

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 965

S. P. 361

In Senate, February 16, 1967

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

JERROLD B. SPEERS, Secretary

Presented by Senator Lund of Kennebec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

**AN ACT Relating to Competence to Stand Trial and Release of Persons Found
Not Guilty by Reason of Mental Disease or Defect.**

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

Whereas, there is no existing statutory authority for the Superior Court to commit or otherwise issue appropriate orders when it finds an accused person to be incompetent to stand trial; and

Whereas, the need for such authority may arise in any criminal case coming before the Superior Court; and

Whereas, such authority is essential in the orderly administration of justice; and

Whereas, the statute establishing procedure for the determination of a person's readiness for release from a state institution who has been committed and placed therein, after being found not guilty of crime by reason of mental disease or mental defect is inadequate; and

Whereas, such statute does not permit the Superior Court to order release, subject to conditions which it deems appropriate and necessary, including continuing community supervision; and

Whereas, the following legislation is vitally necessary in order to provide the Superior Court requisite authority in the administration of the judicial function in criminal cases, and to provide such court with needed flexibility in release

hearings for the benefit of the person, with respect to whom such hearing is conducted and for the public; 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. R. S., T. 15, § 101, amended. Section 101 of Title 15 of the Revised Statutes, as repealed and replaced by chapter 334 of the public laws of 1965, is amended to read as follows:

§ 101. Mental examination and observation of persons accused of crime

When a finding of probable cause has been made, or an indictment has been returned against a person, or a person has taken an appeal to the Superior Court, a Justice of the Superior Court, if requested by the attorney for the respondent, or, ~~provided that the respondent does not object~~ if requested by the prosecuting attorney or by the court on its own motion, may order the respondent examined by one or more psychiatrists or by one or more clinical psychologists, or both, or by one psychiatrist and one or more clinical psychologists, of the Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center or of a mental health clinic of the Department of Mental Health and Corrections or of a mental health clinic recommended to the court by the Department of Mental Health and Corrections or by other properly qualified psychiatrists or psychologists. The site of examination shall be determined by the court, considering proximity to the court, immediate availability of an examiner or examiners, and the necessity for security precautions.

If it is made to appear to the court by the report of any such examiner that the respondent suffers or suffered from a mental disease or mental defect affecting his criminal responsibility **or his competence to stand trial** or that further observation is indicated, the court may order the respondent 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, to be there detained and observed by the superintendent, or his delegate, and professional staff until further order of the court, for the purpose of ascertaining the mental condition of the respondent. When further detention for observation is deemed no longer necessary, the commissioner shall report such fact to any Justice of the Superior Court. Said justice shall then order the person returned to the appropriate court for disposition. A report of the results of the observation shall be forwarded promptly to the court by the commissioner.

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, it shall continue the case until such time as the defendant is deemed by the court, or any justice thereof in vacation, to be competent to stand trial and may either:

1. Custody. Commit the defendant 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 observation, care and treatment. The superintendent of the institution in which the defendant is placed, shall, annually, and may at any time, following commitment, forward a report to the Commissioner of Mental Health and Corrections containing the opinion of the superintendent relative to the defendant's competence to stand trial, and his reasons therefor. The commissioner shall forthwith file the report with the court having jurisdiction of the case. If it is made to appear by the report of the superintendent that the defendant is competent to stand trial, the court, or any justice thereof in vacation, shall forthwith set a date for, and shall hold, a hearing on the question of the defendant's competence to stand trial, and shall receive all relevant testimony bearing on the question; or,

2. Bail. Except in the case of a defendant who is charged with the commission of an offense, the only punishment for which is life imprisonment, order the defendant's release on bail, with or without the further order that the defendant undergo outpatient observation and treatment at a state mental hospital or mental health clinic of the Department of Mental Health and Corrections. When such outpatient observation and treatment is ordered, the head of the hospital or clinic shall, within the time specified by the court, forward a report to the court, containing the opinion of the head of the hospital or clinic relative to the defendant's competence to stand trial and his reasons therefor. If it is made to appear by the report of the head of the hospital or clinic that the defendant is competent to stand trial, the court, or any justice thereof in vacation, shall forthwith set a date for, and shall hold, a hearing on the question of the defendant's competence to stand trial and shall receive all relevant testimony bearing on the question. If it is made to appear to the court by the report of the head of the hospital or clinic, that the defendant is not competent to stand trial, the court may order continued outpatient observation and treatment for a definite or indefinite period of time, or may commit the defendant to the custody of the Commissioner of Mental Health and Corrections, as provided in this section.

The defendant may, not less than 60 days following release on bail or commitment, petition the court having jurisdiction of the case for a rehearing to determine his competence to stand trial. Upon receipt of the petition, the court, or justice thereof in vacation, shall set a date for, and shall hold, a hearing on the question of the defendant's competence to stand trial and shall receive all relevant testimony bearing on the question. Upon a rehearing and a determination that the defendant is not competent to stand trial, he may not again petition for a hearing for 6 months.

Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant shall be in accordance with the Maine Rules of Criminal Procedure.

Sec. 2. R. S., T. 15, § 104, repealed and replaced. Section 104 of Title 15 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 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 before which the person was tried or any justice thereof in vacation. The court or justice 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 or justice 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 or justice 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 or justice shall order the unconditional release of such person or in the court's or justice's discretion release, subject to conditions deemed appropriate and necessary, which may include continuing outpatient treatment or supervision for not more than one year by a probation and parole officer.

A person committed under section 103, or his spouse or 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, or any justice thereof in vacation, 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 at least 7 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 or justice thereof in vacation, 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.

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