

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date July 16, 1968

To Alfred Darby, Jr., M.D., Clinical Dir. of Psychiatry Dept. Pineland Hospital & Training Center
From Courtland D. Perry, Asst. Atty. General Dept. Mental Health and Corrections
Subject Release of Persons Committed Under Title 15, M.R.S.A., 1964, Section 103, After Being Found Not Guilty of Crime by Reason of Mental Disease of Mental Defect.

SYLLABUS:

The readiness for the receipt of off grounds privileges of a person committed to the custody of the Department of Mental Health and Corrections and placed in the Pineland Hospital and Training Center under Title 15, M.R.S.A., Section 103, is a matter for judicial determination and outside the administrative authority of institutional personnel in view of manifest legislative intent in Title 15, M.R.S.A., Section 104, relative to unconditional and conditional release of persons so situated, and in view of the restrictive language of Title 34, Section 2151 - such off grounds privileges being considered conditional release within the contemplation of Title 15, Section 104.

FACTS:

During the summer months Pineland Hospital and Training Center makes available to its patients off-grounds activities supervised by Pineland personnel, which activities are considered by the Clinical Director of Psychiatry at Pineland to have potential value for certain persons currently patients at Pineland who were placed therein following commitment after being found not guilty of crime by reason of mental defect under Title 15, M.R.S.A., 1964, Section 103.

QUESTION:

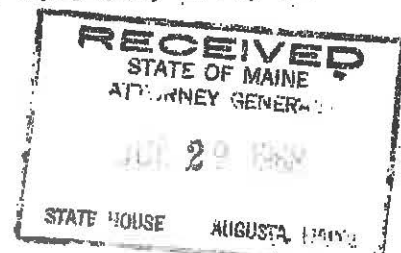
May persons committed to the Department of Mental Health and Corrections under Title 15, Section 103, and placed in the Pineland Hospital and Training Center under that section be administratively permitted off the grounds of the Pineland Hospital and Training Center to participate in summertime activities without the necessity of a court order under Title 15, M.R.S.A., 1964, Section 104?

ANSWER:

No.

OPINION:

Under Title 15, M.R.S.A., 1964, Section 103, a person found not guilty of crime by reason of mental disease or mental defect is committed to the custody of the Commissioner of Mental Health and Corrections to be placed in an appropriate institution for the mentally ill or the mentally retarded for care and treatment. Thus we find ultimate responsibility for custody vested in the Department of Mental Health and Corrections and responsibility for care and treatment vested in the receiving institution.



Although off-grounds activities may be considered treatment or at least to have certain therapeutic value we are constrained to express the opinion that release of persons committed under Title 15, Section 103, of whatever type, unconditional, or conditional, including participation in off-grounds patient activity, requires hearing and a court determination under Title 15, Section 104 and may not be effected by administrative fiat. We are drawn to this conclusion by the language of Title 15, Section 104 which in our opinion manifests a legislative intent that return to the community in such cases whether supervised or unsupervised for whatever period and under whatever conditions be by judicial determination.

It is pertinent to note that under Title 34, M.R.S.A., 1964, Section 2151, the Superintendent of the Pineland Hospital and Training Center is vested with authority to release all persons, patients at the Pineland Hospital and Training Center, except those placed in that institution under Title 15, Section 101 or 103; this restriction, we submit, lends substantial support to the position which we here take. (Although a restriction of the type found in Title 34, Section 2151 does not appear in the Statutes relating to the Augusta State Hospital and Bangor State Hospital we are of the view that Title 15, Section 104 contains language sufficient to render the grant of off-grounds privileges to persons placed in such latter institutions under Section 103 similarly subject to judicial determination.)

We sub-join the full text of Title 15, M.R.S.A., 1964, Section 104 for convenient reference.

" §104. Conditional or unconditional release

"The superintendent of the institution in which a person has been placed under Section 103, shall, annually, and may at any time forward to the Commissioner of Mental Health and Corrections a report containing the opinion of the superintendent as to the condition of any such person and his readiness for release, which opinion in the case of a person found not guilty of crime by reason of mental disease shall indicate whether such person is, or is not, restored sufficiently to permit release without danger to the public within the foreseeable future, due to mental disease, and in the case of a person found not guilty of crime by reason of mental defect shall indicate whether such person is, or is not, adjusted, socially and otherwise, so as to permit release without danger to the public within the foreseeable future, due to mental defect. The commissioner shall forthwith file such report with the court in the county in which the person is hospitalized. The court shall review the report and if it is made to appear by the report that any such person may be ready for release, the court shall set a date for, and hold a hearing on the question of such person's readiness for release, and shall receive the testimony of at least one psychiatrist who has observed or treated such person and any other relevant testimony. If, after hearing, the court finds that such person may be released without danger to the public within the foreseeable future, due to mental disease or, if committed therefor, mental defect, the court shall order the unconditional release of such person

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or in the court's discretion release, subject to conditions deemed appropriate and necessary, which may include outpatient treatment to continue until it is made to appear to the court that such treatment is no longer necessary, to be then terminated by the court's order, and supervision for one year by the State Probation and Parole Board, which supervision upon review by the court at the end of one year may be extended for one year.

"A person committed under section 103, or his spouse and any next of kin, may petition the court in which he was tried for a hearing under this section. Upon receiving such petition the court shall request and receive a report from the superintendent of the institution in which such person was placed under section 103, giving his opinion relative to the readiness of such person for release, and whether his release would be dangerous to the public within the foreseeable future, due to mental disease or mental defect.

"The hearing and release, if ordered, shall be in accordance with this section. If release is not ordered, a petition shall not again be filed for the release of such person for one year.

"Notice of any hearing under this section shall be given to the county attorney or Attorney General at least 14 days before the hearing date.

"When, upon hearing, a person who has been conditionally released is again found to be suffering from a mental disease or mental defect, so as to endanger the public, the court in the county where originally tried, may, by order stating the fact of such mental disease or mental defect, recommit him to the custody of the Commissioner of Mental Health and Corrections for placement as provided in section 103.

"A person who has been unconditionally released under this section may be readmitted to the appropriate institution only under the appropriate provisions of Title 34."

Courtland D. Perry

Courtland D. Perry
Assistant Attorney General