

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 702

7 H.P. 551

House of Representatives, February 10, 1983

8 On Motion of Representative Hobbins of Saco referred to the Committee
9 on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Benoit of So. Portland.

Cosponsors: Senator Diamond of Cumberland, Senator Pearson of
11 Penobscot and Representative Masterton of Cape Elizabeth.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Permit a Verdict of Guilty
18 but Suffering from Mental Disease or Defect.
19

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

22 Sec. 1. 15 MRSA §103, as amended by PL 1981, c.
23 493, is further amended to read:

24 §103. Commitment of defendant on basis of mental
25 disease or defect

26 When a respondent is acquitted, by reason of
27 mental disease or ~~mental~~ defect excluding responsi-
28 bility, or found guilty but suffering from mental
29 disease or defect, the verdict and judgment shall so
30 state. In ~~such~~ either case the court shall order ~~such~~
31 the person committed to the custody of the Commis-
32 sioner of Mental Health and Mental Retardation to be
33 placed in an appropriate institution for the mentally

1 ill or the mentally retarded for care and treatment.
2 Upon placement in ~~such~~ an appropriate institution and
3 in the event of transfer from one such institution to
4 another of persons committed under this section,
5 notice thereof shall be given by the commissioner to
6 the committing court.

7 Sec. 2. 15 MRSA §104-A, sub-§1, ¶¶A and B, as
8 enacted by PL 1979, c. 663, §86, are repealed and the
9 following enacted in their place:

10 A. For a person committed after acquittal by
11 reason of mental disease or defect excluding
12 responsibility:

13 (1) Release from the institution, subject
14 to conditions deemed appropriate by the
15 court, which conditions:

16 (a) May include, but are not limited
17 to, out-patient treatment;

18 (b) Continue until terminated by the
19 court;

20 (c) Are subject to annual review by
21 the court; and

22 (d) May include supervision by the
23 State Division of Probation and Parole
24 for one year, which period may be
25 extended for an additional year by the
26 court upon review after the expiration
27 of the first year; or

28 (2) Discharge from the custody of the Com-
29 missioner of Mental Health and Mental Retar-
30 dation; or

31 B. For a person committed after being found
32 guilty but suffering from mental disease or
33 defect:

34 (1) Release from the institution and place-
35 ment in a correctional facility where the
36 remainder of the person's sentence is to be
37 served; or

1 (2) Release from the institution with
2 supervision by the State Division of Probation and Parole for the remainder of the
3 person's sentence.
4

5 The court may attach any other conditions it
6 deems appropriate to the person's release. The
7 remainder of the person's sentence is determined
8 by deducting the period of time spent by the
9 person in the institution after conviction from
10 the person's sentence.

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

13 Any person released under subsection 1, paragraph
14 A or B, who fails to comply with the conditions of
15 release ordered by the court or whose
16 rehospitalization, due to the likelihood that he will
17 cause injury to himself or others due to mental dis-
18 ease or ~~mental~~ defect, is considered necessary, upon
19 the verified petition of any interested person, may
20 be brought before any Justice of the Superior Court
21 upon his order. In each case, hearing shall be held
22 for the purpose of reviewing the mental condition of
23 the person and the order for release. The court may
24 order the person detained for observation and treat-
25 ment, if appropriate, at the hospital from which he
26 was released pending the hearing, which detention
27 shall not exceed 14 days. The psychiatrist responsi-
28 ble for the observation and treatment, if any, shall
29 report to the court prior to the hearing as to the
30 mental condition of the person, indicating specifi-
31 cally whether the person can remain in the community
32 without likelihood that he will cause injury to him-
33 self or others due to mental disease or mental
34 defect. The court shall receive the testimony of a
35 psychiatrist who observed or treated the person
36 during the period of detention and any other relevant
37 testimony. Following hearing, the court may reissue,
38 modify or rescind the previous order of release. Any
39 person released under subsection 1, paragraph A or
40 paragraph B, may be admitted to a hospital under any
41 provisions of Title 34, chapter 191 while the order
42 for release is in effect.

1 Sec. 4. 17-A MRSA §39, sub-§2, as enacted by PL
2 1981, c. 324, §14, is amended to read:

3 2. As used in this section and section 40,
4 "mental disease or defect" means any abnormal condi-
5 tion of the mind which substantially affects mental
6 or emotional processes and substantially impairs the
7 processes and capacity of a person to control his ac-
8 tions. An abnormality manifested only by repeated
9 criminal conduct or excessive use of alcohol, drugs
10 or similar substances, in and of itself, does not
11 constitute a mental disease or defect.

12 Sec. 5. 17-A MRSA §40, sub-§4, as enacted by PL
13 1981, c. 324, §14, is amended to read:

14 4. If the jury in the first phase returns a
15 guilty verdict, the trial shall proceed to the 2nd
16 phase. The defendant and the State may rely upon evi-
17 dence admitted during the first phase or they may
18 recall witnesses. Any evidence relevant to insanity
19 is admissible. The order of proof shall reflect that
20 the defendant has the burden of establishing his lack
21 of responsibility. The jury shall return a verdict
22 that the defendant is responsible guilty, guilty but
23 suffering from mental disease or defect or not guilty
24 by reason of mental disease or defect excluding
25 responsibility. If the defendant is found responsible
26 guilty, the court shall sentence him according to
27 law. If the defendant is found guilty but suffering
28 from mental disease or defect, the court shall sen-
29 tence him according to law and after sentencing shall
30 order him committed under Title 15, section 103.

31 STATEMENT OF FACT

32 The purpose of this bill is to introduce into
33 criminal law the verdict of guilty but suffering from
34 mental disease or defect.

35 The Maine Criminal Code defines mental disease or
36 defect as "any abnormal condition of the mind which
37 substantially affects mental or emotional processes
38 and substantially impairs the processes and capacity
39 of a person to control his actions." The insanity
40 defense, under the Maine Criminal Code, can only

succeed if the defendant is found substantially unable to conform his conduct to requirements of the law or substantially unable to appreciate the wrongfulness of his conduct because of a mental disease or defect.

The possible verdict of guilty but suffering from mental disease or defect will allow a jury to find that, though a defendant is suffering from an abnormal mental condition affecting his ability to control his actions, his disease or defect is not such that he could not appreciate the wrongfulness of his crime or could not restrain himself from committing the crime. The verdict of guilty but suffering from mental disease or defect, then, will permit a defendant to be held responsible for his conduct while permitting him to receive appropriate treatment.

A defendant found guilty but suffering from mental disease or defect is to be sentenced in the same manner as a defendant found guilty. However, the sentence is, in essence, to be begun by commitment to an institution for the mentally ill or retarded, following the procedures currently in law for the commitment of a person found innocent by reason of mental disease or defect excluding responsibility. Once the defendant has received sufficient treatment, he may be released from the institution upon court order, to either serve the remainder of his sentence in a correctional facility or to be placed on supervised parole for the remainder of his sentence.

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