



Maine Senate Caucus Presentation

Winter 2016

Terminology

Not Criminally Responsible (NCR)

1. A defendant is not criminally responsible by reason of insanity if, at the time of the criminal conduct, as a result of mental disease or defect, *the defendant lacked substantial capacity to appreciate the wrongfulness of the criminal conduct.*
2. As used in this section, "mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect.
3. Lack of criminal responsibility by reason of insanity is an affirmative defense.

Me. Stat. tit. 17-A, § 1-39

- The evaluation of NCR findings is done by the State Forensic Service and includes a review of the defendant and the circumstances of the crime.
- Not all individuals found to be NCR are accused of violent crimes and a 2009 national epidemiology study published in the Arch of General Psychiatry found that severe mental illness alone does not predict violent behavior¹.

Incompetent to Stand Trial (IST)

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.*

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.

Me. Stat. tit. 15, § 1-101-D

- The evaluation of IST findings is done by the State Forensic Service and includes a review of the defendant and the circumstances of the crime.

Overview of Population Data & Research

- As of 2010, the State Forensic Service reported that only 118 people were ruled to be NCR since Maine's first finding in 1946 - an average of less than two people per year.
- Maine's Department of Public Safety reported over 10,000 cleared offenses statewide in 2010 – illustrating that the targeted populations discussed in this legislation represent a miniscule percentage of offenders in our court system.
- A 2015 study published in the Canadian Journal of Psychiatry found that recidivism rates for individuals found to be NCR are comparatively lower than offenders with or without mental disorders who are housed in correctional custodyⁱ.
- Additionally, correctional institutions primarily are not well-equipped to support special populations, as evidenced in a 2010 paper demonstrating conditions for inmates can often increase preexisting mental disordersⁱⁱⁱ.
- State prison budgets have grown significantly over the last several decades, with reported costs related to mental illness taking up to 43% of state prison health care budgets back in 1998^{iv}.

NAMI Maine's primary focus is ensuring every person with mental illness in Maine has access to individualized services that meet their needs.

We support the creation of a small (up to 10 bed), specialized treatment unit in Maine that would serve those individuals who have a severe mental illness accompanied by physically aggressive behavior. This unit would need to be under the administrative oversight of the Department of Health and Human Services, and provide a hospital level of care.

Questions to Consider

- How many people at Riverview are NCR or IST?
- How many incident reports involve forensic patients?
- Who has the authority to sentence people to prison?
- What is the true cost of treating forensic patients at Riverview when the facility is appropriately staffed?
- How does that compare to costs currently accrued by mandated overtime?

Contact NAMI Maine

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ⁱ Elbogen, E.B., Johnson, S.C. (2009). The intricate link between violence and mental disorder: results from the National Epidemiology Survey on Alcohol and Related Conditions. *Arch Gen Psychiatry*. 66 (2): 152-161.

ⁱⁱ Crocker, A.G., Nicholls T. L., Seto, M. C., & Côté, G. (2015). The National Trajectory Project of Individuals found Not Criminally Responsible on Account of Mental Disorder in Canada. Editorial. *Canadian Journal of Psychiatry*

ⁱⁱⁱ Angelotti, Steve, and Sara Wycoff. 2010. "Michigan's Prison Health Care: Costs in Context." Issue Paper. Lansing, MI: Senate Fiscal Agency.

^{iv} Kinsella, Chad. 2004. "Corrections Health Care Costs." Lexington, KY: Council of State Governments.