

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1287

H. P. 1090

House of Representatives, March 13, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Lewis of Auburn.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Require a Mandatory, Minimal Commitment of Persons Acquitted of Criminal Charges as a Result of Mental Abnormality.

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

Sec. 1. 15 MRSA § 103 is repealed and the following enacted in its place:

§ 103. **Commitment of persons acquitted on basis of mental disease or defect**

1. Commitment. The court hearing a criminal matter in which a special verdict is required under Title 17-A, section 59-A shall commit the person charged with crime to the custody of the Commissioner of Mental Health and Corrections when the special verdict states:

A. That the person charged with crime is not guilty:

- (1) By reason of mental disease or defect excluding responsibility; or**
- (2) Because of the existence of reasonable doubt as to the necessary culpable state of mind and such reasonable doubt is established by evidence of an abnormal state of mind; and**

B. That every other element of the crime has been established beyond a reasonable doubt.

2. Period of care and treatment. A person committed to the custody of the Commissioner of Mental Health and Corrections under subsection 1 shall be

placed in an appropriate institution for the mentally ill or the mentally retarded for care and treatment for a minimal period of:

- A. Fifteen years, if the person was acquitted of a criminal charge of murder;
- B. Ten years, if the person was acquitted of a Class A crime other than murder;
- C. Five years, if the person was acquitted of a Class B crime; and
- D. One year, if the person was acquitted of a Class C crime.

3. Notice upon transfer. If, after placement in an appropriate institution under subsection 2, the person committed is transferred from that institution to another, notice of the transfer shall be given by the Commissioner of Mental Health and Corrections to the committing court.

Sec. 2. 15 MRSA § 104-A, sub-§ 1, as enacted by PL 1979, c. 663, § 86, is repealed and the following enacted in its place:

1. Release. 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 as to the mental condition of that person, stating specifically whether he may be released 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 immediately file the report in the Superior Court for 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 the person may be ready for release, the court shall set a date for and hold a hearing on the issue of the person's readiness for release. 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 the hearing, the court finds that the person may be released without likelihood that he will cause injury to himself or to others due to mental disease or defect, the court shall release that person from the institution, subject to conditions deemed appropriate by the court, which conditions:

- A. May include, but are not limited to, out-patient treatment;
- B. Continue until terminated by the court;
- C. Are subject to annual review by the court; and
- D. May include supervision by the Division of Probation and Parole for one year, which may be extended for an additional year by the court upon review after the expiration of the first year.

Sec. 3. 15 MRSA § 104-A, sub-§§ 1-A to 1-D are enacted to read:

1-A. No discharge during mandatory period of treatment. A person committed to the custody of the Commissioner of Mental Health and Corrections

under section 103 may not be discharged before the end of the mandatory period for which he is committed.

1-B. Release and discharge after mandatory period of treatment. At the end of the period for which a person is committed under section 103, the Superior Court for the county in which the person is hospitalized shall 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 the 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. Such release as is available in subsection 1; or

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

1-C. Continued hospitalization. If, after the hearing provided in subsection 1, the court finds that the person may not 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 the continued hospitalization of that person.

1-D. Release and discharge after continued hospitalization. If, under subsection 1-C, the court orders the continued hospitalization of the person, the head of the institution in which the person is hospitalized shall forward a report containing the opinion of a staff psychiatrist as to the person's mental condition to the Commissioner of Mental Health and Corrections. The report shall be filed annually and it shall also be filed whenever it may appear that the person may be ready for release or discharge. The report shall state specifically whether the individual 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 immediately 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 the 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, such release or discharge as is available in subsection 1-B.

Sec. 4. 15 MRSA § 104-A, sub-§ 2, first sentence, as enacted by PL 1979, c. 663, § 86, is amended to read:

Any individual person hospitalized pursuant to under section 103 or whose hospitalization is continued under subsection 1-C may petition the Superior Court

for the county in which that person is hospitalized for a release treatment program allowing the ~~individual~~ **person** to be off institutional grounds for a period of time, not to exceed 14 days at any one time.

Sec. 5. 15 MRSA § 104-A, 5th ¶ from the end, as enacted by PL 1979, c. 663, § 86, is amended to read:

A report shall be forwarded and filed and hearings shall be held in accordance with the first paragraph of subsection 1 without unnecessary delay when, at any time, it is the opinion of a staff psychiatrist that a patient hospitalized under **subsection 1-C or 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.

Sec. 6. 15 MRSA § 104-A, 4th ¶ from the end, as enacted by PL 1979, c. 663, § 86, is amended to read:

A person hospitalized under **subsection 1-C or 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 this section. Upon receiving the petition, the court shall request and be furnished by the Commissioner of Mental Health and Corrections a report on the mental condition of that person, as described in the first paragraph of subsection 1. A hearing shall be held on each petition, and release ~~or discharge~~, if ordered, shall be in accordance with the first paragraph of 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 this section 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 this section. If discharge is not ordered, a petition for discharge may not be filed again for 6 months~~

Sec. 7. 15 MRSA § 104-A, 3rd ¶ from the end, last sentence, as enacted by PL 1979, c. 663, § 86, is amended to read:

Any person released under **this subsection**, subsection 1, ~~paragraph A and subsections 1-B and 1-D~~ may be admitted to a hospital under any provisions of Title 34, chapter 191 while the order for release is in effect.

Sec. 8. 15 MRSA § 104-A, last ¶, first and 3rd sentences, as enacted by PL 1979, c. 663, § 86, are amended to read:

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.

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 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.

Sec. 9. 17-A MRSA § 59-A is enacted to read:

§ 59-A. Special verdict for mental abnormality

1. **Special verdict required.** The jury, in a jury trial, or the court in a jury-waived trial, shall render a special verdict when a person charged with a crime:

A. **Raises the affirmative defense that he is not guilty by reason of mental disease or defect excluding responsibility; or**

B. **Raises the simple defense that he is not guilty because of the existence of reasonable doubt as to the necessary culpable state of mind and such reasonable doubt is established by evidence of an abnormal state of mind.**

2. **Statement of verdict.** The special verdict shall state whether the person charged with the crime is guilty or not guilty.

3. **Special findings required.** If the person is found not guilty, the verdict shall also state:

A. **Whether the person is not guilty:**

(1) **By reason of mental disease or defect excluding responsibility; or**

(2) **Because of the existence of reasonable doubt as to the necessary culpable state of mind and such reasonable doubt is established by evidence of an abnormal state of mind; and**

B. **Whether every other element of the crime has been established beyond a reasonable doubt.**

STATEMENT OF FACT

Under present Maine law, it is possible for an individual against whom every element of a crime has been proven beyond a reasonable doubt to produce evidence establishing that the necessary culpable state of mind was a product or result of a mental disease or mental defect. If the jury is convinced by his evidence, it may excuse him from criminal liability and find him not guilty by reason of insanity. Such a person is then subject to the mandatory commitment provisions of Title 15, chapter 5. To the contrary, if an individual establishes the existence of a reasonable doubt as to the necessary culpable state of mind, then the State has failed to establish every element of the crime beyond a reasonable doubt and the accused is found not guilty. Despite the fact that the reasonable doubt as to the required culpable state of mind is established by evidence of mental abnormality, the acquitted individual is not subject to the mandatory commitment provisions of Title 15, chapter 5.

Under the current commitment statute, it is possible for an individual found to be insane at the time of the crime but who is presently deemed sane to be readily discharged.

It is the judgment of this Legislature that the present state of the art of psychiatry has not attained that degree of scientific certitude that individuals who

have committed heinous and violent crimes against the citizens of this State can unequivocally be declared sane within the time periods prescribed in section 1 of this bill. It is the intent of this bill to protect the citizens of the State from mentally abnormal and dangerous persons who have been found to have committed acts endangering the lives and safety of others.

Sec. 1. The intent of this section is to place any person acquitted under Title 17-A, section 58, subsections 1 and 1-A into an institution for the mentally ill or mentally retarded for a definite period.

Sec. 2. This section amends Title 15, section 104-A, subsection 1 to eliminate provision for discharge following annual reviews of persons committed under section 103. The amended section still provides for annual review of persons committed under section 103 with a court-conditioned release for such persons if they are found ready for the release.

Sec. 3. The intent of this section is to clearly prohibit the discharge of persons committed under section 103 during their mandatory period. Discharge is available under other subsections of this section, but only after the expiration of the mandatory period.

It also enacts Title 15, section 104-A, subsection 1-B, which provides for the discharge or court-conditioned release of persons committed under Title 15, section 103 at the end of their mandatory period of commitment.

It enacts Title 15, section 104-A, subsection 1-C, which continues the hospitalization of persons who are not released or discharged as a result of the review proceedings under subsection 1-B.

It also enacts Title 15, section 104-A, subsection 1-D which provides for an annual review of persons whose commitment is continued beyond the end of their mandatory period. This review is to determine whether such persons are ready for release or discharge. This subsection further provides for a review of persons hospitalized beyond their mandatory period whenever a staff psychiatrist of the institution to which the person is committed considers such person to be ready for discharge or release.

Sec. 4. This section amends Title 15, section 104-A, subsection 2, to make the modified release program available to persons whose hospitalization has been continued beyond their mandatory period as well as to those persons still in their mandatory period of treatment.

Sec. 5. This section corrects references to a statutory provision which is relocated by this bill.

Sec. 6. This section corrects references to a statutory provision which is relocated by this bill and eliminates provision for discharge under the modified release program.

Sec. 7. This section corrects a reference to a statutory provision which is relocated by this bill.

Sec. 8. This section eliminates court consideration of indigency of persons seeking discharge under the modified release program because discharge is no longer available under that program.

Sec. 9. This section enacts Title 17-A, section 59-A, which requires a special verdict of the fact finder in any criminal case where mental abnormality affects either criminal responsibility or the establishment of a necessary culpable state of mind.