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Final Report of the Forensic Mental Health Services Oversight Committee

March 2014

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Executive Summary

In 2013, the 126th Legislature established the Forensic Mental Health Oversight Committee with the passage of LD 1515, An Act to Increase the Availability of Mental Health Services (Public Law 2013, chapter 434). Public Law 2013, chapter 434, section 12 established and specified the duties of the committee and set January 15th, 2014 as the due date for its report to the Legislature. A copy of Public Law 2013, chapter 434 is included as Appendix A.

The membership of the committee includes two members of the Joint Standing Committee on Appropriations and Financial Affairs, two members of the Joint Standing Committee on Criminal Justice and Public Safety, one member of the Joint Standing Committee on Judiciary, one member of the Joint Select Committee on Maine's Workforce and Economic Future and three members of the Joint Standing Committee on Health and Human Services. A copy of the membership list of the committee is included as Appendix B.

The nine member committee met on November 12 and December 20, 2013, and January 7 and February 19, 2014. All four meetings were held in the State House in Augusta and were open to the public and broadcast through the Legislature's public Internet system. In addition, on December 3 the committee conducted a tour of the special care unit of the Riverview Psychiatric Center and a tour of the mental health unit and the future intensive mental health unit at the Maine State Prison.

At the conclusion of its work the committee agreed on statements of support as follows.

A. The committee supports the Memorandum of Agreement for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit (see Appendix F).

B. The committee supports the use of evidence-based training for staff at the intensive mental health unit and the use of contracted mental health services by Correct Care Solutions LLC (see Appendix H).

C. The committee supports the establishment of the intensive mental health unit at the Maine State Prison as a long-awaited mechanism for providing mental health services to persons with mental illness in Maine's county jails and correctional facilities.

D. The committee supports the ongoing work between the Department of Corrections and the Department of Health and Human Services including:

1. The establishment of priorities for patients transferred to the intensive mental health unit at the Maine State Prison from Riverview Psychiatric Center to facilitate their eventual transfer back to the Riverview Psychiatric Center; and
2. The development of a future memorandum of agreement between the two departments on public guardianship.

At the conclusion of its work the committee also agreed to make the following recommendations.

A. The committee recommends that the Department of Corrections and the Department of Health and Human Services work closely with the Joint Standing Committees on Appropriations and Financial Affairs, Criminal Justice and Public Safety, and Health and Human Services to ensure the smooth implementation of Public Law 2013, chapter 434 and the continued work on initiatives that have not been completed. The departments should report regularly to the committees on developing issues and the operation of the intensive mental health unit at the Maine State Prison. The committees should actively oversee implementation and continuing work as follows:

1. With regard to the intensive mental health unit:

(a) The operation of the intensive mental health unit, including staffing and staff training;
(b) The census on the unit and whether a waiting list for transfer or admission develops;
(c) Protocols Riverview Psychiatric Center will use to provide consultations to the Department of Corrections on the provision of mental health services;
(d) The administration of medication on an involuntary basis;
(e) The amendment or development of memoranda of agreement between the Department of Corrections and the county jails and between the Department of Corrections and the Department of Health and Human Services;
(f) The use of best clinical practices in medication and mental health treatments; and
(g) The coordination of activities between the county jails and Riverview Psychiatric Center; and

2. With regard to Riverview Psychiatric Center:

(a) The progress in certification of the Lower Saco Unit and certification of the Riverview Psychiatric Center as a whole;
(b) The census at the Riverview Psychiatric Center, including the distribution of civil and forensic patients and the status of the waiting list for admission;
(c) The protocols Riverview Psychiatric Center will use to provide consultations to the Department of Corrections on the provision of mental health services and the administration of medication on an involuntary basis;
(d) The amendment or development of a memorandum of agreement between the Department of Corrections and the Department of Health and Human Services regarding public guardianships;
(e) The staffing and staff training and the use of best clinical practices in medication and mental health treatments; and
(f) The coordination of activities among the county jails and the Department of Corrections.

B. The committee emphasized the importance of continued funding to ensure the ongoing operation of the intensive mental health unit at the Maine State Prison. The committee recognizes the considerable investment that the State of Maine has made in establishing the unit and cautions that the State should not lose the benefits of the intensive mental health unit because of inadequate funding. Committee members urge the Joint Standing Committee on Appropriations and Financial Affairs to carefully review the need for funding for Fiscal Year 2014-2015.

I. INTRODUCTION

In 2013, the 126th Legislature established the Forensic Mental Health Oversight Committee with the passage of LD 1515, An Act to Increase the Availability of Mental Health Services (Public Law 2013, chapter 434). Public Law 2013, chapter 434, section 12 established and specified the duties of the committee and set January 15th, 2014 as the due date for its report to the Legislature. A copy of Public Law 2013, chapter 434 is included as Appendix A.

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II. PUBLIC LAW 2013, CHAPTER 434, SECTION 12

The duties of the committee are outlined in Public Law 2013, chapter 434, section 12 and include overseeing the expansion of the mental health unit at the Maine State Prison. The committee was directed to study the following to develop its recommendations.

- **Memoranda of understanding.** Any memoranda of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation.
- **Staffing.** The addition of new staff and training of staff at the Maine State Prison.
- **Standards.** The decision-making authority related to admissions, release and transfer to and from the expanded mental health unit, eligibility standards and due process safeguards for placement and treatment decisions.
- **Impact.** The impact of the expanded mental health unit on resources and population of the Riverview Psychiatric Center and county jails.

III. COMMITTEE PROCESS

A. First Meeting

The first meeting of the committee was held on November 12, 2013. The chairs, Senator Gerzofsky and Representative Drew Gattine, introduced the members of the committee.

The committee reviewed and discussed the major policy issues in LD 1515, An Act to Increase the Availability of Mental Health Services. Committee members discussed the public hearing, work sessions, eventual vote of the Joint Standing Committee on Criminal Justice and Public Safety during the First Regular Session of the 126th Legislature and the return of the bill to committee and eventual vote to carry the bill forward to another legislative session. Committee members then discussed the consideration given to LD 1515 during the summer of 2013 and the work sessions and votes on the bill during the First Special Session of the 126th Legislature. In discussions of LD 1515 among themselves and with members of the public, committee members stressed that the transfer provisions of Public Law 2013, chapter 434, section 5 and 6 do not apply to persons at Riverview Psychiatric Center who have been found by a Court to be not criminally responsible by reason of insanity or who have been found to be incompetent to stand trial.[i] Public Law 2013, Chapter 434 does grant authority to the Commissioner of Corrections to accept the transfer of certain adult prisoners from jails into a correctional facility that provides intensive mental health services and treatment. The prisoners who may be accepted from jails include the following:

- A prisoner in a jail for whom a court has ordered a mental examination for the purposes of evaluating competency to stand trial, insanity or other abnormal condition of the mind or after sentencing if the State Forensic Service has determined that the jail in which the prisoner is incarcerated is not an appropriate setting for the examination and that the intensive mental health unit can provide an appropriate setting;[ii] and
- A prisoner in a jail whom the Superintendent of Riverview Psychiatric Center confirms is eligible for involuntary psychiatric admission to the hospital but no space is available in the hospital.[iii] To be eligible for involuntary psychiatric admission the prisoner must have a psychiatric or other disease that substantially impairs the person's mental health or creates a risk of suicide and because of that illness the prisoner poses a substantial risk of physical harm to himself or herself or there is a reasonable certainty that the prisoner will suffer severe physical or mental harm as a result of being unable to avoid risk or protect himself or herself from impairment or injury.[iv]

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[i] 34-A Maine Revised Statutes, section 3069-B, subsection 1 (2013).
[ii] 34-A Maine Revised Statutes, section 3069-A, subsection 2 (2013).
[iii] 34-A Maine Revised Statutes, section 3069-A, subsection 1 (2013).
[iv] 34-B, Maine Revised Statutes, sections 3801, subsections 4-A and 5 (2013) and 34-B Maine Revised Statutes, section 3863, subsection 2 (2013).

Public Law 2013, chapter 434 also authorizes the Commissioner of Corrections to accept the transfer of persons committed to the custody of the Commissioner of Health and Human Services. The correctional facility must provide intensive mental health services and treatment. All of the following requirements must be met.

- A court has ordered the commitment of the person for psychiatric observation in connection with an examination for insanity or other abnormal condition of the mind
- for the purposes of determining competency or criminal responsibility or for examination after sentencing.
- In addition to finding that the person meets the criteria for commitment for observation, a court has found that the person poses a likelihood of serious harm as a result of having a mental illness.
- A court has also found that the Riverview Psychiatric Center lacks sufficient security to address the likelihood of serious harm and that there is no less restrictive alternative to placement in a correctional facility mental health unit.[v]

Attorney General Janet Mills presented information to the committee about competency to stand trial and criminal responsibility for one's actions. Concisely stated, the *competency* process works to determine whether a person can understand the nature and object of the charges, comprehend that person's own condition in reference to the charges, and cooperate with counsel to conduct a defense in a rational and reasonable manner.[vi] Concisely stated, the *criminal responsibility* process works to determine whether a person has a mental disease or defect and, if so, whether the person lacked substantial capacity to appreciate the wrongfulness of the criminal conduct.[vii] The follow is a synopsis of the process.

- A defendant in a criminal case may be ordered by the court to be examined for mental disease or defect or other abnormal condition of the mind for the purpose of evaluating competency or criminal responsibility.
- The evaluation consists of an examination by the State Forensic Service, usually performed in a county jail or during a short-term transfer to the Riverview Psychiatric Center.
- A defendant who is diagnosed with a mental disease or defect or other abnormal condition of the mind may still be found competent to stand trial and may be found criminally responsible for that person's actions.
- A defendant who is found to be incompetent to stand trial will be ordered into the custody of the Commissioner of Health and Human Services for treatment to restore the defendant to competency. A defendant who is found incompetent to stand trial typically remains at the Riverview Psychiatric Center for 3 to 20 years.

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[v] 34-A Maine Revised Statutes, section 3069-B, subsection 1.

[vi] 15 Maine Revised Statutes, section 101-D, subsection 1 (2013) and State of Maine versus Michael Nickerson, 2013 ME 45.

[vii] 17-A Maine Revised Statutes, section 39 (2013).

- On the date of the first meeting, seven patients at the Riverview Psychiatric Center are being evaluated for competency and twelve patients are in treatment to restore competency.
- A defendant who is diagnosed with a mental disease or defect who is found not criminally responsible by reason of insanity will be discharged from the criminal justice system and ordered into the custody of the Commissioner of Health and Human Services for treatment to address the mental illness.
- On the date of the first meeting, 78 people are in the custody of the Commissioner of Health and Human Services for treatment of their mental illness or defect after a finding of not criminally responsible. Of these 78 people, 34 are patients at Riverview Psychiatric Center and 44 are in structured release programs in the community.

Attorney General Mills confirmed that the four units of the Riverview Psychiatric Center all serve civil and forensic patients and that both civil and forensic patients engage in difficult and aggressive behavior that can pose issues of security and safety for patient and staff alike. She also stated that in 2013, the number of transfers from the jails to Riverview Psychiatric Center has dropped from 18 persons to one person. Attorney General Mills pointed out that since 2009 the Commissioner of Corrections has had the authority to transfer persons between correctional facilities across the state. The new law does not broaden or constrict that authority.

Attorney General Mills discussed with the committee the consent decree in *Paul Bates et al. versus the Commissioner of the Department of Health and Human Services* (referred to as the AMHI consent decree case), and distributed a handout provided to the Joint Standing Committee on Appropriations and Financial Affairs on February 5, 2009. The presentation by the Office of the Attorney General to the Appropriations and Financial Affairs Committee on the AMHI consent decree dated February 5, 2009 is included as Appendix C. In addition, Attorney General Mills distributed a handout on the history of services to forensic clients that was prepared by the Department of Health and Human Services and is included as Appendix D.

The Honorable Daniel Wathen, who serves as Court Master in the AMHI consent decree settlement, provided information to the committee about the origin and development of the AMHI consent decree. Court Master Judge Wathen stated that the consent decree is a legally binding settlement agreement that provides court oversight of the provision of adult mental health services at Riverview Psychiatric Center and through community-based providers. Court Master Judge Wathen told the committee that, in his capacity as Court Master, he visits Riverview Psychiatric Center regularly and attends all discharge meetings. He spoke of the capacity of Riverview Psychiatric Center to serve 92 patients and that the hospital was originally planned to serve 48 civil patients on two units and 44 forensic patients on two units. Court Master Judge Wathen mentioned that on November 12, 2013 there were 51 forensic patients and only 21 civil patients. He also discussed the recent court order reinstating active supervision by himself as the Court Master.

The committee then opened the meeting to presentations by advocates and members of the public. Robert Reed, a board member of the National Alliance for the Mentally Ill-Maine

(NAMI-ME), spoke of a family member who has been both a patient at Riverview Psychiatric Center and a prisoner in the county jails and the Maine State Prison and the experiences of that family member. Jenna Mehnert, Executive Director of NAMI-ME also addressed the committee.

B. Tours of Riverview Psychiatric Center and the Mental Health Units at the Maine State Prison

On December 3, 2013 the committee toured the Lower Saco unit of Riverview Psychiatric Center and the special care unit on Lower Saco. At the conclusion of the tour committee members spoke with Superintendent Mary Louise McEwen, key hospital staff and Jay Harper, who is a patient advocate, about the operation of the Lower Saco unit.

During the afternoon of the same day, the committee toured the existing mental health unit and the future intensive mental health unit at the Maine State Prison. Following the tour committee members spoke with Superintendent Rodney Bouffard, Associate Commissioner of Corrections Jody Breton, key prison staff and representatives of Correct Care Solutions, a private community health care provider of medical, dental and behavioral health services in correctional facilities that contracts to provide services in the Maine State Prison. Committee members discussed with the Department of Corrections and Correct Care Solutions the parties' contractual obligations to provide behavioral health services in the intensive mental health unit.

C. Second Meeting

The second meeting of the committee was held on December 20, 2013. The committee discussed the operation of Riverview Psychiatric Center with representatives of the Department of Health and Human Services and the hospital. Jamie Meader, who serves as a nurse, and Dr. Brendan Kirby who is the medical director at Riverview Psychiatric Center answered questions from committee members. Ms. Meader said that Public Law 2013, chapter 434 will be of primary assistance to the county jails, enabling them to transfer persons to the intensive mental health unit at the Maine State Prison who have been ordered to have a psychiatric examination but for whom no space is available at Riverview Psychiatric Center. She said that the waiting list for court ordered examinations usually includes 15 persons. Ms. Meader said that there are currently two patients at Riverview Psychiatric Center who might be eligible for transfer to the intensive mental health unit at the Maine State Prison. Dr. Kirby asked for additional time to consider and discuss the issue of secure and safe treatment settings for persons who are found to be not criminally responsible. He spoke of the improvement in behavioral health treatment at the Maine State Prison that will occur with the opening of the new intensive mental health unit. In answer to questions about transfers from Riverview Psychiatric Center to the intensive mental health unit at the Maine State Prison, Dr. Kirby stated that in consultation with the Department of Corrections, the hospital will identify patients for whom transfer is appropriate. The final decisions on transfers, both admission to and discharge from the intensive mental health unit, will be made by the Department of Corrections, as set forth in Public Law 2013, chapter 434, sections 5 and 6.

Dr. Joseph Fitzpatrick, Director of Behavioral Health for the Department of Corrections, addressed admissions to the intensive mental health unit at the Maine State Prison. He pointed

out that two of the three admissions categories, one consisting of some patients at Riverview Psychiatric Center and the other consisting of certain persons incarcerated in jails, require court orders. The third category, consisting of some persons incarcerated in county jails, requires the Superintendent of Riverview Psychiatric Center to confirm that the person is eligible for admission to the hospital but that no space is available in the hospital for the person. Dr. Kirby and Dr. Fitzpatrick mentioned the importance of establishing a system for prioritizing the return to Riverview Psychiatric Center of any patients transferred pursuant to Public Law 2013, chapter 434, sections 5 and 6. Dr. Fitzpatrick agreed with Ms. Meader and Dr. Kirby that persons found to be incompetent to stand trial and persons found not criminally responsible are not eligible for transfer to the Department of Corrections pursuant to Public Law 2013, chapter 434, sections 5 and 6.

Dr. Fitzpatrick presented a draft memorandum of agreement between the Department of Corrections and the Department of Health and Human Services for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit dated November 25, 2013, and a draft memorandum of agreement between Department of Corrections and the Department of Health and Human Services for the Placement of Prisoners under Guardianship dated November 25, 2013. Since both memoranda are in the drafting and discussion stage, Dr. Fitzpatrick agreed to provide updated and final drafts to committee members on a timely basis.

Dr. Fitzpatrick and Dr. Kirby spoke of the compatibility of the treatment models that will be used at Riverview Psychiatric Center and the intensive mental health unit at the Maine State Prison. They mentioned that the approach to treatment that will be followed by Correct Care Solutions is consistent with the approach at Riverview Psychiatric Center. Specifically, Dr. Kirby stated that Riverview Psychiatric Center will perform clinical audits at the intensive mental health unit at the Maine State Prison twice a year, that the intensive mental health unit will have its own clinical performance measures and that the two facilities may use an electronic link for case conferences.

Dr. Fitzpatrick assured committee members that staff on the intensive mental health unit at the Maine State Prison will complete correctional staff training and additional training in behavioral health issues provided by Correct Care Solutions. He stated that direct care staff will be trained to recognize and de-escalate potentially difficult situations. Dr. Fitzpatrick mentioned that Department of Corrections staff will provide security consultations at Riverview Psychiatric Center.

The committee reviewed proposed training at the Riverview Psychiatric Center and focused on the de-escalation training being provided for staff of the Lower Saco Unit and training drills for behavioral incidents being provided for staff throughout the hospital. Dr. Fitzpatrick stated that staff from the hospital will review difficult cases at the intensive mental health unit and consult and advise staff from the Department of Corrections. Committee members noted the hiring of new staff at Riverview Psychiatric Center, including five Capitol Police officers and four other new positions, listed as acuity specialists, to work with nursing staff to maintain a safe and therapeutic environment, prevent escalation of behaviors and prevent possible injuries to patients and staff.

The committee chairs then opened the meeting to comment from the public. Helen Bailey, of the Disability Rights Center raised issues regarding due process rights in the emergency guardianship procedure in the draft memorandum of agreement regarding prisoners under guardianship. She cautioned that the terms of the draft memoranda should be consistent with Public Law 2013, chapter 434, asked that the memoranda be more specific on standards and eligibility for transfer and discharge from the intensive mental health unit at the Maine State Prison and questioned what the procedures will be for a person who opposes transfer to the intensive mental health unit. Ms. Bailey also raised questions about medication formularies and the need for compatibility between formularies in use in the intensive mental health unit, the county jails and Riverview Psychiatric Center. She raised questions about 60-day observations at the Maine State Prison, for a prisoner transferred to the intensive mental health unit from a jail or correctional facility how the accrual of good time will be calculated, and how a person in the intensive mental health unit will have access to advocates such as patient advocates from the Disability Rights Center.

Oamshri Amarasingham of the American Civil Liberties Union of Maine discussed issues of disagreement with the new law, particularly involuntary medication, transferring non-adjudicated persons to the intensive mental health unit at the Maine State Prison and the challenges of adequate training and staffing. She expressed a preference for providing treatment options, training and staffing to provide adequate treatment and security in a hospital setting.

Vickie McCarty and Charles Ames of the Consumer Council System of Maine addressed the committee and expressed concern that the intensive mental health unit at the Maine State Prison not be used to treat persons with traumatic brain injury, persons with organic brain syndrome and persons with intellectual and developmental disabilities. They stressed the need to continue with the recovery model of treatment, the positive influence of the physical environment and the positive role of peer specialists. They requested a meeting among members of the committee, fellow peers and representatives of the Consumer Council System of Maine to ensure that the intensive mental health unit provides the best possible care for persons needing mental health services.

Jenna Mehnert of the National Alliance for the Mentally Ill-Maine (NAMI-ME) told the committee that she opposed any transfer of patients to the intensive mental health unit at the Maine State Prison who were found incompetent to stand trial or not criminally responsible. Committee members assured Ms. Mehnert that persons found incompetent to stand trial and persons found not criminally responsible are not eligible for transfer to the intensive mental health unit at the Maine State Prison under the provisions of Public Law 2013, chapter 434. Ms. Mehnert asked what evidence-based de-escalation model will be used in the training of staff of the intensive mental health unit and asked what would be realistic performance measures for the unit. Ms. Mehnert questioned whether the Legislature should choose to establish a smaller, more secure psychiatric hospital.

Robert Reed, a board member of the National Alliance for the Mentally Ill-Maine (NAMI-ME), expressed the need for safe and secure treatment facilities, for good treatment design and for careful scrutiny of Correct Care Solutions to ensure that good quality treatment is provided.

D. Third Meeting

The third meeting of the committee was held on January 7, 2014. The chairs invited representatives of the Department of Corrections and the Department of Health and Human Services to present written information that had been compiled for the committee. A copy of the information, entitled "Responses of the Department of Corrections and the Department of Health and Human Services, January 7, 2104," is attached as Appendix E.

The draft Memorandum of Agreement for the Placement of Prisoners under Guardianship dated December 26, 2013, was discussed. A copy of the memorandum is attached as Appendix I. Dr. Fitzpatrick and Superintendent McEwen explained the intention of the departments to pursue a guardianship through adult protective services in the Department of Health and Human Services for a person who is admitted to the intensive mental health unit at the Maine State Prison and who lacks the capacity to make decisions. They explained that the memorandum will commit adult protective services staff within the Department of Health and Human Services to initiate an on-site guardianship evaluation within 10 days of referral from the Department of Corrections, to discuss the evaluation and participate in a case conference with the treatment team at the intensive mental health unit, to complete the evaluation within 30 days and, when guardianship is appropriate, to expedite the application process in court. Conversely, the memorandum will require the Department of Corrections to make available to adult protective services the person and the person's records and members of the treatment team, to provide necessary meeting and office space and to make treatment team members available for testimony in guardianship proceedings in court. Dr. Fitzpatrick agreed to provide further information on the guardianship memorandum of agreement to legislative committees.

With regard to "memoranda of understanding," committee members discussed with Dr. Joseph Fitzpatrick and Superintendent Mary Louise McEwen the draft Memorandum of Agreement between Department of Corrections and the Department of Health and Human Services for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit dated December 26, 2013. A copy of this memorandum attached as Appendix F. After some discussion of the commitment to use clinical factors in determining whether to accept the transfer of a person from a county jail or Riverview Psychiatric Center into the intensive mental health unit, Dr. Fitzpatrick offered to discuss the issue further, to consult with the Office of the Attorney General and to provide additional information to the committee at future meetings. Committee members discussed the requirement in the memorandum that the Department of Corrections will provide all transportation for persons transferred into and from the intensive mental health unit. With regard to protocols for medications, Dr. Fitzpatrick acknowledged that the Department of Corrections lacks authority over health care services at the county jails, that the intensive mental health unit will strive to maintain medication regimens that are working well for persons admitted to the unit and that the participation of the intensive case manager for the person is critical to successful discharge from the unit.

Committee members then discussed the hiring of new staff and training for new and experienced staff. Superintendent McEwen expressed the commitments of the Department of Corrections and the Department of Health and Human Services to work together on training issues and to

utilize each other's expertise on issues including safety and security, behavioral management and best practices in mental health treatment. Dr. Fitzpatrick spoke of the importance of behavioral health training for correctional officers while Superintendent McEwen spoke of the importance of safety and security training for mental health staff. In addition to questions on training and staffing, committee members asked if the Department of Corrections has developed standards to use in evaluating and judging the success of the intensive mental health unit in delivering mental health services. Committee members asked that the Department of Corrections and Department of Health and Human Services develop performance measures to be used in evaluating the success of the intensive mental health unit and within that unit the success of Correct Care Solutions as contractor for the Department of Corrections providing the mental health services on the intensive mental health unit.

In discussing the two draft memoranda of agreement presented to the committee, Dr. Fitzpatrick mentioned a draft memorandum of agreement between the Department of Corrections and the county jails that is in the drafting process and that was expected to be completed by February 1, 2104.

Mark Westrum Jail Administrator at Two Bridges Regional Jail and Chair of the State Board of Correction spoke with the committee about the need for mental health services in the jails. He estimated that of the 1700 to 1850 people in the fifteen county jails at any point in time, approximately 40% have significant and complex mental health and substance abuse needs and pose safety and security risks. Mr. Westrum stated that the intensive mental health unit at the Maine State Prison will provide an important service to the jails but that the current thirty-two beds are completely inadequate to address the needs of the jails, the Maine State Prison and Riverview Psychiatric Center.

Dr. Fitzpatrick spoke with the committee about issues that require attention at this stage in planning for the implementation of the intensive mental health unit. He raised the issue of funding for State Fiscal Year 2014-15 and following years, questioned the financial impact on the Department of Corrections providing all transportation for all persons admitted to and discharged from the intensive mental health unit, and mentioned the employment classifications of new positions at the unit and plans to provide training so that the positions are eventually raised to a higher classification with higher funding. In response to a question raised at the December 20, 2013 meeting, Dr. Fitzpatrick stated that the Department of Corrections is committed to providing access for persons on the intensive mental health unit, as appropriate under the circumstances, to advocates from the agencies traditionally providing advocacy services to persons receiving treatment at Riverview Psychiatric Center.

The committee concluded the third meeting with an agreement to request from the Legislative Council permission to hold one additional meeting in order to complete its duties and an extension of the reporting deadline. The committee expressed a desire to review final copies of the memoranda of agreement between the Department of Corrections and the Department of Health and Human Services that were under discussion and the memorandum of agreement as yet unfinished between the Department of Corrections and the county jails. In addition, the committee requested the following information:

A. A list of new positions in the Department of Corrections that are related to the intensive mental health unit and their funding sources;

B. The clinical factors to be used in the process of decision-making on transfers and discharges;

C. Adult protective guardianship procedures;

D. Estimates of the cost of operation of the intensive mental health unit;

E. The cost of transportation;

F. The relationship of the Department of Corrections to the State Board of Corrections and the county jails;

G. Performance measures for the intensive mental health unit and for Correct Care Solutions; and

H. Additional detail on access for persons in the intensive mental health unit to the advocates who traditionally serve persons receiving treatment at Riverview Psychiatric Center.

E. Fourth Meeting

The fourth meeting of the committee was held on February 19, 2014. The chairs invited representatives of the Department of Corrections and the Department of Health and Human Services to present information that had been prepared at the request of the committee. Dr. Joseph Fitzpatrick informed the committee that the intensive mental health unit at the Maine State Prison opened on February 15, 2014, to serve mental health patients. Dr. Fitzpatrick stated that the intensive mental health unit is complete except for the installation of Lexan windows in the doors to some observation cells that should be completed within the next 10 days. He mentioned with praise the talent of clinical staff and line staff and was unsure when the intensive mental health unit might reach full capacity.

The intensive mental health unit at the Maine State Prison is designed to serve up to 32 patients. The current census is 16 patients, 3 of whom are transfers from county jails who were being served on what was formerly the mental health unit at the Maine State Prison. The Department of Corrections and Riverview Psychiatric Center are currently processing applications for 3 additional transfers from the county jails.

Dr. Fitzpatrick reviewed the clinical criteria for admission to the intensive mental health unit from a county jail including the consideration of whether the jail can safely manage the behavior of a person that is aggressive, unpredictable and dangerous. The criteria are set by law in Title 34-A Maine Revised Statutes, section 3069-A and include:

A. A jail inmate who the Superintendent of the Riverview Psychiatric Center confirms is eligible for emergency hospitalization at a state mental health institute but for whom no suitable bed is available may be transferred to the intensive mental health unit at the State Prison. To be eligible for emergency psychiatric hospitalization the person must be

believed to have a mental illness that causes the person to pose a likelihood of serious harm to self or others; and

B. A jail inmate who has been ordered by a court to undergo a mental health examination under Title 15 Maine Revised Statutes, section 101-D, if the State Forensic Service determines that the jail cannot provide an appropriate setting for the examination but that the intensive mental health unit at the Maine State Prison can do so.

Riverview Psychiatric Center Superintendent Mary Louise McEwen, in response to a question about potential transfers from the hospital, said that there are currently not any patients at the Riverview Psychiatric Center who have been identified for possible transfer to the intensive mental health unit. The standard for eligibility for transfer is set by law in Title 34-A Maine Revised Statutes, section 3069-B. The standard requires:

A. A court order of custody to the Commissioner of Health and Human Services for observation under Title 15 Maine Revised Statutes, section 101-D, and

B. Court findings that the person has a mental illness, that as a result of the mental illness the person poses a likelihood of serious harm to others, that there is not sufficient security at a state mental health institute to address the likelihood of serious harm and that there is no less restrictive alternative to placement in the intensive mental health unit at the Maine State Prison.

Dr. Fitzpatrick then discussed the Memoranda of Agreement between the Department of Corrections and the Department of Health and Human Services for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit. The agreement recites the standards for eligibility for transfers of persons as provided above, excludes from eligibility persons found incompetent to stand trial and persons found not criminally responsible, provides for the transfer of records as needed, provides for transportation, case management, peer review, consultation and second clinical opinion services, and grants to the Commissioner of Corrections final authority with regard to a transfer and to release of the person transferred.

Dr. Fitzpatrick informed the committee that there is a separate memorandum of agreement with county jails. He stated that 10 jails have signed and returned the agreements and that he expects signed copies from the other county jails in the near future. Dr. Fitzpatrick reassured committee members that if the county jails are hesitant to sign the memoranda of agreement he would be sure to notify committee members.

Dr. Fitzpatrick discussed with the committee two items that are the subject of ongoing work. First, he mentioned the draft memorandum of agreement regarding public guardianship that was discussed at prior meetings of the committee. He stated that based on the work the Department of Corrections and the Department of Health and Human Services have done on the memorandum at this point, they are convinced that the departments will need additional time and work to address their interests and to provide a complete and timely process for persons in need of public guardianship. That work having been completed after the last meeting of the committee, but before publication of this report, a copy of the final agreement is attached as

Appendix G. Second, he mentioned the importance of communication and cooperation as the Department of Corrections, Riverview Psychiatric Center and the county jails work to ensure continuity of care, particularly with regard to medication regimen, when a patient who has stabilized and is doing well at one facility is transferred to another facility.

Committee members proceeded to review their draft recommendations and draft report. They agreed on the following statements of support and recommendations.

IV. STATEMENTS OF SUPPORT

The committee agreed on statements of support as follows.

A. The committee supports the Memorandum of Agreement for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit (see Appendix F).

B. The committee supports the use of evidence-based training for staff at the intensive mental health unit and the use of contracted mental health services by Correct Care Solutions LLC (see Appendix H).

C. The committee supports the establishment of the intensive mental health unit at the Maine State Prison as a long-awaited mechanism for providing mental health services to persons with mental illness in Maine's county jails and correctional facilities.

D. The committee supports the ongoing work between the Department of Corrections and the Department of Health and Human Services including:

1. The establishment of priorities for patients transferred to the mental health unit at the Maine State Prison from Riverview Psychiatric Center to facilitate their eventual transfer back to the Riverview Psychiatric Center; and

2. The development of a future memorandum of agreement between the two departments on public guardianship.

V. RECOMMENDATIONS

The committee makes the following recommendations.

A. The committee recommends that the Department of Corrections and the Department of Health and Human Services work closely with the Joint Standing Committees on Appropriations, Criminal Justice and Public Safety and Health and Human Services to ensure the smooth implementation of Public Law 2013, chapter 434 and the continued

work on initiatives that have not been completed. The departments should report regularly to the committees on developing issues and the operation of the intensive mental health unit at the Maine State Prison. The committees should actively oversee implementation and continuing work as follows.

1. With regard to the intensive mental health unit:

   (a) The operation of the intensive mental health unit, including staffing and staff training;

   (b) The census on the unit and whether a waiting list for transfer or admission develops;

   (c) Protocols Riverview Psychiatric Center will use to provide consultations to the Department of Corrections on the provision of mental health services;

   (d) The administration of medication on an involuntary basis;

   (e) The amendment or development of memoranda of agreement between the Department of Corrections and the county jails and between the Department of Corrections and the Department of Health and Human Services;

   (f) The use of best clinical practices in medication and mental health treatments; and

   (g) The coordination of activities between the county jails and Riverview Psychiatric Center; and

2. With regard to Riverview Psychiatric Center:

   (a) The progress in certification of the Lower Saco Unit and certification of the hospital as a whole;

   (b) The census at the hospital, including the distribution of civil and forensic patients and the status of the waiting list for admission;

   (c) The protocols Riverview Psychiatric Center will use to provide consultations to the Department of Corrections on the provision of mental health services and the administration of medication on an involuntary basis;

   (d) The amendment or development of a memorandum of agreement between the Department of Corrections and the Department of Health and Human Services regarding public guardianships;

   (e) The staffing and staff training and the use of best clinical practices in medication and mental health treatments; and

   (f) The coordination of activities between the county jails and the Department of Corrections.

B. The committee emphasized the importance of continued funding to ensure the ongoing operation of the intensive mental health unit at the Maine State Prison. The committee recognizes the considerable investment that the State of Maine has made in establishing the unit and cautions that the State should not lose the benefits of the intensive mental health unit because of inadequate funding. Committee members urge the Joint Standing Committee on Appropriations and Financial Affairs to carefully review the need for funding for Fiscal Year 2014-2015.

APPENDIX A

Authorizing Legislation, Public Law 2013, Chapter 434

APPROVED
SEPTEMBER 6, 2013
BY GOVERNOR

CHAPTER
434
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND AND THIRTEEN

H.P. 1087 - L.D. 1515

An Act To Increase the Availability of Mental Health Services

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, this legislation authorizes the Commissioner of Corrections to transfer an adult jail inmate to a correctional facility for the purpose of providing the inmate with mental health services, and to accept placement of certain adult defendants in a mental health unit of a correctional facility; and

Whereas, it is critically important to implement this authority as soon as possible in order to increase the availability of mental health services; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 15 MRSA §101-D, sub-§5, as amended by PL 2013, c. 265, §2, is further amended to read:

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

A. Commit the defendant to the custody of the Commissioner of Health and Human Services for ~~appropriate~~ placement in an appropriate program 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 appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism,~~ 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 ~~living situation~~ 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 ~~appropriate~~ placement in an appropriate program 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 appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism,~~ 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 ~~living situation~~ 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

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, 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 approved by the Department of Health and Human Services or an intensive outpatient treatment program or ~~a living situation~~ any program specifically approved by the court or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

Sec. 2. 34-A MRSA §1001, sub-§11-B is enacted to read:

11-B. Likelihood of serious harm. "Likelihood of serious harm" means a:

A. Substantial risk of physical harm to a person, as manifested by that person's recent threats of, or attempts at, suicide or serious self-inflicted harm;

B. 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; or

C. Reasonable certainty that a person will suffer severe physical or mental harm as manifested by that person's recent behavior demonstrating an inability to avoid risk or to protect the person's self adequately from impairment or injury.

This subsection is repealed August 1, 2017.

Sec. 3. 34-A MRSA §1001, sub-§12-A is enacted to read:

12-A. 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. This subsection is repealed August 1, 2017.

Sec. 4. 34-A MRSA §3049 is enacted to read:

§3049. Involuntary medication of person with mental illness

1. Grounds for involuntary medication. A person with mental illness residing in a mental health unit of a correctional facility that provides intensive mental health care and treatment may be given medication for the mental illness without the consent of the person if, upon application by the chief administrative officer of the facility, the Superior Court of the county in which the correctional facility is located finds by clear and convincing evidence that:

A. The person is a person with mental illness;

B. As a result of the mental illness, the person poses a likelihood of serious harm;

C. The medication has been recommended by the facility's treating psychiatrist as treatment for the person's mental illness;

D. The recommendation for the medication has been supported by a professional who is qualified to prescribe the medication and who does not provide direct care to the person;

E. The person lacks the capacity to make an informed decision regarding medication;

F. The person is unable or unwilling to consent to the recommended medication;

G. The need for the recommended medication outweighs the risks and side effects; and

H. The recommended medication is the least intrusive appropriate treatment option.

For purposes of this subsection, "intensive mental health care and treatment" means daily on-site psychiatric treatment services, daily on-site group and individual mental health treatment and other therapeutic programs and 24-hour on-call psychiatric coverage and includes, as authorized in accordance with this section, the ability to order and administer involuntary medication for treatment purposes.

2. Rights prior to involuntary medication. Except as provided in this section, a person who is the subject of an application for an order permitting involuntary medication pursuant to this section must be provided, before being medicated, a court hearing at which the person has the following rights.

A. The person is entitled, at least 7 days before the hearing, to written notice of the hearing and a copy of the application for an order permitting involuntary medication, including the specific factual basis for each of the grounds set out in subsection 1.

B. The person is entitled to be present at the hearing.

C. The person is entitled to be represented by counsel.

D. The person is entitled to present evidence, including by calling one or more witnesses.

E. The person is entitled to cross-examine any witness who testifies at the hearing.

F. The person is entitled to appeal to the Supreme Judicial Court any order by the Superior Court permitting involuntary medication.

3. Court hearing. Except as provided in this section, the following applies to the court hearing.

A. The Superior Court may, in its discretion, grant a continuation of the hearing for up to 10 days for good cause shown.

B. The Maine Rules of Evidence apply.

C. The Supreme Judicial Court may adopt such rules of court procedure as it determines appropriate.

D. If the person is indigent, costs of counsel and all other costs, including all costs on appeal, must be provided by the Maine Commission on Indigent Legal Services as in other civil cases.

E. The Superior Court may, in its discretion, subpoena any witness and, if the person is indigent, the witness fees must be provided by the Department of Health and Human Services.

F. The hearing must be electronically recorded and, if an appeal is brought and the person is indigent, the transcript fee must be provided by the Department of Health and Human Services.

G. The order and the application for the order, the hearing, the record of the hearing and all notes, exhibits and other evidence are confidential.

4. Ex parte order. When there exists an imminent likelihood of serious harm, the Superior Court may enter an ex parte order permitting involuntary medication. An application for the ex parte order must include all the information otherwise required under this section, as well as the specific factual basis for the belief that the likelihood of serious harm is imminent. The ex parte order and the application for the ex parte order, the proceeding, any record of the proceeding and all notes, exhibits and other evidence are confidential. If the court enters an ex parte order permitting involuntary medication, a hearing conforming with the requirements of subsections 2 and 3 must be held within 10 days.

5. Court order. If the Superior Court finds by clear and convincing evidence that each of the grounds set out in subsection 1 has been met, the court may grant the application for involuntary medication, as requested or as may be modified based upon the evidence, and may authorize the correctional facility's chief administrative officer to permit qualified health care staff to order and administer medication for treatment of the mental illness, as well as laboratory testing and medication for the monitoring and management of side effects.

6. Periodic review. Involuntary medication of a person under this section may continue only with periodic reviews consisting of subsequent hearings conforming with the requirements of subsections 2 and 3 to take place at least once every 120 days.

7. Medication by consent. This section does not preclude giving medication for a mental illness when either the person to receive the medication or the person's legal guardian, if any, consents to the medication.

8. Repeal. This section is repealed August 1, 2017.

Sec. 5. 34-A MRSA §3069-A is enacted to read:

§3069-A. Transfer of jail inmates for mental health services

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.

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 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.

3. Disclosure of information. With respect to an adult inmate who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to a transfer of the inmate under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

4. Application of other laws. All other applicable provisions of law governing inmates, whether detained pending a trial or other court proceeding or sentenced, apply to inmates transferred under this section.

5. Discretion. Nothing in this section or in any other provision of law requires the commissioner to transfer an adult inmate from a jail to a correctional facility or precludes the commissioner from transferring an adult inmate from a jail to a correctional facility at any time for any other reason at the commissioner's discretion.

6. Repeal. This section is repealed August 1, 2017.

Sec. 6. 34-A MRSA §3069-B is enacted to read:

§3069-B. Placement of defendants for observation

1. Acceptance of placement. The commissioner may accept the placement of an adult defendant in a mental health unit of a correctional facility that provides intensive mental health care and treatment for observation whom a court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, subsection 4 if, in addition to the findings required under Title 15, section 101-D, subsection 4, the court, after hearing, finds by clear and convincing evidence that:

A. The defendant is a person with mental illness and, as a result of the defendant's mental illness, the defendant poses a likelihood of serious harm to others;

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

C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

The commissioner may not accept the placement of a person who has been found not criminally responsible by reason of insanity.

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

2. Termination of placement. The commissioner may terminate the placement of a defendant accepted pursuant to this section if the commissioner determines that the likelihood of serious harm posed by the defendant has decreased or the security at a state mental health institute has increased or for any other reason.

3. Disclosure of information. With respect to an adult defendant who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to accepting placement of the defendant under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

4. Application of other laws. All other applicable provisions of law governing defendants committed for observation apply to defendants accepted for placement under this section.

5. Discretion. Nothing in this section or in any other provision of law requires the commissioner to accept the placement of a defendant who is committed for observation.

6. Repeal. This section is repealed August 1, 2017.

Sec. 7. 34-B MRSA §1207, sub-§1, ¶B, as repealed and replaced by PL 2009, c. 415, Pt. A, §20, is 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; ~~or~~ 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. This paragraph is repealed August 1, 2017;

Sec. 8. 34-B MRSA §1207, sub-§1, ¶B-3 is enacted 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. This paragraph takes effect August 1, 2017;

Sec. 9. Report of Department of Health and Human Services and Department of Corrections. By January 15, 2015, the Department of Health and Human Services shall, in collaboration with the Department of Corrections, submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the operations of a mental health unit within a correctional facility. The report must include the following information regarding the mental health 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 pursuant to the Maine Revised Statutes, Title 34-A, sections 3069-A and 3069-B. The report must also include any recommendations for reallocation of resources or the redesign of services of the mental health unit, the forensic services provided at Riverview Psychiatric Center and the transfer provisions of Title 34-A, sections 3069-A and 3069-B.

Sec. 10. Report of the Department of Corrections. By January 15, 2015, the Department of Corrections shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding the number of applications submitted and orders granted pursuant to the Maine Revised Statutes, Title 34-A, section 3049.

Sec. 11. Report of the Department of Health and Human Services. The Department of Health and Human Services shall prepare a plan regarding how to fully assess for brain injury or suspected brain injury persons who enter into the custody of the department under the Maine Revised Statutes, Title 15, section 101-D or section 103. The plan must include how the department will meet the needs of persons who have traumatic or acquired brain injuries. By January 15, 2015, the department shall report on its plan to the joint standing committee of the Legislature having jurisdiction over criminal justice matters.

Sec. 12. Forensic Mental Health Services Oversight Committee.

1. Establishment. The Forensic Mental Health Services Oversight Committee, referred to in this section as "the committee," is established to oversee the provision of mental health services to persons receiving services as forensic patients in correctional facilities in the State.

2. Appointment; chairs; convening; meetings. The committee consists of 9 members, including 5 members from the political party holding the most seats in the Legislature and 4 members from the political party holding the 2nd most seats in the Legislature. The President of the Senate shall appoint 4 members of the Senate. The first named member of the Senate serves as Senate chair. The Speaker of the House of Representatives shall appoint 5 members of the House of Representatives. The first named member of the House of Representatives serves as House chair. All appointments must be made no later than 30 days following the effective date of this section. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. When the appointment of all members has been completed, the chairs shall call the first meeting of the committee. If 30 days or more after the effective date of this section a majority but not all of the appointments have been made, the chairs may request authority for the committee to meet and conduct its business and the Legislative Council may grant that authority. The committee is authorized to meet up to 4 times.

3. Duties. The committee shall oversee expansion of the Mental Health Unit at the Maine State Prison, as provided in this Act. The committee shall review and consider for the purpose of making recommendations the following:

A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation;

B. The addition of new staff and training of staff at the Maine State Prison;

C. Decision-making authority related to admissions, release and transfer to and from the Mental Health Unit;

D. Eligibility standards;

E. Due process safeguards for placement and treatment decisions; and

F. Impact on resources and population of Riverview Psychiatric Center and county jails.

4. Cooperation. The Department of Corrections, the State Board of Corrections, the Department of Health and Human Services, the judicial branch and the Office of the Attorney General shall provide to the committee all assistance and information necessary to its oversight duties.

5. Compensation. Members of the committee are entitled to receive compensation at the legislative per diem rate and reimbursement of necessary expenses for attendance at authorized meetings of the committee.

6. **Report.** Notwithstanding Joint Rule 353, the committee shall submit its recommendations, including any proposed legislation, by January 15, 2014 for introduction to the Second Regular Session of the 126th Legislature for legislative action.

7. **Staff assistance.** The Legislative Council shall provide staffing services to the committee.

Sec. 13. Addressing concerns of federal Department of Health and Human Services. The Department of Health and Human Services shall report at each meeting of the Joint Standing Committee on Health and Human Services held from September 2013 to December 2013 and any time the committee requests to the Joint Standing Committee on Health and Human Services regarding the issues raised in the report issued by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services in 2013, including:

1. Lower Saco Unit. The plan to recertify the Lower Saco Unit at the Riverview Psychiatric Center; and

2. Model. The plan to implement a recovery and rehabilitation model at the Riverview Psychiatric Center.

The report must address the hiring and training of staff and any other necessary structural changes that must be implemented in order to correct the issues raised in the 2013 report.

The Department of Health and Human Services shall provide a report on the issues outlined in this section to the Joint Standing Committee on Appropriations and Financial Affairs prior to December 1, 2013.

Sec. 14. Appropriations and allocations. The following appropriations and allocations are made.

CORRECTIONS, DEPARTMENT OF

Correctional Medical Services Fund 0286

Initiative: Provides funds for contracted clinical staff to staff a mental health unit at the Maine State Prison effective February 15, 2014.

GENERAL FUND	2013-14	2014-15
All Other	$1,381,771	$0
GENERAL FUND TOTAL	$1,381,771	$0

CORRECTIONS, DEPARTMENT OF DEPARTMENT TOTALS	2013-14	2014-15

GENERAL FUND	**$1,381,771**	**$0**
DEPARTMENT TOTAL - ALL FUNDS	**$1,381,771**	**$0**

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)

Departmentwide 0640

Initiative: Reduces funding from salary savings. Notwithstanding any other provision of law, the State Budget Officer shall calculate the amount of savings in this Act that applies to each General Fund account in the Department of Health and Human Services and shall transfer the amounts by financial order upon approval of the Governor. These transfers are considered adjustments to appropriations in fiscal year 2013-14.

GENERAL FUND	**2013-14**	**2014-15**
Personal Services	($1,382,521)	$0
GENERAL FUND TOTAL	($1,382,521)	$0

HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS) DEPARTMENT TOTALS	**2013-14**	**2014-15**
GENERAL FUND	**($1,382,521)**	**$0**
DEPARTMENT TOTAL - ALL FUNDS	**($1,382,521)**	**$0**

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON

Maine Commission on Indigent Legal Services Z112

Initiative: Provides funds for indigent legal services.

GENERAL FUND	**2013-14**	**2014-15**
All Other	$750	$0
GENERAL FUND TOTAL	$750	$0

INDIGENT LEGAL SERVICES, MAINE COMMISSION ON DEPARTMENT TOTALS	**2013-14**	**2014-15**
GENERAL FUND	**$750**	**$0**

DEPARTMENT TOTAL - ALL FUNDS	$750	$0

SECTION TOTALS	2013-14	2014-15
GENERAL FUND	$0	$0
SECTION TOTAL - ALL FUNDS	$0	$0

Sec. 15. Effective date. That section of this Act that amends the Maine Revised Statutes, Title 15, section 101-D, subsection 5 takes effect October 9, 2013.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved, except as otherwise indicated.

APPENDIX B

Forensic Mental Health Services Oversight Committee Membership List

Forensic Mental Health Services Oversight Committee

Public Law 2013, ch. 434

Tuesday, October 15, 2013

Appointment(s) by the President

Sen. Stanley J. Gerzofsky - Chair 3 Federal Street Brunswick, ME 04011 207 373-1328	Senate Member
Sen. Roger J. Katz 3 Westview Street Augusta, ME 04330 207 622-3711	Senate Member
Sen. Colleen M. Lachowicz 1 Kelsey Street, Apt. #2 Waterville, ME 04901	Senate Member
Sen. Patrick S. Flood 56 Wedgewood Drive Winthrop, ME 04364 207 395-4915	Senate Member

Appointment(s) by the Speaker

Rep. Andrew M. Gattine - Chair 529 Stroudwater Street Westbrook, ME 04092	House Member
Rep. Mark N. Dion 45 Allison Avenue Portland, ME 04103 207 797-6341	House Member
Rep. Aaron M. Frey 69 B Palm Street Bangor, ME 04401	House Member
Rep. Stacey K. Guerin 79 Phillips Road Glenburn, ME 04401 207 884-7118	House Member
Rep. Richard S. Malaby 52 Cross Road Hancock, ME 04640 207 422-3146	House Member

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Staff:

Jane Orbeton 287-1670
OPLA

Curtis Bentley 287-1670
OPLA

APPENDIX C

AMHI Consent Decree, Appropriations Committee Presentation by the Office of the Attorney General, February 5, 2009

AMHI Consent Decree

Appropriations Committee Presentation
by the Office of the Attorney General
February 5, 2009

Overview

The Consent Decree arose from the settlement of litigation on behalf of people who were patients at the Augusta Mental Health Institute ("AMHI") on or after January 1, 1988 ("class members") related to conditions at AMHI that resulted in patient deaths. The Consent Decree, a court order incorporating a 303 paragraph Settlement Agreement, established obligations to improve conditions at AMHI; to reduce the size of AMHI to 70 civil patients; to assure individualized planning for class members; and to develop, fund, recruit, and support resources to serve people with mental illness in the community.

The Consent Decree was written in 1990, when there were 350 patients at AMHI – today, there are about 48 civil and 44 forensic (criminal related) patients at Riverview. Under the Consent Decree, every class member has a right to an individualized support plan coordinated and monitored by a community support worker. In contrast to the MaineCare program, the Decree does not describe any financial or clinical eligibility requirements for individuals, other than "assessed need."

The Consent Decree requires the Department of Health and Human Services ("DHHS"):

- to create a plan to satisfy requirements of the Consent Decree;
- not to deprive non-class members of services solely because they are not class members; and
- to take "all necessary steps and exert good faith efforts to obtain adequate funding from the Legislature."

Class/Non-class Members

Originally, the only requirement for non-class members was that, as the Settlement Agreement said, "in meeting class members' identified needs, defendants shall not deprive non-class members of services solely because they were not members of the class."

Two years after the Consent Decree was signed, the Legislature enacted a law saying that it was the intent of the Legislature to apply the principles of the Consent Decree to all persons with severe and prolonged mental illness, and that the individualized planning process under the Consent Decree would be available to non-class members "to the extent possible and within available resources." 34-B M.R.S.A. § 1217.

In 1994, the Superior Court noted that the plaintiffs "are a separate and distinct class. The [Consent Decree] applies to them; it mandates changes in the way they receive services." *Bates v. Davenport*, CV 89-88, Me. Super. Ct., Ken. Cty, Sept. 7, 1994; 1994 Me. Super. LEXIS 465 (emphasis in original). But, in 2004, the Maine Law Court interpreted the Consent Decree under

the Americans with Disabilities Act to require the State "to provide the same community mental health services to qualifying non-class members as are required for class members." *Bates v. DHHS*, 2004 ME 154, ¶68.

The Department's Consent Decree Plan, approved by the Court Master in 2006, defined "qualified non-class members" to mean anyone deemed eligible for community support services under section 17 of the MaineCare rules. The scope of the state's financial responsibility to serve individuals who might not meet the financial criteria for MaineCare, however, was left unclear.

The Court Master resolved this ambiguity in October 2008 by concluding that DHHS should fund "mental health services included in the State's Medicaid Plan (i.e. community integration, ACT, daily living supports, skills development, outpatient services, medication management and residential treatment) for all persons who are clinically eligible, even though they may be financially ineligible for MaineCare." The Court Master noted that his conclusion would not prevent "the imposition of a fee for service on non-MaineCare eligible qualified non-class members and class members who meet reasonable income thresholds that may be established."

Funding the Consent Decree

The Consent Decree is interpreted as if it were a contract between the plaintiff class and DHHS. In 1994, the Superior Court ruled specifically that the Decree does not bind the Governor. It also does not bind the Legislature.

Under paragraph 268 of the Decree, the DHHS Commissioner must "prepare budget requests which are reasonably calculated to meet the terms of [the] Agreement...and take all necessary steps and make good faith efforts to obtain adequate funding from the Legislature."

Insufficient funding of services, if it affected DHHS' ability to comply with the requirements of the Consent Decree, could affect the determination of compliance and delay termination of the decree, or lead to a finding that DHHS is in contempt. In fact, the Court has recently undertaken an inquiry to determine whether DHHS should be held in contempt for failure to obtain adequate funding of the community mental health system. In August 2008 the Court appointed Elizabeth Jones to "assess in a detailed manner the funding of the adult mental health system for FY 2007-2008 and thereafter." Her report is due to the Court later this month.

The Legislature's Role in System Design

The Legislature is legally free to propose and enact statutes that redefine the scope and coverage of the publicly funded mental health system.

If legislative changes to the mental health system make compliance with the Consent Decree impossible, DHHS would have to return to court, describe the changes that make compliance impossible, and seek changes to the Consent Decree to conform to legislative priorities. The legal standard for making changes to the Consent Decree is set by the U. S. Supreme Court in *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992).

APPENDIX D

History of Service to Forensic Clients, Department of Health and Human Services, November 12, 2013

History of Service to Forensic Clients

AMHI/Riverview Psychiatric Center

The first forensic unit at the Augusta Mental Health Institute (AMHI) opened in February of 1978. Prior to that, forensic clients were scattered throughout the rest of the hospital units within AMHI, with the exception of a maximum security unit that opened in the 1970s

The maximum security unit held individuals that came from the jails and prison. In April of 1987, the forensic unit expanded from eight to 27 beds. Clients who were not criminally responsible (NCR) continued to be mixed in with other hospital clients, reserving the forensic unit for evaluations, restoration and jail transfers. In the mid-1990s, a second forensic unit opened and held a mix of civil and forensic clients but as the population grew, it held just forensic clients.

In June 2004, Riverview Psychiatric Center (RPC) opened with a total of 44 forensic beds. In the fall of 2011, there was a spike of forensic referrals. That, mixed with the growing number of NCR clients, prompted the hospital to start moving the forensic clients onto the civil units in January 2012. That trend has continued and presently on any given day, there are more forensic clients than civil clients in the hospital.

The categories of forensic clients that RPC currently serves are those court-ordered for evaluation for competency, those court-ordered for restoration of competency and NCR clients. Currently, there are 78 NCR clients under the custody of the Commissioner. Of those, 34 reside at RPC and the remainders are served in the community in a variety of living situations. Over the past 12 years, there has been a net gain of five new NCR clients annually. The length of stay of current NCR clients at RPC ranges from three to 20 years.

Under a recent change in statute, those who are court-ordered to RPC for restoration can stay for up to 180 days. There are currently 12 clients at RPC for restoration. Evaluations for those court-ordered to RPC must be completed in 30 days, however, the State Forensic Service can request an additional 30 days from the court. There are currently seven clients at RPC awaiting evaluation and the average length for clients who are court-ordered for evaluation is 27 days.

Due to the increase in court-ordered forensic referrals, RPC has been extremely limited in the number of jail transfer admissions from County jails or the Maine State Prison. In State Fiscal Year 13, RPC admitted 18 clients transferred from the jails and thus far in SFY 14, no jail transfers have occurred. In August 2013, Public Law, Chapter 434 was signed into law, creating a psychiatric unit within the Maine State Prison to provide additional capacity for care within the system and additional flexibility for RPC when dealing with forensic patients. While the law limits the type of forensic patient that can be transferred, the law creates an additional option outside of RPC for individuals found incompetent to stand trial by allowing care in an intensive outpatient treatment program specifically approved by the court.

APPENDIX E

Responses of the Department of Corrections and Department of Health and Human Services to information requests from the Forensic Mental Health Services Oversight Committee, January 7, 2014

Requests for information and materials:

A. Any memorandum of understanding executed between the Department of Corrections and the Department of Health and Human Services for the purposes of implementation. Request to DHHS and DOC.

1. Please provide copies of the most recent drafts of memoranda of understanding between DOC and DHHS.

The committee has been provided with the most recent drafts of the memoranda of agreement between DOC and DHHS as of 11/25/2013

2. Please provide information regarding the status of all memoranda of understanding, whether they are in final form and when they will be executed.

The DOC and DHHS continue to fine tune the memoranda of agreements. They will be executed upon the opening of the unit on February 15, 2013

B. The addition of new staff and training of staff at the Maine State Prison (MSP). Request to DOC.

1. How will new staff be hired and trained? Please provide an update on new staff and training at MSP.

The DOC and CCS are currently are actively recruiting for the Intensive Mental Health Unit.

All DOC and CCS staff on the Intensive Mental Health Unit will be trained in behavioral health and mental health prior to the opening of the unit.

Training will include, but not be limited to, new employee orientation, suicide prevention, social learning theory and programing, risk-needs responsively, ERMA, DSM-5, psychiatric medication, general mental health concerns identification and intervention, points and level treatment system, recognizing psychiatric medication side-effects, ect.

2. Please provide a timeline for hiring new staff and for providing training to new and current staff.

All efforts will be made recruit and hire all new staff by February 1, 2014; all training of new staff will be completed prior to the opening of the unit February 15, 2014.

3. With regard to the state employee Correctional Care and Treatment Workers who will staff the intensive mental health unit at MSP please provide information on the training that they will receive in behavioral health, techniques to anticipate and de-escalate behavioral health care crises and management of behavioral health crises.

All Correctional Care and Treatment Workers on the unit will receive the aforementioned behavioral and mental health training. (Please refer to B-1)

4. With regard to the state employee Correctional Officers who will staff the intensive mental health unit at MSP please provide information on the training that they will receive in behavioral health, techniques to anticipate and de-escalate behavioral health crises and management of behavioral health crises.

All correctional officers will received the aforementioned behavior and mental health training (Please refer to B-1)

5. With regard to the personnel employed by CCS who will staff the intensive mental health unit at MSP please provide information on the training that they will receive in behavioral health, techniques to anticipate and de-escalate behavioral health crises and management of behavioral health crises.

All correctional officers will received the aforementioned behavior and mental health training (Please refer to B-1)

6. What are the staffing needs at the intensive mental health unit related to the expansion? What is the "delta" between the current staffing and the new staffing? What is the cost differential between the current staffing in the current mental health unit and the expanded unit? In addition to the staff provided by the vendor are there additional state staff that will need to be utilized to manage the expanded intensive mental health unit?

The Intensive Mental Health Unit will have a significant increase in service providers as compared to the current stabilization Unit. The Intensive Mental Health Unit staffing matrix includes;

- *Program Administrator (1.0)*
- *Psychiatrist (1.0)*
- *Psychologist (1.0)*
- *Physician (.20)*
- *Masters level provider (2.4)*
- *Mental Health Technician (4.2)*
- *RN's (5.6)*
- *Mental Health Administrative Assistant (1.0)*

The current Mental Health Stabilization Unit is staffed with two (2) Masters level clinicians and one Correctional Caseworker. The state staff to be utilized on the Intensive Mental Health Unit will include five (5) Correctional Care Treatment Workers with custody training.

C. Decision-making authority related to admissions, release and transfer to and from the Intensive mental health unit at MSP. Request to DOC and DHHS.

1. Section A.1 of the draft MOA provided last week states that the RPC Superintendent can refer a defendant to the intensive mental health unit if it is determined that the there is no bed available at RPC and if the Superintendent determines that the person is "appropriate for referral" to the intensive mental health unit. What are the criteria for determination of whether a person is appropriate for referral? Are there clinical criteria?

   The criteria for referral to the Intensive Mental Health Unit will be in accordance with Statute H.P. 1087-LD 1515, namely, likelihood of serious harm and major mental illness.

2. Please provide information and copies of any written materials being considered by DOC or DHHS related to decision-making authority related to admissions, release and transfer to and from the intensive mental health unit at MSP. Is the November 25th draft regarding placement and transfer of prisoners the most recent draft?

   The November 25th of the MOA is the most recent draft

3. If DOC or DHHS has consulted with any other state or state agencies or other hospitals or prisons regarding decision-making authority for admissions, release and transfer to and from the intensive mental health unit at MSP, please describe the consultation and the results of the consultation and provide copies of any written materials obtained during the consultation.

   Authority for admission, release and transfer to and from the Intensive Mental Health Unit will be in accordance with Statute H.P. 1087-LD 1515.

4. Please provide a timeline for the development of memoranda of agreement, protocols or standards for decision-making authority related to admissions, release and transfer to and from the intensive mental health unit at MSP, including as the other facility Riverview Psychiatric Center and the county jails and other correctional facilities.

   The final draft of the MOA's will be completed by February 1, 2014.

5. How will decisions be made regarding admitting and releasing prisoners and defendants to and from the intensive mental health unit?

   Decisions for admission and release from the Intensive Mental Health Unit will be clinically based in accordance with Statute H.P. 1087-LD 1515.

6. What are the eligibility standards for admission to the intensive mental health unit? Are there clinical criteria as well as criteria related to "legal status"?

   Eligibility standards for admission will be in accordance with Statute H.P. 1087-LD 1515. (Please see C-1)

D. Eligibility standards.

1. Please provide information and copies of any written materials being considered by DOC or DHHS regarding eligibility standards for the intensive mental health unit at MSP. Is the November 25th draft regarding prisoners under guardianship the most recent draft?

   Please refer to C-5

2. If DOC or DHHS has consulted with any other state or state agency or other hospitals or prisons regarding eligibility standards for the intensive mental health unit at MSP, please describe the consultation and the results of the consultation and provide copies of any written materials obtained during the consultation.

   Eligibility standards are based on Statute H.P. 1087-LD 1515.

3. Please provide a timeline for the development of memoranda of agreement, protocols or standards for eligibility standards for the intensive mental health unit at MSP.

   Please see C-4

4. Notwithstanding the limitations in the number beds in the current or expanded intensive mental health unit, what is the current estimate of DOC and DHHS of the number of persons who would be eligible for placement at the intensive mental health unit under each of the criteria described in the statute:
   - Section 3069-A (1). An adult inmate transferred from a jail, eligible for admission to RPC, but for whom no Riverview bed is available
   - Section 3069-A (2). An adult inmate transferred from a jail for evaluation
   - Section 3069-B. A defendant transferred from RPC pursuant to court order

   The DOC does not have this data.

5. How will the DOC and DHHS prioritize the placement of inmates or defendants in the prison unit if there are more persons eligible for placement than available beds?

   Clinical needs of the inmates/defendants

E. Due process safeguards for placement and treatment decisions.

1. What due process safeguards will be in place related to placement and treatment decisions? What access will advocates have to prisoners and defendants in the prison unit?

   DOC will act in accordance with Statute H.P. 1087-LD 1515 regarding due process safeguards.

Advocates will be given access to prisoners/defendants in keeping with legal and ethical rights afforded prisoners/defendants and in keeping with Statute H.P. 1087-LD 1515.

2. Please provide information and copies of any written materials being considered by DOC or DHHS regarding due process safeguards for placement and treatment decisions for the intensive mental health unit at MSP.

   Please refer to question (E-1)

3. If DOC or DHHS has consulted with other state or other hospitals or prisons regarding due process safeguards for placement and treatment decisions for, please describe the consultation and the results of the consultation and provide copies of any written materials obtained during the consultation.

   Due process safeguards for placement and treatment decisions will be in accordance with the Statute H.P. 1087-LD 1515 and based on current DHHS practices at RPH

4. Please provide a timeline for the development of memoranda of agreement, protocols or standards for due process safeguards for placement and treatment decisions for the intensive mental health unit at MSP.

   Please see C-4

F. Impact on resources and population of Riverview Psychiatric Center and county jails.

1. Please provide information and copies of any written materials developed to date on the impact of the intensive mental health unit at MSP on RPC and the county jails.

   The data regarding impact is currently unknown.

2. What will be the impact of Public Law 2013, Chapter 434 on staffing resources and funding at Riverview and the county jails?

   Please refer to F-1

3. Where do the DOC and DHHS anticipate the biggest impact of Public Law 2013, Chapter 434 will be?

   Relief to County Jails regarding mentally ill aggressive offenders

4. Has Public Law 2013, Chapter 434 increased or decreased the flexibility of RPC in terms of transfer and treatment options available to these patients?

DOC does not have this data.

5. Prior to Public Law 2013, Chapter 434 was MSP able to take in patients from RPC who have been determined to be not criminally responsible or incompetent to stand trial?

   Yes. Such patients could be transferred under "Safe Keeper" status if they were admitted from RPC to a County Jail, secondary to new criminal charges.

G. Oversight; funding

1. Our understanding is that the DOC is already operating a 21-bed forensic intensive mental health unit and that Chapter 434 allows and funds an expansion of that existing unit from 21 to 32 beds. Is the funding from Chapter 434 covering the cost of the entire unit or just the incremental expansion from 21 to 32 beds.

   Currently DOC dose not operate a forensic intensive mental health unit. DOC has a Mental Health Stabilization Unit at MSP. The funding from Chapter 434 will cover the cost of expanding the professional staff and services necessary to provide an Intensive Mental Health Unit at MSP

2. Describe the clinical services currently being provided in the mental health unit and any differences from a clinical services perspective that will occur after the expansion.

   Currently the DOC provides Masters Level mental Health counseling. With Psychiatry and Psychology consultation on an as needed basis. The proposed Intensive Mental Health Unit will have dedicated on-site Psychiatry, Psychology, Social Workers, Medical Staff, Administration, Mental Health Technician, and Case Work Staff.

3. What are the historical costs of operating the current mental health unit over the past three fiscal years?

   The DOC does not have this data.

4. What does the DOC anticipate the cost will be of operating the intensive mental health unit in subsequent fiscal years?

   3.3 - 3.4 million per year

5. Is all of the funding that the legislature provided being paid to the vendor or are there costs to either DOC or DHHS being covered by the appropriation? If there are costs not covered by the appropriation please detail them and provide the amount and source of the funding.

   All funding is being paid to the vendor with no anticipated cost to DOC or DHHS

6. Describe the clinical and/or quality standards that are utilized to determine whether the mental health services are effective.

   Reduction in aggression and stabilization of Mental Illness.

7. Please provide any documentation, communication or correspondence from CMS to DHHS indicating that the existence or expansion of the MSP intensive mental health unit is a consideration or factor in the decision by CMS to continue to provide funding to RPC.

   DHHS

Issues Raised at the December 20th Meeting
Forensic Mental Health Services Oversight Committee

1. In drafting the standards for release from the intensive mental health unit at the MSP and return to RPC, how ill coordination with RPC be done? Will there be a priority for a person returning from MSP? *(DHHS, DOC)*

Clients returning from MSP will be prioritized by Riverview. Riverview has an admission office and the coordination with any referring agency is done through that office.

2. What will be the roles of DHHS/RPC staff in training DOC/MSP staff and DOC/MSP staff in training DHHS/RPC staff? *(DHHS, DOC)*

The Directors of Staff Education from DOC and Riverview are in constant communication in order to share training between the two agencies that benefit client care. This will continue after the unit is established.

3. What evidence-based practices will Correct Care Solutions in training and practice for DOC/MSP staff? *(DOC)*

CCS will be utilizing a social learning model and all training will align with that evidence based approach, including but not limited to; de-escalation techniques, point-levels, education regarding psychiatric medication intervention and side effects, and risk-needs responsivity, ect.

4. How will DOC/MSP and DHHS/RPC staff work together to review and consult on difficult cases at both facilities? *(DHHS, DOC)*

As stated in the MOU, RPC staff shall provide consultation services as requested by DOC related to the treatment of any male prisoner placed in or admitted to the Intensive Mental Health Unit, regardless of how the client was placed in the unit.

5. How will DHHS/RPC and DOC/MSP work together and with the jails regarding medication formularies for persons moving between facilities to ensure continuity of care and medical stability? *(DHHS, DOC)*

RPC already works with DOC and the county jails to ensure continuity of care and will continue to do so.

6. What will be the standards for transfer to the intensive mental health unit for a prisoner incarcerated at MSP? What happens if a prisoner identified for transfer within MSP does not want to transfer? *(DOC)*

The standards for transfer to the Intensive Mental Health Unit for an MSP prisoner will be the clinical presentation of acute mental health symptoms related to a major mental illness. Prisoners do not determine their own transfers within the prison system.

7. What will be the standards for release from the intensive mental health unit at MSP back to the jails or to RPC? What will happen if a jail lacks capacity to take back a prisoner when the person is ready to return to the jail? *(DOC)*

The standards for release from the Intensive Mental Health Unit at MSP will be the stabilization of acute mental health symptoms and the reduction of dangerousness related to major mental illness.

If there is no bed available at a County Jail when a prisoner is ready to return from the Intensive Mental Health Unit at MSP the prisoner will be held at MSP until the first available bed, unless another County Jail is willing to make a bed available.

8. How will a prisoner transferred to the intensive mental health unit at MSP continue to earn good time that would have accrued in the facility from which the prisoner transferred? *(DOC)*

Prisoners would continue to earn their good time based on positive behavior and work assignment.

APPENDIX F

Memorandum of Agreement between the Department of Corrections and the Department of Health and Human Services for the Placement and Treatment of Prisoners into the Department of Corrections Intensive Mental Health Unit

MEMORANDUM OF AGREEMENT
between
Maine Department of Corrections
and
Maine Department of Health and Human Services
for the Placement of Prisoners under Guardianship

This Memorandum of Agreement ("MOA") is entered into this 5th day of March, 2014 by and between signatories Maine Department of Health and Human Services ("DHHS") and Maine Department of Corrections ("DOC').

RECITALS

WHEREAS, DHHS and DOC recognize the need, at times, for the appointment of DHHS guardians to make healthcare decisions for prisoners in the custody of DOC;

NOW, THEREFORE, in consideration of these mutual covenants as to the procedures and scope of responsibilities for each party regarding guardianship of prisoners in the DOC Intensive Mental Health Unit;

A. DHHS agrees:

1. For a male prisoner placed in or admitted to the Maine State Prison's Intensive Mental Health Unit, DHHS shall, upon referral from DOC, expedite the process of assessing the appropriateness of guardianship for the purpose of making healthcare decisions;

2. DHHS shall initiate an on-site guardianship evaluation within a maximum of 10 days from the referral from DOC;

3. As part of the evaluation, DHHS shall engage in a face to face discussion with the Intensive Mental Health Unit Treatment Team;

4. DHHS shall complete the evaluation and present it to the Intensive Mental Health Unit Treatment Team within 30 days;

5. DHHS shall participate in a case conference with members of the Intensive Mental Health Unit Treatment Team to deliver the evaluation findings;

6. If it is determined that the prisoner is appropriate for guardianship, DHHS shall expedite the application to the court for the appointment of a guardian, initially using the process for the court appointment of an emergency guardian, to be followed by timely application for the appointment of a permanent guardian; and

7. DHHS shall apply for the emergency guardianship within a maximum of 10 days from the determination that guardianship is appropriate.

B. DOC agrees:

1. DOC shall make the prisoner, Intensive Mental Health Unit Treatment Team members, and relevant prisoner/patient records available to DHHS;

2. DOC shall provide DHHS the appropriate, secure, confidential meeting space and office space to conduct and complete the evaluation; and

3. If it is determined the prisoner is appropriate for guardianship, DOC shall make the Intensive Mental Health Unit Treatment Team members available to provide witness testimony as needed for the emergency and permanent guardianship proceedings.

C. Both Parties agree:

1. This MOA may be amended at any time by mutual agreement of the parties, provided that for any amendment to be operative or valid, it shall be reduced to writing and signed by both parties; and

2. This MOA shall be in effect until August 1, 2017 and may be extended by mutual agreement of the parties, provided that for any extension to be operative or valid, it shall be reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day, month and year first written above.

MAINE DEPARTMENT OF CORRECTIONS

By: Joseph Ponte 3-5-14
Signature Date
Name: Joseph Ponte
Title: Commissioner
Mailing Address: 25 Tyson Drive, 111 SHS, Augusta, ME 04333-0111

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: Mary C. Mayhew 3-5-14
Signature: Date
Name: Mary C. Mayhew
Title: Commissioner
Mailing Address: 221 State Street, 11 SHS, Augusta, ME 04333-0011

APPENDIX G

Memorandum of Agreement between Department of Corrections and the Department of Health and Human Services for the Placement of Prisoners under Guardianship

MEMORANDUM OF AGREEMENT
Between
Maine Department of Corrections
and
Maine Department of Health and Human Services
for the Placement and Transfer of Prisoners into the
Department of Corrections Intensive Mental Health Unit

This Memorandum of Agreement ("MOA") is entered into this 5th day of March, 2014 by and between signatories Maine Department of Health and Human Services ("DHHS") and Maine Department of Corrections ("DOC').

RECITALS

WHEREAS, DHHS and DOC recognize the mutual benefit of utilizing the Department of Corrections Intensive Mental Health Unit for eligible prisoners who would otherwise be the responsibility of a jail or state mental health institute;

NOW THEREFORE, in consideration of these mutual covenants as to the procedures and scope of responsibilities for each party regarding the placement and transfer of such prisoners into the DOC Intensive Mental Health Unit;

A. DHHS agrees:

1. For an adult male prisoner referred by a jail to a state mental health institute for possible civil commitment, the Superintendent of the Riverview Psychiatric Center ("RPC") shall evaluate the eligibility of the prisoner for admission to a state mental health institute under Title 34-B, section 3863, and the availability of a suitable bed at the RPC. If the Superintendent confirms the prisoner is eligible for admission and that no suitable bed is available, but that the prisoner is appropriate for referral to the Maine State Prison's Intensive Mental Health Unit, the Superintendent may refer the prisoner to the DOC Director of Treatment, or designee, for a determination whether to accept the prisoner for transfer to the Maine State Prison's Intensive Mental Health Unit;

2. For an adult male prisoner referred by the State Forensic Service for transfer from a jail in order to conduct an examination under Title 15, section 101-D, subsection 1, 2, 3, or 9, because the jail cannot provide an appropriate setting for the examination, but the Intensive Mental Health Unit can, the Superintendent of the RPC may refer the prisoner, on behalf of the State Forensic Service, to the DOC's Director of Treatment, or designee, for a determination whether to accept the prisoner for transfer to the Maine State Prison's Intensive Mental Health Unit;

3. For an adult male prisoner committed by a court to the custody of DHHS for observation under Title 15, section 101-D, subsection 4, and with

respect to whom the court has found the prisoner has a mental illness as a result of which the prisoner poses a likelihood of serious harm to others; there is not sufficient security at a state mental health institute to address the likelihood of serious harm; and there is no other less restrictive alternative to placement in a prison mental health unit, the Superintendent of the RPC may refer the prisoner to the DOC's Director of Treatment, or designee, for a determination whether to accept the prisoner for placement into the Maine State Prison's Intensive Mental Health Unit;

4. The Superintendent may not refer any person who is currently the subject of a court finding of incompetent to stand trial or not criminally responsible by reason of insanity;

5. Upon referral, the Superintendent shall provide whatever supporting documentation is requested by the DOC Director of Treatment, or designee, to include, as relevant, DHHS records and, to the extent available to DHHS, jail records;

6. DHHS shall immediately accept the return to RPC of any prisoner placed in the Intensive Mental Health Unit for observation pursuant to 3. above whose placement has been terminated by DOC;

7. DHHS Intensive Case Managers shall keep apprised of court proceedings related to any prisoner accepted into the Intensive Mental Health Unit from a jail or RPC and shall inform appropriate DOC and DHHS staff of any pending resolution of charges that would result in a release from custody to the community or commitment to the custody of DHHS after a finding of incompetent to stand trial or not criminally responsible by reason of insanity;

8. DHHS shall immediately accept into RPC any prisoner accepted into the Intensive Mental Health Unit from a jail or RPC who has been committed by a court to the immediate custody of DHHS after a finding of incompetent to stand trial or not criminally responsible by reason of insanity;

9. As requested by DOC, DHHS shall provide DHHS records relevant to the provision of mental health services by the DOC to any of its prisoners, regardless of whether the prisoner is being housed or ever has been housed in the Intensive Mental Health Unit;

10. DHHS shall provide consultation services as requested by DOC related to the treatment of any male prisoner placed in or admitted to the Intensive Mental Health Unit, regardless of whether the prisoner was transferred to or placed in the unit pursuant to this MOA;

11. DHHS shall provide peer review services on a quarterly basis as requested by DOC related to the treatment of any male prisoner placed in

or admitted to the Intensive Mental Health Unit, regardless of whether the prisoner was transferred to or placed in the unit pursuant to this MOA;

12. DHHS shall conduct site visits to the Intensive Mental Health Unit, to include chart audits, on a semiannual basis as requested by DOC; and

13. When the DOC is proposing to obtaining a court order for involuntary medication of any male prisoner placed in or admitted to the Intensive Mental Health Unit, regardless of whether the prisoner was transferred to or placed in the unit pursuant to this MOA, DHHS shall make available a professional qualified to prescribe the medication to provide a second clinical opinion as to whether the recommendation for the medication is supported and, if necessary, to testify at the involuntary medication proceedings, regardless of whether the prisoner was transferred to or placed in the unit pursuant to this MOA.

B. DOC agrees:

1. DOC shall determine whether to accept a prisoner within a maximum of 10 days from the referral from DHHS and the provision of any requested documentation;

2. DOC shall arrange and provide all transportation for any prisoner who has been accepted, both to and from the Intensive Mental Health Unit;

3. DOC shall provide all care, custody, and treatment of a prisoner who has been accepted into the Intensive Mental Health Unit until the prisoner's release to the community, return to the jail, or placement at RPC; and

4. DOC shall enter into a Memorandum of Agreement with any jail from which prisoners may be accepted by DOC pursuant to 1. above setting out the responsibilities of the jail with respect to providing documentation to DHHS and with respect to the mutual responsibilities of the jail and DOC.

C. Both Parties agree:

1. The DOC Commissioner, or designee, has the discretion to either approve or deny any request for the transfer or placement of a prisoner into the DOC Intensive Mental Health Unit and to order the return of a prisoner to a jail or terminate a prisoner's placement from DHHS at any time;

2. This MOA may be amended at any time by mutual agreement of the parties, provided that, for any amendment to be operative or valid it shall be reduced to writing and signed by both parties; and

3. This MOA shall be in effect until August 1, 2017 and may be extended by mutual agreement of the parties, provided that, for any extension to be operative or valid it shall be reduced to writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day, month and year first written above.

MAINE DEPARTMENT OF CORRECTIONS

By: Joseph Ponte 3-5-14

Signature Date

Name: Joseph Ponte
Title: Commissioner
Mailing Address: 25 Tyson Drive, 111 SHS, Augusta, ME 04333-0111

MAINE DEPARTMENT OF HEALTH AND HUMAN SERVICES

By: Mary C. Mayhew 3-5-14

Signature Date

Name: Mary C. Mayhew
Title: Commissioner
Mailing Address: 221 State Street, 11 SHS, Augusta, ME 04333-0011

APPENDIX H

Contract for Special Services between Department of Corrections and Correct Care Solutions, LLC, dated November 7, 2013

Department of Corrections
CONTRACT FOR SPECIAL SERVICES – 3rd AMENDMENT

BY AGREEMENT of both parties this 7th day of November, 2013, the Contract for Special Services between the State of Maine, Department of Corrections, hereinafter called "Department," and Correct Care Solutions, LLC, hereinafter called "Provider," is hereby amended as follows:

1. Expansion of services to include mental health staffing and programming in order to support the creation of a new Intensive Mental Health Unit (IMHU) to be located at the Maine State Prison (MSP). The **IMHU Scope of Work** attached hereto outlines the services to be provided to patients of the Intensive Mental Health Unit and the proposed, additional staffing requirements for the Intensive Mental Health Unit are reflected under **IMHU Rider D**, also attached hereto.

2. The dollar amount of the contract is increased by $1,215,009 from $78,934,553 to $80,149,562.

3. **Amended Rider E** (a/k/a Shared Risk Pricing Model) has been updated to reflect the cost increase as noted above and attached hereto. The shared risk cap and threshold have also been adjusted to account for the additional costs/risks associated with this expansion.

All other terms and conditions of the original contract dated June 19, 2012 and amendments thereto, hereinafter called the "Contract," remain in full force and effect.

IN WITNESS WHEREOF, the Department and Provider, by their duly authorized representatives, have executed this amendment in one (1) original as of the day and year first above written.

Department of Corrections

By: _____
Jody Breton, Associate Commissioner

and

Correct Care Solutions, LLC

By: _____
Jerry Boyle, President

Approved, State Purchases Review Committee: _____ Date: _____

Contract Number (CT #): 03A 20120620-6072 Vendor Code: VC00001778839

Old Contract Amount: $78,934,553 Account Codes: (unchanged)

New Contract Amount: $80,149,562 New Termination Date: (unchanged)

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IMHU SCOPE OF WORK

PURPOSE:

In order to fulfill the requirements of PL 2013, c. 434 (An Act To Increase the Availability of Mental Health Services), the Provider will engage mental health professionals and staff to develop and administer programming to support the creation of a new Intensive Mental Health Unit to be located at the Maine State Prison. The program shall be operational by February 15, 2014.

IN FURTHERANCE THEREOF,

A. Provider agrees:

1. To develop and implement treatment programs based on research-supported, evidence-based and/or evidence-informed principles of psychiatric rehabilitation and recovery for the discrete populations of patients defined under PL 2013, c. 434 as described above.

2. To administer treatment plans targeted to each individual patient's needs.

3. To collaborate with MDOC onsite personnel utilizing a multidisciplinary Treatment Team to facilitate the treatment programs.

4. To continuously monitor and analyze the staff-to-patient ratio and make appropriate modifications as mutually agreed by the parties.

5. To establish a structure and process for reporting relevant information to the MDOC regarding the Provider's operations and outcomes within a timeframe and in a manner to be determined and agreed by the parties.

6. To develop a method for dialogue with the MDOC on a routine basis to identify and assess processes or issues impacting the treatment programs and/or patient care.

7. To monitor the fidelity and measure the effectiveness of the treatment programs by a variety of means, including but not limited to, CQI evaluations and functional studies.

8. To maintain appropriately trained, licensed and credentialed staff for designated positions.

9. To create, maintain, and publish a schedule of all activities occurring in the Unit.

10. To coordinate with a designated MDOC representative to respond to inquiries and requests for information from advocacy groups and community members regarding the purpose and function of the Intensive Mental Health Unit.

11. To work with the MDOC in good faith to resolve in a mutually satisfactory manner any concerns or issues regarding the implementation or application of the treatment programs or the evolution of the Intensive Mental Health Unit.

B. The parties agree:

1. In the event the population in the IMHU increases by 10% (ten percent) or more from the original base of 32 (thirty-two) patients for a period of 30 (thirty) days or longer, the parties agree to immediately evaluate the staff-to-patient ratio and the positions providing services to ensure adequate levels of care. Upon mutual agreement, the parties will adjust the staffing and associated costs to accommodate any increase described above.

2. MDOC will ensure that a sufficient number of Correctional Officers per shift are assigned to and available for the safe and efficient operation of the Intensive Mental Health Unit.

3. This 3rd Amendment addresses services for the Intensive Mental Health Unit only through Year 2 of the Contract as that term is defined therein. For subsequent Years of the Contract, annual budgets and the shared risk model will be determined by mutual agreement of the parties.

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IMHU RIDER D: STAFFING SUMMARY

MAINE STATE PRISON

INTENSIVE MENTAL HEALTH UNIT

Minimum Staffing Requirements									
Mental Health Unit Proposed Staffing Requirements total									
Maine State Prison - Mental Health Unit								ADP:	32
Total Staff - All Shifts									
POSITION	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
Program Administrator	8	8	8	8	8			40	1.00
Psychiatrist	8	8	8	8	8			40	1.00
Physician					8			8	0.20
Psychologist	8	8	8	8	8			40	1.00
Masters Level Provider	16	16	16	16	16	8	8	96	2.40
Mental Health Technician	24	24	24	24	24	24	24	168	4.20
RN	32	32	32	32	32	32	32	224	5.60
MH Administrative Assistant	8	8	8	8	8			40	1.00
TOTAL HOURS/FTE WEEK								656	16.40
Minimum Staffing Requirements									
Maine State Prison - Mental Health Unit								ADP:	32
POSITION	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Hrs/WK	FTE
DAY SHIFT									
Program Administrator	8	8	8	8	8			40	1.00
Psychiatrist	8	8	8	8	8			40	1.00
Physician					8			8	0.20
Psychologist	8	8	8	8	8			40	1.00
Masters Level Provider	16	16	16	16	16	8	8	96	2.40
Mental Health Technician	16	16	16	16	16	16	16	112	2.80
RN	16	16	16	16	16	16	16	112	2.80
MH Administrative Assistant	8	8	8	8	8			40	1.00
TOTAL HOURS/FTE-Day								488	12.20
EVENING SHIFT									
Mental Health Technician	8	8	8	8	8	8	8	56	1.40
RN	8	8	8	8	8	8	8	56	1.40
TOTAL HOURS/FTE-Evening								112	2.80
NIGHT SHIFT									
RN	8	8	8	8	8	8	8	56	1.40
TOTAL HOURS/FTE-Night								56	1.40
TOTAL HOURS/FTE per week								656	16.40

AMENDED RIDER E: SHARED RISK PRICING MODEL

	Year 1	Year 2*	Year 3	Year 4
Comprehensive Services	7/1/12 - 6/30/13	7/1/13 - 6/30/14	7/1/14 - 6/30/15	7/1/15 - 6/30/16
Employees Benefits and Salaries	$12,857,441	~~$12,775,204~~ 13,428,192	$13,706,755	$14,152,224
Off-site Expenses (Inpatient; Outpatient; Specialty; ER)**	$1,541,305	$1,087,491	$848,902	$876,491
All Medical Supplies	$239,051	~~$322,732~~ 357,732	$254,842	$263,124
All other Ancillary Services (Includes Pharmacy, Lab and Mobile x-Ray)	$1,645,069	~~$2,343,870~~ 2,545,310	$1,753,736	$1,810,732
Administrative Costs	$958,220	~~$837,520~~ 1,192,240	$1,021,516	$1,054,716
Management Fee (Includes overhead)	$1,971,749	~~$2,035,831~~ 2,168,552	$2,101,996	$2,170,310
First Aid Protective Devices	$74,262	~~$61,692~~	$63,697	$65,767
Credit on Existing Program		($61,861)		
Annual Totals	**$19,287,097**	**~~$19,502,648~~ 20,717,657**	**$19,751,444**	**$20,393,364**

Four-Year Grand Total: ~~$78,034,653~~ 80,149,562

* Under the Shared Risk Model, the parties agree that in the event actual costs for Year 2 of the contract exceed $21,301,957, plus any expenses associated with travel for the Training Initiative, then CCS and the MDOC will share equally (50%- 50%) in such excess costs up to $745,000. Should actual costs for Year 2 exceed $745,000 over the agreed $21,301,957 then MDOC shall be solely responsible for such excess costs above $745,000.

Consolidated MDOC
Summary of Budget Revisions

	Current Contract Budget	Cost of New Progam at MSP	Revised Contract Budget
Wages, Prof Fees, & Benefits	$ 12,775,204	$ 652,989	$ 13,428,192
Travel	147,646	19,000	166,646
Insurance	283,553	40,664	324,217
Pharmacy	2,043,670	152,000	2,195,670
Other On-Site	300,200	49,440	349,640
Supplies	322,732	35,000	357,732
Off-Site Services	1,087,491	-	1,087,491
Other Expenses	506,321	195,056	701,377
DIRECT EXPENSE	**17,466,817**	**1,144,149**	**18,610,965**
Management Fee	2,035,831	132,721	2,168,552
SUBTOTAL	**$ 19,502,648**	**$ 1,276,870**	**$ 20,779,518**
Credit on Existing Program	(61,861)	-	(61,861)
TOTAL EXPENSE	**$ 19,440,787**	**$ 1,276,870**	**$ 20,717,657**