

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 1137

6
7 H.P. 883

House of Representatives, March 9, 1983

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

10 EDWIN H. PERT, Clerk

11 Presented by Representative Scarpino of St. George.

12 STATE OF MAINE
13

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

17 AN ACT to Redefine the Insanity Plea.
18

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

21 Sec. 1. 15 MRSA §103, as amended by PL 1981, c.
22 493, §2, is further amended to read:

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

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

1 placement in such appropriate institution and in the
2 event of transfer from one such institution to
3 another of persons committed under this section,
4 notice thereof shall be given by the commissioner to
5 the committing court.

6 Sec. 2. 15 MRSA §104-A, as amended by PL 1981,
7 c. 493, §2, is further amended to read:

8 §104-A. Release and discharge, hearing, payment of
9 fees

10 1. Release and discharge. The head of the insti-
11 tution in which a person is placed under section 103
12 shall, annually, forward to the Commissioner of
13 Mental Health and Mental Retardation a report con-
14 taining the opinion of a staff psychiatrist as to the
15 mental condition of that person, stating specifically
16 whether he may be released or discharged without
17 likelihood that he will cause injury to himself or to
18 others due to mental disease or ~~mental~~ defect. The
19 report shall also contain a brief statement of the
20 reasons for the opinion. The commissioner shall
21 forthwith file the report in the Superior Court for
22 the county in which the person is hospitalized. The
23 court shall review each report and, if it is made to
24 appear by the report that any person may be ready for
25 release or discharge, the court shall set a date for
26 and hold a hearing on the issue of the person's
27 readiness for release or discharge. At the hearing,
28 the court shall receive the testimony of at least one
29 psychiatrist who has observed or treated that person
30 and any other relevant testimony. If, after hearing,
31 the court finds that the person may be released or
32 discharged without likelihood that he will cause
33 injury to himself or to others due to mental disease
34 or ~~mental~~ defect, the court shall order, as applica-
35 ble:

36 A. Release from the institution, ~~subject to con-~~
37 ~~ditions deemed appropriate by the court which~~
38 conditions- and placement in a correctional
39 facility where the remainder of the person's sen-
40 tence is to be served; or

41 ~~{i} May include, but are not limited to,~~
42 ~~out-patient treatment,~~

- 1 (2) Continue until terminated by the court,
2 (3) Are subject to annual review by the
3 court, and
4 (4) May include supervision by the State
5 Division of Probation and Parole for one
6 year, which period may be extended for an
7 additional year by the court upon review
8 after the expiration of the first year, or

9 B. Discharge from the custody of the Commis-
10 sioner of Mental Health and Corrections. Place-
11 ment under the custody of the Department of Cor-
12 rections which may provide for release with
13 supervision by the State Division of Probation
14 and Parole for the remainder of the person's sen-
15 tence.

16 The court may attach any other conditions it deems
17 appropriate to the person's release. The remainder
18 of the person's sentence is determined by deducting
19 the period of time spent by the person in the insti-
20 tution after conviction from the person's sentence.

21 2. Modified release treatment. Any individual
22 hospitalized pursuant to section 103 may petition the
23 Superior Court for the county in which that person is
24 hospitalized for a release treatment program allowing
25 the individual to be off institutional grounds for a
26 period of time, not to exceed 14 days at any one
27 time. The petition shall contain a report from the
28 institutional staff including at least one psychia-
29 trist, and the report shall define the patient's
30 present condition, the planned treatment program
31 involving absence from the institution, the duration
32 of the absence from the institution, the amount of
33 supervision during the absence, the expectation of
34 results from the program change and the estimated
35 duration of the treatment program before further
36 change. This petition shall be forwarded to the court
37 no later than 60 days prior to the beginning of the
38 modified treatment program. If the court considers
39 that the individual being off the grounds as de-
40 scribed in the treatment plan is inappropriate, it
41 shall notify the hospital that the plan is not
42 approved and shall schedule a hearing on the matter.

1 The clerk of courts upon receipt of the proposed
2 treatment program shall give notice thereof by mail-
3 ing a copy to the District Attorney and Attorney Gen-
4 eral, who may file objections and request hearing on
5 the matter. If the court does not respond within 60
6 days to the proposed treatment plan and no objections
7 and request for hearing are filed by the District
8 Attorney or Attorney General, it may then be put into
9 effect by the administrator of the hospital on the
10 assumption that the court approved the treatment
11 plan.

12 The term "release" as used in this section means
13 termination of institutional inpatient residency and
14 return to permanent residency in the community.

15 A report shall be forwarded and filed and hear-
16 ings shall be held in accordance with the first para-
17 graph of subsection 1 without unnecessary delay when,
18 at any time, it is the opinion of a staff psychia-
19 trist that a patient hospitalized under section 103
20 may be released or discharged without likelihood that
21 he will cause injury to himself or to others due to
22 mental disease or mental defect.

23 A person hospitalized under section 103, or his
24 spouse or next of kin, may petition the Superior
25 Court for the county in which that person is hospi-
26 talized for a hearing under this section. Upon
27 receiving the petition, the court shall request and
28 be furnished by the Commissioner of Mental Health and
29 Mental Retardation a report on the mental condition
30 of that person, as described in the first paragraph
31 of subsection 1. A hearing shall be held on each
32 petition, and release or discharge, if ordered, shall
33 be in accordance with the first paragraph of subsec-
34 tion 1. If release or discharge is not ordered, a
35 petition shall not be filed again for the release or
36 discharge of that person for 6 months. Any person
37 released under this section who does not have any
38 part of a sentence remaining to be served or his
39 spouse or next of kin may at any time after 6 months
40 from the release petition the Superior Court for the
41 county in which he was hospitalized for his discharge
42 under this section. If discharge is not ordered, a
43 petition for discharge may not be filed again for 6
44 months.

1 Any person released under subsection 17, paragraph
2 A7, who fails to comply with the conditions of release
3 ordered by the court or whose rehospitization, due
4 to the likelihood that he will cause injury to him-
5 self or others due to mental disease or ~~mental~~
6 defect, is considered necessary, upon the verified
7 petition of any interested person, may be brought
8 before any Justice of the Superior Court upon his
9 order. In each case, hearing shall be held for the
10 purpose of reviewing the mental condition of the
11 person and the order for release. The court may order
12 the person detained for observation and treatment, if
13 appropriate, at the hospital from which he was
14 released pending the hearing, which detention shall
15 not exceed 14 days. The psychiatrist responsible for
16 the observation and treatment, if any, shall report
17 to the court prior to the hearing as to the mental
18 condition of the person, indicating specifically
19 whether the person can remain in the community with-
20 out likelihood that he will cause injury to himself
21 or others due to mental disease or ~~mental~~ defect. The
22 court shall receive the testimony of a psychiatrist
23 who observed or treated the person during the period
24 of detention and any other relevant testimony. Fol-
25 lowing hearing, the court may reissue, modify or
26 rescind the previous order of release. Any person
27 released under subsection 17, paragraph A may be
28 admitted to a hospital under any provisions of Title
29 34, chapter 191 while the order for release is in
30 effect.

31 Notice of any hearing under this section shall be
32 given to the District Attorney and Attorney General
33 at least 7 days before the hearing date.

34 Whenever a hearing is to be held under this
35 section, the court shall determine whether the person
36 whose release or discharge is in issue, is indigent.
37 If the court finds that the person is indigent, it
38 shall appoint counsel to represent the person in con-
39 nection with the hearing. Fees for court-appointed
40 counsel for services rendered in connection with any
41 hearing held under this section, or appeal from a
42 decision therein, and the fees of any expert wit-
43 nesses called by the District Attorney, Attorney Gen-
44 eral or on behalf of the person whose release or dis-
45 charge is in issue, if indigent, shall be paid by the

1 State. Any such fee to be in order for payment shall
2 be first approved by the justice presiding at the
3 hearing held under this section.

4 Sec. 3. 17-A MRSA §39 as enacted by PL 1981, c.
5 324, §14, is repealed.

6 Sec. 4. 17-A MRSA §40, as enacted by PL 1981, c.
7 324, §14, is amended to read:

8 §40. Procedure upon plea of not guilty coupled with
9 plea of guilty but suffering from mental dis-
10 ease or defect

11 1. When the defendant enters a plea of not
12 guilty together with a plea of ~~not guilty by reason~~
13 of insanity guilty but suffering from mental disease
14 or defect, he shall also elect whether the trial
15 shall be in 2 stages as provided for in this section,
16 or a unitary trial in which both the issues of guilt
17 and of insanity mental disease or defect are submit-
18 ted simultaneously to the jury. At the defendant's
19 election, the jury shall be informed that the 2 pleas
20 have been made and that the trial will be in 2
21 stages.

22 2. If a 2-stage trial is elected by the defen-
23 dant, there shall be a separation of the issue of
24 guilt from the issue of insanity mental disease or
25 defect in the following manner.

26 A. The issue of guilt shall be tried first and
27 the issue of insanity mental disease or defect
28 tried only if the jury returns a verdict of
29 guilty. If the jury returns a verdict of not
30 guilty, the proceedings shall terminate.

31 B. Evidence of mental disease or defect, as de-
32 defined in section 39, subsection 2, shall not be
33 admissible in the guilt or innocence phase of the
34 trial for the purpose of establishing insanity
35 mental disease or defect. Such evidence shall be
36 admissible for that purpose only in the 2nd phase
37 following a verdict of guilty. For the purposes
38 of this section, "mental disease or defect" means
39 any abnormal condition of the mind which substan-
40 tially affects mental or emotional processes and

1 substantially impairs the processes and capacity
2 of a person to control his actions. An abnormal-
3 ity manifested only by repeated criminal conduct
4 or excessive use of alcohol, drugs or similar
5 substances, in and of itself, does not constitute
6 a mental disease or defect.

7 3. The issue of insanity mental disease or
8 defect shall be tried before the same jury as tried
9 the issue of guilt. Alternate jurors who were
10 present during the first phase of the trial but who
11 did not participate in the deliberations and verdict
12 thereof may be substituted for jurors who did partic-
13 ipate. The defendant may elect to have the issue
14 of insanity mental disease or defect tried by the
15 court without a jury.

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

34 5. This section does not apply to cases tried
35 before the court without a jury.

36 STATEMENT OF FACT

37 The purpose of this bill is to eliminate the
38 insanity defense from the Maine Criminal Code and to
39 establish the verdict of guilty but suffering from
40 mental disease or defect. A person found guilty but
41 suffering from mental disease or defect would be sen-

1 tenced and would also be committed to an institution
2 for the mentally ill or retarded. If the person's
3 commitment is terminated before his sentence has run,
4 he would be returned to a correctional facility to
5 serve out the remainder of his sentence or placed
6 under the custody of the Department of Corrections
7 which may place him on probation for the remainder of
8 his sentence.

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