

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FOURTH LEGISLATURE

Legislative Document

No. 1362

H. P. 1032

House of Representatives, March 12, 1969

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

BERTHA W. JOHNSON, Clerk

Presented by Mr. Lund of Augusta.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-NINE

AN ACT Relating to Disposition in the Superior Court of
Persons Charged With Crime.

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

Sec. 1. R. S., T. 15, c. 6, additional. Title 15 of the Revised Statutes is amended by adding a new chapter 6 to read as follows:

CHAPTER 6

DISPOSITION IN THE SUPERIOR COURT
OF PERSONS CHARGED WITH CRIME

§ 121. Competence to stand trial.

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 defendant, or, if requested by the prosecuting attorney, or by the court on its own motion, may order the defendant examined to determine his mental condition with reference to the issue of competence to stand trial. The examination may be conducted at the Augusta State Hospital, Bangor State Hospital, Pineland Hospital and Training Center, or at a mental health clinic of, or recommended by, the Department of Mental Health and Corrections, and when conducted at any such facility shall be the responsibility of a psychiatrist, who may join with him in such examination other psychiatrists or clinical psychologists, as in his opinion are required. The examination may be conducted by a psychiatrist independent from any such facility, employed for such purpose by the court. The court in selecting the examination site shall

consider proximity to the court, availability of an examiner and the necessity for security precautions. No person shall be presented for examination under this paragraph without arrangements therefor, with the head of the institution or clinic or with the individual examiner being first made by the court, clerk of courts or sheriff. The opinion of the examiner, with reasons therefor, relative to the defendant's competence to stand trial, shall be reported forthwith to the court following examination.

If it is made to appear to the court by the report of any such examiner that the defendant suffers from a mental disorder or is mentally retarded, so as to affect his competence to stand trial, or that further observation is indicated, the court may order the defendant committed to the Department 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 defendant, bearing on the issue of his competence to stand trial. When further detention for observation is deemed no longer necessary the Department of Mental Health and Corrections 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, with reasons therefor, shall be forwarded promptly to the court by the superintendent of the hospital in which the person was placed.

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 to be competent to stand trial and may either:

1. **Custody.** Commit the defendant to the Department 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 court containing the opinion of the superintendent relative to the defendant's competence to stand trial, and his reasons therefor. It is made to appear by the report of the superintendent that the defendant is competent to stand trial, the court 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 observation at a state mental hospital or mental health clinic of the Department of Mental Health and Corrections, or by arrangement with a private psychiatrist, and treatment when it is deemed appropriate by the head of the hospital or clinic or by the private psychiatrist. When such outpatient observation and treatment is ordered, the head of the hospital or clinic or the psychiatrist 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 or of the psychiatrist, 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 or of the psychiatrist that the defendant is competent to stand trial, the court 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 or of the psychiatrist, that the defendant is not competent to stand trial, the court may order continued out-patient observation and treatment, or may commit the defendant to the Department 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 hearing to determine his competence to stand trial. Upon receipt of the petition, the court 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 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.

§ 122. Presentence investigation, observation and hearing.

At the trial of a defendant in the Superior Court the plea in defense heretofore known as the insanity plea, raising the issue of criminal responsibility, shall not be entered and such defense is abolished.

Upon conviction in the Superior Court after a verdict or plea of guilty the court may order an investigation to be conducted by a probation and parole officer, and a written report thereof to be submitted to the court, for its consideration prior to sentence or other disposition. When directed to make an investigation the probation and parole officer shall promptly inquire into the characteristics, circumstances, needs and potentialities of the defendant, his criminal record and social history, the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family and the community, or shall make limited inquiry as directed by the court. All State mental, penal and correctional institutions, courts and law enforcement agencies shall furnish to the probation and parole officer on request the defendant's criminal record and other relevant information. Whenever, in the opinion of the court there is reason to believe that the defendant is suffering from a mental disorder, including a severe personality disorder, indicating a propensity toward criminal activity or is mentally retarded, the defendant shall be remanded to the Department of Mental Health and Corrections for placement in an appropriate institution for the mentally ill or the mentally retarded for diagnosis, evaluation and recommendation thereon. Such remand may be by the court upon its own motion or following motion by the defendant's attorney and preliminary hearing thereon. The report of the superintendent or examining staff psychiatrist of the hospital in which the defendant has been placed, shall be forwarded to the court forth-

with following completion of the examination period. The said report shall contain diagnoses, and evaluation relative to the mental condition of the defendant, and recommendations thereon. Upon receipt of the report the court, in its discretion, may continue the defendant under commitment to the Department of Mental Health and Corrections if warranted by the report, or the court may order the defendant returned to the jail from which he was remanded, or released on bail as previously or then fixed by the court.

Following receipt of the report of the probation and parole officer, when investigation has been ordered, or a report of the superintendent or examining staff psychiatrist of the state hospital, when the defendant has been remanded for evaluation of his mental condition, or both such reports, the court shall set a date for, give reasonable notice of, to the defendant and his counsel and to the county attorney, and if his office has appeared in the case, to the Attorney General, and shall hold a presentence hearing at which shall be received all relevant testimony, including the testimony of the psychiatrist responsible for the evaluation of the defendant's mental condition. The court shall make the report of the mental hospital and other diagnostic or mental evaluation reports available to the county attorney, and if his office has appeared in the case, to the Attorney General and to counsel for the defendant, upon request.

Subject to the control of the court the defendant shall be entitled to cross-examine those who have rendered reports to the court, such reports shall be part of the record, but shall be sealed and opened only on order of the court.

Following the hearing, the court, based upon evidence adduced at trial, the report, if any, of the investigation of the probation and parole officer, and testimony based thereon; the report, if any, from the mental hospital and testimony based thereon; and any other relevant testimony received at the presentence hearing, shall sentence the defendant in accordance with law or commit the defendant in accordance with section 123. Copies of all reports received in connection with the presentence hearing shall be forwarded by the court to the institution to which the defendant is sentenced or in which he is placed following commitment under section 123. Said reports shall be kept confidential and shall be used only in connection with the correctional or other treatment of the defendant.

§ 123. Commitment for treatment or other special services of persons convicted of crime in lieu of sentence.

When the court following the presentence hearing under section 122 determines that the defendant is suffering from a mental disorder requiring hospitalization, or is mentally retarded and requires specialized services available only at the Pineland Hospital and Training Center, it shall, in lieu of the imposition of sentence, commit such person to the Department of Mental Health and Corrections for placement in an institution for the mentally ill or the mentally retarded for care and treatment, and other specialized services required by such person available in any such institution. The court in its order shall fix probation or sentence, which shall be considered advisory and shall represent the disposition or sentence, which the court in

accordance with law would have ordered had it not ordered commitment under this section. The court on the order shall also note the maximum sentence applicable to the offense of which the defendant was convicted. Release or any other further disposition of any person committed under this section shall be in accordance with section 124.

§ 124. Release, remand, disposition of dangerous offenders.

Whenever, in the opinion of the superintendent or staff psychiatrist of the institution in which a person was placed under section 123, such person may be released without danger to the public within the foreseeable future, due to mental disorder or mental retardation, and is no longer in need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation, the superintendent shall report such opinion and the reasons therefor, to the committing court. Upon receipt of such report the court shall set a date for, give reasonable notice of, to the county attorney, and if his office has appeared in the case, to the Attorney General, and to the defendant and his counsel, 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 disorder or mental retardation, and is no longer in need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation, and

1. Probation. Probation was fixed in the advisory order under section 123, or

2. Period of commitment. Such person has been under commitment under section 123 for a period of time equivalent to half of the sentence or to the minimum sentence fixed in the advisory order under section 123, and the court finds that such person's release would not otherwise constitute a danger to the public, the court may order the unconditional release of such person or in the court's discretion release, subject to conditions deemed appropriate and necessary, which may include outpatient treatment to continue until the court finds that such treatment is no longer necessary, to be then terminated by the court's order. Release under subsection 2 may include supervision by the State Probation and Parole Board, which may continue until terminated by the board, but for not longer than the maximum sentence contained in the advisory order under section 123, computed from the date of commitment under section 123. If probation was fixed in the advisory order under section 123, release may include supervision by the Probation and Parole Board for a period not to exceed the period of probation permitted by law, computed from the date of release under this section. The court as to any such person with respect to whom sentence has been fixed in the advisory order under section 123 may, in its discretion, remand him to the Maine State Prison. The equivalent of half of the sentence or the minimum sentence fixed in the advisory order under section 123 having run, notwithstanding, such person following remand shall not be eligible for a hearing before the State Probation and Parole Board for 6 months. No person so remanded shall be held in

custody, including time on parole for longer than the maximum sentence fixed in the advisory order under section 123, computed from the date of commitment under section 123.

If the person committed under section 123 is determined by the court at the hearing held under this section, not to be dangerous to the public within the foreseeable future, due to mental disorder or mental retardation, and is no longer in need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation, but has not been under commitment for a period of time equivalent to half of the sentence, or to the minimum sentence fixed in the advisory order under section 123, he shall be remanded to the Maine State Prison, and shall be subject to parole laws applicable thereto; provided that he shall not be held in custody, including time on parole, beyond the maximum sentence fixed in the advisory order under section 123, computed from the date of commitment under section 123.

If the person committed under section 123 is determined at the hearing held under this section not to be dangerous to the public within the foreseeable future, due to mental disorder or mental retardation, and is no longer in need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation, but is found by the court at such hearing following receipt of evidence bearing on the issue to be a socially dangerous offender having a severe personality disorder, indicating a propensity toward criminal activity, regardless of the length of the period of commitment under section 123; provided that it has not exceeded the maximum sentence fixed in the advisory order under section 123, he shall be remanded to the Maine State Prison. He shall be held in custody, including time on parole, for a term not to exceed the maximum sentence applicable to the offense of which he was convicted, and in any case, actual confinement shall not exceed 30 years, less applicable good time, computed from the date of commitment under section 123.

The superintendent of the institution, in which any person was placed under section 123, shall annually cause a report to be forwarded to the committing court, advising the court as to the mental condition of such person. If, it is made to appear to the court by such report that such person would not be dangerous to the public within the foreseeable future, due to mental disorder or mental retardation, and is no longer in need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation the court shall set a date for, give notice of, and hold a hearing and make disposition of the matter as provided in this section.

A person committed under section 123, his attorney or his spouse or any next of kin may petition the committing court 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 the person was placed under section 123, containing the opinion of the superintendent or staff psychiatrist, 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 disorder or mental retardation, and whether such person is in

need of institutional care and treatment or other specialized in-patient services related to mental disorder or mental retardation. The hearing and disposition of the matter shall be as provided in this section. If release from the institution is not ordered, a petition shall not again be filed for the release of such person for one year.

§ 125. Recommitment of persons conditionally released.

When, upon hearing, a person who has been conditionally released under section 124, is found to be suffering from a mental disorder, or is mentally retarded and due thereto is dangerous to the public, the committing court, may by order indicating such findings, recommit him to the custody of the Department of Mental Health and Corrections for placement as provided in section 123.

§ 126. Discharge or readmission of persons committed.

The commitment of any person committed under section 123, shall be terminated by the superintendent of the institution in which he was placed upon expiration of a period of time equivalent to the maximum sentence fixed in the advisory order under section 123. Upon such termination he shall be discharged, unless at that time he applies for admission and is admitted under Title 34, section 2291 or his admission is applied for, and he is admitted under Title 34, section 2332 or 2334, or if he is mentally retarded his admission is applied for, and he is admitted under Title 34, section 2152.

Sec. 2. Application of rules in criminal cases. The power of the Supreme Judicial Court to prescribe rules in criminal cases, as specified in Title 4, section 9, shall apply to this chapter.

Sec. 3. R. S., T. 15, § 101, repealed. Section 101 of Title 15 of the Revised Statutes, as repealed and replaced by chapter 334 of the public laws of 1965 and as amended by section 1 of chapter 402 of the public laws of 1967, is repealed.

Sec. 4. R. S., T. 15, §§ 102 - 103, repealed. Sections 102 and 103 of Title 15 of the Revised Statutes are repealed.

Sec. 5. R. S., T. 15, § 104, repealed. Section 104 of Title 15 of the Revised Statutes, as repealed and replaced by section 2 of chapter 402 of the public laws of 1967, is repealed.