

MAINE STATE LEGISLATURE

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(EMERGENCY)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document No. 536

H.P. 443 House of Representatives, February 2, 1983

Received by the Clerk of the House on February 2, 1983. Referred to the Committee on Judiciary, and ordered printed pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

Presented by Representative Ketover of Portland.
Cosponsors: Representative Lisnik of Presque Isle, Representative Kane of South Portland and Senator Violette of Aroostook.

STATE OF MAINE

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

**AN ACT Establishing a Commission to
Study the Defense of Insanity and the
Treatment of Persons Adjudged Not Guilty
by Reason of Insanity.**

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

Whereas, the defense of insanity in criminal cases, and the treatment of persons found not guilty by reason of insanity, are issues of fundamental importance to the people of the State; and

Whereas, the defense of insanity has been or is being reexamined by a large number of states; and

Whereas, certain states have abolished the verdict of not guilty by reason of insanity, limited

1 its application or enacted in its place a verdict of
2 "guilty but insane;" and

3 Whereas, the release of persons found not guilty
4 by reason of insanity is predicated by statute on the
5 likelihood of future dangerousness while the American
6 Psychiatric Association has formally and expressly
7 disavowed any expertise on the part of psychiatry in
8 predicting future dangerousness; and

9 Whereas, the testimony of the mental health pro-
10 fessional at both criminal trials and release hear-
11 ings has in some cases gone beyond the scope allowed
12 by the Maine Rules of Evidence; and

13 Whereas, in the judgment of the Legislature,
14 these facts create an emergency within the meaning of
15 the Constitution of Maine and require the following
16 legislation as immediately necessary for the preser-
17 vation of the public peace, health and safety; now,
18 therefore,

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

21 Sec. 1. Study commission created. There is estab-
22 lished a commission to study the defense of insanity
23 and the treatment of those adjudged not guilty by
24 reason of insanity.

25 Sec. 2. Appointment. The commission shall consist
26 of 11 members, as follows: Two Senators appointed by
27 the President of the Senate; 2 Representatives
28 appointed by the Speaker of the House of Representa-
29 tives; and 4 attorneys, 2 with substantial
30 prosecutorial experience and 2 with substantial crim-
31 inal defense experience, appointed by the Attorney
32 General; one psychiatrist and one psychologist, both
33 with substantial experience in evaluating persons
34 asserting the defense of insanity and in treating
35 persons adjudged not guilty by reason of insanity,
36 appointed by the Commissioner of Mental Health and
37 Mental Retardation; and the Commissioner of Mental
38 Health and Mental Retardation, or his designee. The
39 commission shall choose a chairman from among its
40 members.

1 Sec. 3. Duties. The commission shall undertake a
2 complete study of the defense of insanity and the
3 treatment of persons adjudged not guilty by reason of
4 insanity with particular attention to:

5 1. Whether the current statutes governing the
6 insanity defense adequately protect society from dan-
7 gerous persons;

8 2. Whether the current statutes governing the
9 insanity defense adequately protect the constitu-
10 tional rights of criminal defendants;

11 3. Whether the Revised Statutes, Title 17-A,
12 section 40 should be amended to abolish or change the
13 2-stage trial procedure for the jury's consideration
14 of guilt and insanity;

15 4. Whether the statutes and decisions of the Law
16 Court governing the commitment, treatment and release
17 of persons adjudged not guilty by reason of insanity:

18 A. Adequately protect society from dangerous per-
19 sons; and

20 B. Adequately protect the constitutional rights
21 of those adjudged not guilty by reason of insan-
22 ity;

23 5. Whether the procedures for committing, treating
24 and releasing persons adjudged not guilty by reason
25 of insanity should be amended; and

26 6. The extent to which the testimony of competent
27 psychiatrists and psychologists should be allowed in
28 criminal proceedings.

29 Sec. 4. Reports. The commission shall present its
30 findings, together with any recommended legislation,
31 to the Second Regular Session of the 111th Legis-
32 lature.

33 Sec. 5. Assistance. The Office of Legislative
34 Assistants shall provide assistance to the commission
35 in carrying out its duties.

