

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION

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Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH
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SUBSECTION 4.

J.S. McCarthy Co., Inc.
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PUBLIC LAWS
OF THE
STATE OF MAINE

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1985

struction, major alteration or repair of school buildings, in excess of \$25,000, by any school administrative unit and for which state school construction aid is to be paid, provided that sections 1743 and 1745 shall not be applicable to construction, major alteration or repair of school buildings. Nothing in this section shall may apply to the construction, improvement or repair of any and all ways, roads or bridges with appurtenances and other public improvements which, by law, are under the supervision of the Department of Transportation.

Effective September 19, 1985.

CHAPTER 131

H.P. 856 - L.D. 1213

AN ACT Concerning Persons on Partial Release from a Mental Health Institution.

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

Whereas, failure to comply with the conditions of release ordered by the court may increase the risk of danger of injury to the person or others due to mental disease or defect; and

Whereas, current law does not provide for emergency return of persons acquitted by reason of insanity who are released by the court, or set forth standards to be used by the court in ordering rehospitalization; 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Sec. 1. 15 MRSA §104-A, as amended by PL 1981, c. 493, §2, is repealed and the following enacted in its place:

§104-A. Release and discharge, hearing, payment of fees

1. Release and discharge. The term "release," as used in this section, means termination of institutional in-patient residency and return to permanent residency in the community. The head of the institution in which a person is placed, under section 103, shall, annually, forward to the Commissioner of Mental Health and Mental Retardation a report containing the opinion of a staff psychiatrist as to the mental conditions of that person, stating specifically whether he may be released or discharged without likelihood that he will cause injury to himself or to others due to mental disease or mental defect. The report shall also contain a brief statement of the reasons for the opinion. The commissioner shall forthwith file the report in the Superior Court for the county in which the person is hospitalized. The court shall review each report and, if it is made to appear by the report that any person may be ready for release or discharge, the court shall set a date for and hold a hearing on the issue of the person's readiness for release or discharge. At the hearing, the court shall receive the testimony of at least one psychiatrist who has observed or treated that person and any other relevant testimony. If, after hearing, the court finds that the person may be released or discharged without likelihood that he will cause injury to himself or to others due to mental disease or mental defect, the court shall order, as applicable:

A. Release from the institution, provided that:

(1) The order for release may include conditions deemed appropriate by the court, including, but not limited to, out-patient treatment and supervision by the Department of Correction, Division of Probation and Parole; and

(2) The order for release shall include the condition that the person shall be returned to the institution forthwith upon the order of the commissioner whenever the person fails to comply with other conditions of release ordered by the court; or

B. Discharge from the custody of the Commissioner of Mental Health and Mental Retardation.

Release from the institution shall be subject to annual review by the court and, except for return as ordered by the commissioner under paragraph A, sub-

paragraph (1), shall continue until terminated by the court. Each person released under this section shall remain in the custody of the commissioner.

2. Modified release treatment. Any individual hospitalized pursuant to section 103, may petition the Superior Court for the county in which that person is hospitalized for a release treatment program allowing the individual to be off institutional grounds for a period of time, not to exceed 14 days at any one time. The petition shall contain a report from the institutional staff, including at least one psychiatrist, and the report shall define the patient's present condition; the planned treatment program involving absence from the institution; the duration of the absence from the institution; the amount of supervision during the absence; the expectation of results from the program change; and the estimated duration of the treatment program before further change. This petition shall be forwarded to the court no later than 60 days prior to the beginning of the modified treatment program. If the court considers that the individual being off the grounds, as described in the treatment plan, is inappropriate, it shall notify the hospital that the plan is not approved and shall schedule a hearing on the matter. The clerk of courts upon receipt of the proposed treatment program shall give notice of the receipt of this program by mailing a copy to the district attorney and Attorney General, who may file objections and request a hearing on the matter. If the court does not respond within 60 days to the proposed treatment plan and no objections and request for hearing are filed by the district attorney or Attorney General, it may then be put into effect by the administrator of the hospital on the assumption that the court approved the treatment plan.

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

A person hospitalized under section 103, or his spouse or next of kin, may petition the Superior Court for the county in which that person is hospitalized for a hearing under subsection 1. Upon receiving the petition, the court shall request and be furnished by the Commissioner of Mental Health and

Mental Retardation a report on the mental condition of that person, as described in subsection 1. A hearing shall be held on each petition, and release or discharge, if ordered, shall be in accordance with subsection 1. If release or discharge is not ordered, a petition shall not be filed again for the release or discharge of that person for 6 months. Any person released under subsection 1 or his spouse or next of kin may at any time after 6 months from the release petition the Superior Court for the county in which he was hospitalized for his discharge under subsection 1. If discharge is not ordered, a petition for discharge may not be filed again for 6 months.

4. Return to institution upon commissioner's order. The commissioner may order any person released under subsection 1, paragraph A, who fails to comply with the conditions of release ordered by the court, as evidenced by the affidavit of any interested person, to return to the institution from which he was released. A hearing shall be held for the purpose of reviewing the order for release within 7 days of the 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 other relevant testimony. Following hearing, the court may reissue or modify the previous order of release.

5. Reinstitutionalization due to likelihood of causing injury. Any person released under subsection 1, paragraph A, whose reinstitutionalization, due to the likelihood that he will cause injury to himself or others due to mental disease or mental defect, is considered necessary, upon the verified petition of any interested person, may be brought before any Justice of the Superior Court upon his order. A hearing shall 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 was released pending the hearing, which detention shall not exceed 14 days. The psychiatrist responsible for the observation and 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 will cause injury to himself 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 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 person released under subsection 1, paragraph A, may be admitted to a hospital under any provision of Title 34-B, chapter 3, subchapter IV, Article 3, while the order for release is in effect.

Notice of any hearing under subsection 1, 2, 3 or 5 shall be given to the district attorney and Attorney General at least 7 days before the hearing date. Notice of any hearing under subsection 4 shall be given to the district attorney and 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 shall appoint counsel to represent the person in connection with the hearing. Fees for court-appointed counsel for services rendered in connection with any hearing held under this section, or appeal from a decision in any hearing, and the fees of any expert witnesses called by the district attorney, Attorney General or on behalf of the person whose release or discharge is in issue, if indigent, shall be paid by the State. Any such fee to be in order for payment shall be first approved by the justice presiding at the hearing held under this section.

Sec. 2. 15 MRSA §104-B, as amended by PL 1981, c. 493, §2 is repealed and the following enacted in its place:

§104-B. Failure of patient to return

If any patient committed to the Department of Mental Health and Mental Retardation for care and treatment, under section 103 or 105, is ordered to return to the hospital by the Commissioner of Mental Health and Mental Retardation, law enforcement personnel of the State or of any of its subdivisions shall, upon request of the commissioner, assist in the return of the patient to the hospital.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective May 2, 1985.

CHAPTER 132

H.P. 905 - L.D. 1282

AN ACT to Provide for Registration of Bottle Clubs.

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

Sec. 1. 28 MRS.A §2, sub-§1-A, as enacted by PL 1979, c. 576, §1, is repealed and the following enacted in its place:

1-A. Bottle club. "Bottle club" means an establishment not licensed or permitted to sell liquor which is operated on a regular, profit or nonprofit basis where members, guests or others are regularly permitted to consume liquor. Charges paid by the bottle club's members or the general public for membership, admission, food, mixers or other supplies used with liquor or storage or handling of liquor belonging to members or the general public are not sales, as defined in this Title, or gifts. A bottle club is not a public place as defined in Title 17, section 2003-A.

Sec. 2. 28 MRS.A §809 is enacted to read:

§809. Bottle clubs

1. Registration. Each bottle club as defined in section 2, subsection 1-A, shall register annually with the State Liquor Commission on forms provided by the commission. Registration shall consist of payment of the registration fee and submission of the information required in paragraph A.

A. The information each bottle club is required to submit consists of only the following:

(1) The name and address of each owner of the bottle club;