

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

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Legislative Document

No. 454

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H. P. 336

House of Representatives, January 30, 1973

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

E. LOUISE LINCOLN, Clerk

Presented by Mr. Dunleavy of Presque Isle.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-THREE

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**AN ACT** Relating to Release and Discharge of Persons Acquitted by Reason  
of Mental Disease or Mental Defect.

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

R. S., T. 15, § 104, repealed and replaced. Section 104 of Title 15 of the Revised Statutes, as last repealed and replaced by chapter 555 of the public laws of 1969, is repealed and the following enacted in place thereof:

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

The head of the institution in which a person is placed under section 103 shall, annually, forward to the Commissioner of Mental Health and Corrections a report containing the opinion of a staff psychiatrist or psychologist, or both, as to the mental condition of such 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 such report and, if it is made to appear by the report that any such 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 or psychologist who has observed or treated such person and any other relevant testimony. If, after hearing, the court finds that such 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:

1. Release. Release from the institution subject to conditions deemed appropriate by the court not limited to, but which may include out-patient treatment, to continue until terminated by the court, subject to annual review by the court and which may include supervision for one year by the State Division of Probation and Parole, which supervision, upon review by the court at the expiration of such period, may be extended for one year; or

2. Discharge. Discharge from the custody of the Commissioner of Mental Health and Corrections.

The term "release" as used in this section shall mean termination of institutional in-patient residency and return to permanent residency in the community. The nature and scope of the treatment program of persons hospitalized under section 103 preceding release, including the grant of trial visits not exceeding 14 days at any one time, shall be determined by the professional hospital staff designated for such purpose by the superintendent.

A report shall be forwarded and filed and hearings shall be held in accordance with the first paragraph of this section without unnecessary delay when, at any time, it is the opinion of a staff psychiatrist or psychologist, or both, 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 such person is hospitalized for a hearing under this section. Upon receiving such petition, the court shall request and be furnished by the Commissioner of Mental Health and Corrections a report on the mental condition of such person, as described in the first paragraph of this section. A hearing shall be held on each such petition, and release or discharge, if ordered, shall be in accordance with the first paragraph of this section. If release or discharge is not ordered, a petition shall not be filed again for the release or discharge of such person for 6 months. Any person released under this section or his spouse or next of kin may at any time after 6 months from such release petition the Superior Court for the county in which he was hospitalized for his discharge under this section. If discharge is not ordered, a petition for discharge may not be filed again for 6 months.

Any person released under subsection 1, who fails to comply with the conditions of release ordered by the court or whose rehospitalization, 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. In each such case, hearing shall be held for the purpose of reviewing the mental condition of such person and the order for release. The court may order such person detained for observation and treatment, if appropriate, at the hospital from which he was released pending such hearing, which detention shall not exceed 14 days. The psychiatrist or psychologist, or both, responsible for such observation and treatment, if any, shall report to the court prior to such hearing as to the mental condition

of such person, indicating specifically whether such 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 a psychiatrist or psychologist who observed or treated such person during the period of detention and any other relevant testimony. Following hearing, the court may reissue, modify or rescind the previous order of release. Any person released under subsection 1 may be admitted to a hospital under any provisions of Title 34, chapter 191 while the order for release is in effect.

Notice of any hearing under this section shall be given to the county attorney and Attorney General at least 7 days 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 such person is indigent, it shall appoint counsel to represent such person in connection with such hearing. Fees for court-appointed counsel for services rendered in connection with any hearing held under this section, or appeal from a decision therein, and the fees of any expert witnesses called by the county attorney, Attorney General or on behalf of the person whose release or discharge is in issue, if indigent, shall be paid by the county commissioners of the county in which the trial resulting in acquittal by reason of mental disease or mental defect was held. Any such fee to be in order for payment shall be first approved by the justice presiding at the hearing held under this section.

#### STATEMENT OF FACT

The purpose of this Act is to provide for the exercise of professional clinical judgments in matters of treatment of persons hospitalized after acquittal by reason of mental disease or mental defect to include permitting such persons brief trial visits away from the hospital without necessity of burdening the courts.

Release from the hospital, permitting return to community living, is a matter still left to jurisdiction of the Superior Court. This change will effect a conservation of judicial resources and will leave to the professional hospital staff authority for making clinical decisions within their professional competence.

This Act will also make clear the source from which payments of certain fees may come. This problem has plagued the Superior Court, the office of the Attorney General and the Department of Mental Health and Corrections for some time, leading in some instances to some delay in the processing of cases.

This Act provides a procedure for rehospitalization of releasees in appropriate cases, thus filling a gap in the prior law.