

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 29

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H.P. 32

House of Representatives, January 6, 2005

### **An Act To Provide Justice to Those Found Not Guilty Due to Mental Disease or Defect and Decrease Costs to the State**

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative FAIRCLOTH of Bangor.

2  
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §104-A**, as corrected by RR 1995, c. 2, §§29  
5 and 30 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is  
6 further amended to read:

7 **§104-A. Release and discharge; hearing; payment of fees**

8  
9  
10 **1. Release and discharge.** The term "release," as used in  
11 this section, means termination of institutional ~~in-patient~~  
12 inpatient residency and return to permanent residency in the  
13 community. The head of the institution in which a person is  
14 placed, under section 103, shall, annually, forward to the  
15 Commissioner of Health and Human Services a report containing the  
16 opinion of a staff psychiatrist as to the mental conditions of  
17 that person, stating specifically whether the person may be  
18 released or discharged without likelihood that the person will  
19 cause injury to that person or to others due to mental disease or  
20 mental defect. The report must also contain a brief statement of  
21 the reasons for the opinion. The commissioner shall immediately  
22 file the report in the Superior Court for the county in which the  
23 person is hospitalized. The court shall review each report and,  
24 if it is made to appear by the report that any person may be  
25 ready for release or discharge, the court shall set a date for  
26 and hold a hearing on the issue of the person's readiness for  
27 release or discharge. The court shall give notice of the hearing  
28 and mail a copy of the report to the ~~Attorney-General, --offices-of~~  
29 ~~the-district-attorney~~ prosecutorial office that prosecuted the  
30 criminal charges for which the person was ~~acquitted~~ found not  
31 criminally responsible by reason of ~~insanity~~ mental disease or  
32 mental defect and the offices of the district attorneys in whose  
33 district the release petition was filed or in whose district  
34 release may occur. At the hearing, the court shall receive the  
35 testimony of at least one psychiatrist who has treated the person  
36 and of a member of the State Forensic Service who has examined  
37 the person, the testimony of any independent psychiatrist or  
38 licensed clinical psychologist who is employed by the ~~prosecuter~~  
39 prosecutor or the petitioner and has examined the person and any  
40 other relevant testimony. If, after hearing, the court finds  
41 that the person may be released or discharged without likelihood  
42 that the person will cause injury to that person or to others due  
43 to mental disease or mental defect, the court shall order, as  
44 applicable:

45 **A. Release from the institution, ~~provided-that~~ if:**

46  
47 (1) The order for release ~~may--include~~ includes  
48 conditions determined appropriate by the court,  
49 including, but not limited to, ~~out-patient~~ outpatient  
50 treatment and supervision by the Department of Health

2                   and Human Services, Division of Mental Health, which  
3                   shall monitor and ensure that prescribed medications  
4                   are taken; and

6                   (2) The order for release includes the condition that  
7                   the person must be returned to the institution  
8                   immediately upon the order of the commissioner whenever  
9                   the person fails to comply with other conditions of  
10                   release ordered by the court; or

12                   B. Discharge from the custody of the Commissioner of Health  
13                   and Human Services.

14                   Release from the institution is subject to annual review by the  
15                   court and, except for return as ordered by the commissioner under  
16                   paragraph A, ~~subparagraph-(1)~~, must continue until terminated by  
17                   the court. Each person released under this section ~~shall~~ must  
18                   remain in the custody of the commissioner. ~~The Commissioner of~~  
19                   ~~Health and Human Services~~ commissioner shall inform the ~~public~~  
20                   ~~safety-officer~~ law enforcement agency of the municipality or the  
21                   sheriff's office of the county into which the person is released  
22                   of the release.

24                   2. **Modified release treatment.** Any An individual  
25                   hospitalized pursuant to section 103 may petition the Superior  
26                   Court for the county in which that person is hospitalized for a  
27                   release treatment program allowing the individual to be off  
28                   institutional grounds for a period of time, not to exceed 14 days  
29                   at any one time. The petition must contain a report from the  
30                   institutional staff, including at least one psychiatrist, and the  
31                   report must define the patient's present condition; the planned  
32                   treatment program involving absence from the institution; the  
33                   duration of the absence from the institution; the amount of  
34                   supervision during the absence; the expectation of results from  
35                   the program change; and the estimated duration of the treatment  
36                   program before further change. This petition must be forwarded  
37                   to the court no later than 60 days prior to the beginning of the  
38                   modified treatment program. If the court considers that the  
39                   ~~individual~~ individual's being off the grounds, as described in  
40                   the treatment plan, is inappropriate, it shall notify the  
41                   hospital that the plan is not approved and shall schedule a  
42                   hearing on the matter. The clerk of courts upon receipt of the  
43                   proposed treatment program shall give notice of the receipt of  
44                   this program by mailing a copy to the ~~office of the district~~  
45                   ~~attorney~~ prosecutorial office that prosecuted the criminal  
46                   charges ~~of~~ for which the person was ~~acquitted~~ found not  
47                   criminally responsible by reason of ~~insanity~~ mental disease or  
48                   mental defect, the offices of the district attorneys in whose  
49                   district the release petition was filed or in whose district  
50                   release may occur and the Attorney General, who may file

2 objections and request a hearing on the matter. Representatives  
3 of the ~~Attorney--General--and--the~~ prosecutorial office that  
4 prosecuted the person may appear at any hearing on the matter.  
5 At the hearing, the court shall receive the testimony of at least  
6 one psychiatrist who has treated the person and of a member of  
7 the State Forensic Service who has examined the person, the  
8 testimony of any independent psychiatrist or licensed clinical  
9 psychologist who is employed by the ~~proseeeuter~~ prosecutor or  
10 petitioner and has examined the person and any other relevant  
11 testimony. If the court does not respond within 60 days to the  
12 proposed treatment plan and no objections and request for hearing  
13 are filed by the district attorney or the Attorney General, it  
14 may then be put into effect by the administrator of the hospital  
15 on the assumption that the court approved the treatment plan.  
16 The Commissioner of Health and Human Services shall inform the  
17 ~~public-safety-officer~~ law enforcement agency of the municipality  
18 or the sheriff's office of the county in which the person will  
19 spend any unsupervised time under the release treatment program  
20 ~~ef-that-program~~.

21 **3. Other provisions concerning initial release or**  
22 **discharge.** A report must be forwarded and filed and hearings  
23 must be held in accordance with subsection 1, without unnecessary  
24 delay when, at any time, it is the opinion of a staff  
25 psychiatrist that a patient hospitalized under section 103, may  
26 be released or discharged without likelihood that the patient  
27 will cause injury to that patient or to others due to mental  
28 disease or mental defect.

29 A person hospitalized under section 103, or the person's spouse  
30 or next of kin, may petition the Superior Court for the county in  
31 which that person is hospitalized for a hearing under subsection  
32 1. Upon receiving the petition, the court shall request and ~~must~~  
33 ~~be-furnished-by~~ the Commissioner of Health and Human Services  
34 shall furnish to the court a report on the mental condition of  
35 that person, as described in subsection 1. A hearing must be  
36 held on each petition, and release or discharge, if ordered, must  
37 be in accordance with subsection 1. If release or discharge is  
38 not ordered, a petition may not be filed again for the release or  
39 discharge of that person for 6 months. Any A person released  
40 under subsection 1 or the person's spouse or next of kin may at  
41 any time after 6 months from the release petition the Superior  
42 Court for the county in which that person was hospitalized for  
43 that person's discharge under subsection 1. If discharge is not  
44 ordered, a petition for discharge may not be filed again for 6  
45 months.

46 **3-A. Petitioner's burden of proof.** In a hearing pursuant  
47 to subsection 1, 2 or 3, the petitioner's burden of proof is as  
48 follows.  
49  
50

2           A. If the person hospitalized was found not criminally  
4           responsible by reason of mental disease or mental defect for  
6           murder or a Class A crime, the petitioner must demonstrate  
8           by clear and convincing evidence that the modified release  
          treatment program, release on conditions or discharge may be  
          granted without likelihood that the person will cause injury  
          to that person or to others due to mental disease or mental  
          defect.

10           B. If the person hospitalized was found not criminally  
12           responsible by reason of mental disease or mental defect for  
14           a Class B, C, D or E crime, the petitioner must demonstrate  
16           by a preponderance of the evidence that the modified release  
18           treatment program, release on conditions or discharge may be  
          granted without likelihood that the person will cause injury  
          to that person or to others due to mental disease or mental  
          defect.

20           **4. Return to institution upon commissioner's order.** The  
22           commissioner may order any a person released under subsection 1,  
24           paragraph A, who fails to comply with the conditions of release  
26           ordered by the court, as evidenced by the affidavit of any  
28           interested person, to return to the institution from which he the  
30           person was released. A hearing shall must be held for the  
32           purpose of reviewing the order for release within 7 days of the  
34           person's return if the person will be detained for 7 or more  
          days. At the hearing, the court shall receive testimony of the  
          psychiatrist who observed or treated the person upon the person's  
          return to the institution, and any member of the State Forensic  
          Service who has examined the person upon the person's return, and  
          any other relevant testimony. Following hearing, the court may  
          reissue or modify the previous order of release.

36           **5. Reinstitutionalization due to likelihood of causing**  
38           **injury.** Any A person released under subsection 1, paragraph A,  
40           whose reinstitutionalization, due to the likelihood that he the  
42           person will cause injury to himself that person or others due to  
44           mental disease or mental defect, is considered necessary, upon  
46           the verified petition of any interested person, may be brought  
48           before any a Justice of the Superior Court upon his the justice's  
50           order. A hearing shall must be held for the purpose of reviewing  
          the mental condition of the person and the order for release.  
          The court may order the person detained for observation and  
          treatment, if appropriate, at the institution from which he the  
          person was released pending the hearing, which detention shall  
          may not exceed 14 days. The psychiatrist responsible for the  
          observation or treatment of the person shall report to the court  
          prior to the hearing as to the mental condition of the person,  
          indicating specifically whether the person can remain in the

community without likelihood that he the person will cause injury to ~~himself~~ that person or others due to mental disease or mental defect. The court shall receive the testimony of the psychiatrist who observed or treated the person during the period of detention, and any member of the State Forensic Service who has examined the person during the period of detention, and any other relevant testimony. Following the hearing, the court may reissue, modify or rescind the previous order of release.

**6. Involuntary hospitalization; notice; appointed counsel.**

Any ~~A~~ person released under subsection 1, paragraph A, may be admitted to a hospital under any provision of Title 34-B, chapter 3, subchapter ~~IV~~ 4, Article 3, while the order for release is in effect.

Notice of any hearing under subsection 1, 2, 3 or 5 ~~shall~~ must be given to the offices of the ~~district-attorney-which~~ prosecutorial office that prosecuted the criminal charges against the person ~~for of~~ which the person was ~~acquitted~~ found not criminally responsible by reason of ~~insanity~~ mental disease or mental defect, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and the Attorney General at least 7 days before the hearing date. Notice of any hearing under subsection 4 ~~shall~~ must be given to the office of the district attorney and the Attorney General as soon as possible before the hearing date.

Whenever a hearing is to be held under this section, the court shall determine whether the person whose release or discharge is in issue is indigent. If the court finds that the person is indigent, ~~it~~ the court shall appoint counsel to represent the person in connection with the hearing. Fees for court-appointed counsel for services rendered in connection with any a hearing held under this section, or appeal from a decision in any a hearing, and the fees of any expert witnesses called by the district attorney, or the Attorney General or on behalf of the person whose release or discharge is in issue, if indigent, ~~shall~~ must be paid by the State. Any such fee to be in order for payment ~~shall~~ must be first approved by the justice presiding at the hearing held under this section.

**SUMMARY**

This bill specifies that proper use of prescribed medications may be a condition of release for a person found not criminally responsible by reason of mental disease or mental defect. This bill lessens the burden of proof for a petitioner seeking the release or discharge of a person hospitalized after having been found not criminally responsible by reason of mental

2 disease or mental defect for committing a Class B, C, D or E  
crime. For discharge or release, a petitioner must demonstrate  
4 by a preponderance of the evidence that the modified release  
treatment program, release on conditions or discharge may be  
6 granted without likelihood that the person will cause injury to  
that person or to others due to mental disease or mental defect.  
8 The petitioner's burden of proof in a case for release or  
discharge where a person was found not criminally responsible by  
reason of mental disease or defect for murder or a Class A crime  
10 remains proof by clear and convincing evidence (Taylor v.  
Commissioner of Mental Health and Mental Retardation, 481 A.2d  
12 139 (1984)). The bill also makes technical changes to the  
statutes.