

**§101-D. Mental examination of persons accused of crime**

**1. Competency to proceed.** The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency to proceed to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court's order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate any party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination will be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

**2. Insanity; abnormal condition of the mind.** The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 39 and abnormal condition of the mind under Title 17-A, section 38.

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes

that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination.

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

(3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A. [PL 2009, c. 268, §3 (NEW).]

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

[PL 2015, c. 431, §4 (AMD).]

**3. Mental condition relevant to other issues.** The court may for good cause shown order that the defendant be examined to evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it pertains to those issues. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may grant an extension of time that is reasonable under the circumstances. The examination may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

**4. Commitment for observation.** The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection. If the State Forensic Service determines that observation of the defendant will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9 and the defendant is incarcerated, the observation may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation. If the observation is to take place in a correctional facility, the court may not commit the defendant to the custody of the Commissioner of Health and Human Services.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant. [PL 2013, c. 265, §1 (AMD).]

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and

treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment. If the defendant had been incarcerated prior to the commitment for observation and if, during the period of observation, the defendant presents a substantial risk of causing bodily injury to staff or others that cannot be managed in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, the commissioner may return the defendant to the correctional facility. The commissioner shall report the risk management issues to the court. Upon receiving the report, the court shall review the report and may enter any order authorized by this section, including termination of the commitment. [PL 2013, c. 265, §1 (AMD).]

C. If the court has provided for remand to a correctional facility following the commitment under paragraph B, the correctional facility shall execute the remand order upon advice from the Commissioner of Health and Human Services that commitment is determined no longer necessary. [PL 2009, c. 268, §3 (NEW).]

[PL 2013, c. 265, §1 (AMD).]

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

home, a residential care facility, an assisted living facility, a hospice, a hospital, an intensive outpatient treatment program or any program specifically approved by the court. When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed; or [PL 2021, c. 306, §1 (AMD).]

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 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. [PL 2013, c. 434, §1 (AMD); PL 2013, c. 434, §15 (AFF).]

[PL 2021, c. 306, §1 (AMD).]

**5-A. Finding of nonrestorability.** If 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, the court may 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 is transported shall execute the court's order. [PL 2021, c. 306, §2 (NEW).]

**6. Examiners.** Evaluation of a defendant by the State Forensic Service pursuant to this section must be performed by a licensed psychologist or a psychiatrist. The State Forensic Service may determine whether an examination will be performed by a licensed psychologist or a psychiatrist unless the court has designated the specialty of the examiner in its order. [PL 2009, c. 268, §3 (NEW).]

**7. Competence; proceedings.** Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant must be in accordance with the rules of criminal procedure. [PL 2009, c. 268, §3 (NEW).]

**8. No release during commitment period; violation.** A person ordered or committed for examination, observation, care or treatment pursuant to this section may not be released from the designated placement during the period of examination. An individual responsible for or permitting the release of a person ordered committed pursuant to this section for examination, observation, care or treatment from the designated placement commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [PL 2013, c. 265, §3 (AMD).]

**9. Examination after sentencing.** If the issue of insanity, competency, abnormal condition of mind or any other issue involving the mental condition of the defendant is raised after sentencing, the court may for cause shown order the convicted person to be examined by the State Forensic Service. If at the time an examination order is entered by the court the sentenced person is in execution of a sentence of imprisonment imposed for any criminal conduct, the time limits and bail provisions of this section do not apply. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination.  
[PL 2011, c. 464, §2 (AMD).]

**10. Appropriate placement.** When a court commits the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of persons with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism as set forth in subsection 4, the transfer of the defendant must take place within 30 days from the time the order is transmitted to the State Forensic Service, unless an extraordinary circumstance causes a necessary delay. The Commissioner of Health and Human Services shall notify the court of the extraordinary circumstance causing a delay.  
[PL 2021, c. 757, §1 (NEW).]

#### SECTION HISTORY

PL 2009, c. 268, §3 (NEW). PL 2011, c. 464, §§1, 2 (AMD). PL 2011, c. 542, Pt. A, §§8, 9 (AMD). PL 2013, c. 21, §2 (AMD). PL 2013, c. 265, §§1-3 (AMD). PL 2013, c. 434, §1 (AMD). PL 2013, c. 434, §15 (AFF). PL 2015, c. 431, §4 (AMD). PL 2021, c. 306, §§1, 2 (AMD). PL 2021, c. 757, §1 (AMD).

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