody agreement or under any other circumstances, unless that person is being lawfully detained in relation to or is serving a sentence for commission of a crime.

Sec. 13. 34-B MRSA §3864, sub-§7-B is enacted to read:

7-B. Involuntary placement order. Upon making the findings in subsection 6, paragraph A and ordering the patient to be involuntarily committed under subsection 7 to the custody of the commissioner, the court may in addition order the patient to be involuntarily placed for treatment in the secure, therapeutic mental health unit established pursuant to Title 34-A, section 4303 if the court finds that involuntary placement is likely to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm, that the mental health condition of the patient does not contraindicate the proposed involuntary transfer and that there is not security at the state mental health institute sufficient to address the likelihood of serious harm. An order of involuntary placement under this subsection lasts until the first occurring of the following events:

A. The period of commitment under subsection 7 ends; or

B. The Commissioner of Corrections, in consultation with the Commissioner of Health and Human Services, determines that continued placement in the secure, therapeutic mental health unit is not likely to meet the needs of the patient and alleviate or stabilize the likelihood of serious harm posed by the patient or that the mental health condition of the patient contraindicates the continued placement in the secure, therapeutic mental health unit.

If an order for involuntary placement under this subsection ends prior to the period of commitment under subsection 7, the Department of Corrections shall transfer the patient to the physical custody of a state mental health institute.

For purposes of this subsection, "likelihood of serious harm" has the same meaning as in Title 34-A, section 4302, subsection 2.

Sec. 14. Report of Department of Health and Human Services, Department of Corrections and the Cumberland County sheriff or Somerset County sheriff. By January 15, 2016, the Department of Corrections, in collaboration with the Department of Health and Human Services and the county sheriff of the county in which the secure, therapeutic mental health unit established pursuant to the Maine Revised Statutes, Title 34-A, section 4303 is located, shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the operations of the unit. The report must include the following information regarding the unit: the average daily population of the unit, the average daily staffing patterns, the average length of stay in the unit, a description of services provided and the number of persons placed in the unit. The report must also include recommendations regarding the reallocation of resources for the unit; the design of the unit; the provisions of forensic services at the Riverview Psychiatric Center and the unit; and the transfer provisions of Title 34-A, sections 3069, 3069-A and 3069-B.

SUMMARY

This bill provides for the establishment of a secure, therapeutic mental health unit for defendants undergoing court-ordered assessments to determine their competency to stand trial or their criminal culpability and to provide therapeutic care for forensic patients and authorizes involuntary placement in or transfer to the secure, therapeutic mental health unit for civilly committed patients with mental illness who pose a likelihood of serious harm to others. The bill establishes the unit as follows.

1. It directs the Commissioner of Corrections and the Commissioner of Health and Human Services to enter into an agreement to establish the unit with the sheriff of either Cumberland County or Somerset County.

2. It directs the Department of Corrections to provide security for the unit. Security staff must be dedicated to the unit and trained to provide security in a mental health hospital environment.

3. It directs the Department of Corrections to provide therapeutic mental health care for the unit. The therapeutic mental health care must meet standards established by a national organization on correctional facilities mental health standards. The Department of Health and Human Services may also provide mental health services to the unit upon agreement with the Department of Corrections and the county jail.

4. It requires that the population in a secure, therapeutic mental health unit be separated by sight and sound from the general jail population and that forensic patients and civil patients must also be separated by sight and sound within the unit.

5. It specifies that a person under a court order to undergo a mental evaluation by the State Forensic Service must be admitted in the unit unless the Department of Health and Human Services determines that the person's mental health condition contraindicates admittance to the unit, the person is an inmate at a state correctional facility or there is not a suitable bed available.

6. It also provides that a person not in a state correctional facility who poses a likelihood of serious harm must be admitted to the unit unless the Commissioner of Health and Human Services determines that the person's mental health condition contraindicates admittance to the unit or the unit does not have a suitable bed. Inmates with mental illness housed in a state correctional facility must be treated at the Maine State Prison's mental health unit and are not eligible to be admitted to the unit.

This bill establishes a procedure through which a patient who has been involuntarily committed to a state mental health institute may be involuntarily transferred to the secure, therapeutic mental health unit upon the order of a clinical review panel and after completion of a procedure that protects the rights of the patient and provides due process.

It also authorizes a court, in the process of ordering involuntary civil commitment for a person, to order placement in the secure, therapeutic mental health unit and provides for transfer of physical custody to a state mental health institute at the end of the order of involuntary placement.