

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 278

6
7 H.P. 237

House of Representatives, January 30, 1985

8 Reference to the Committee on Judiciary suggested and ordered printed.

9 EDWIN H. PERT, Clerk

10 Presented by Representative Vose of Eastport.
Cospponsored by Senator Erwin of Oxford.

11
12 STATE OF MAINE
13

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

17 AN ACT to Abolish the Insanity Defense but
18 Permit a Verdict of Guilty but
19 Suffering from Mental Disease or
20 Defect.
21

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

24 Sec. 1. 15 MRSA §101, first ¶, as amended by PL
25 1983, c. 580, §2, is further amended to read:

26 The District Court or the Superior Court having
27 jurisdiction in any criminal case for cause shown may
28 order the defendant examined to determine his mental
29 condition with reference to the issues of ~~criminal~~
30 ~~responsibility~~ mental disease or defect and compe-
31 tence to stand trial. The examination may be con-
32 ducted at the Augusta Mental Health Institute, Bangor
33 Mental Health Institute, Pineland Center or at a men-
34 tal health clinic of, or recommended by, the Depart-
35 ment of Mental Health and Mental Retardation, and
36 when conducted at any such facility shall be the re-

1 sponsibility of a psychiatrist or of a licensed clinical
2 ical psychologist, who may join with him in such ex-
3 amination other psychiatrists or licensed clinical
4 psychologists, as in his opinion are required. The
5 examination may be conducted by a psychiatrist or li-
6 censed clinical psychologist independent from any
7 such facility, employed for such purpose by the
8 court. The court in selecting the examination site
9 shall consider proximity to the court, availability
10 of an examiner or examiners, and the necessity for
11 security precautions. No person may be presented for
12 examination under this paragraph without arrangements
13 therefor with the head of the institution or clinic
14 or with the individual examiner being first made by
15 the court, clerk of courts or sheriff. The opinion of
16 the examiner or examiners relative to the mental con-
17 dition of the respondent shall be reported forthwith
18 to the court following examination.

19 Sec. 2. 15 MRSA §101, 2nd ¶, as amended by PL
20 1983, c. 580, §3, is further amended to read:

21 If it is made to appear to the court by the re-
22 port of any such examiner that the defendant suffers
23 ~~or suffered~~ from a mental disease or mental defect or
24 suffers from a mental disease or defect affecting his
25 criminal responsibility ~~or~~ his competence to stand
26 trial or that further observation is indicated, the
27 court shall order the defendant to be further exam-
28 ined by a psychiatrist and a licensed clinical psy-
29 chologist designated by the Commissioner of Mental
30 Health and Mental Retardation with such assistance as
31 the designated examiners may deem necessary who shall
32 determine the mental condition of the defendant. The
33 court may order that observations, interviews and in-
34 vestigative reports regarding the behavior of the de-
35 fendant made by law enforcement officials be made
36 available to the designated psychiatrist and licensed
37 clinical psychologist for the limited purpose of this
38 examination. If the examination by such designees can
39 be completed without admission, a report of the re-
40 sults of such completed examination shall be for-
41 warded to the court forthwith. If the designated ex-
42 aminers of the Commissioner of Mental Health and Men-
43 tal Retardation determine that admission to an appro-
44 priate institution for the mentally ill or mentally
45 retarded is necessary for complete examination, the

1 examiners shall so notify the court which may order
2 the defendant committed to the custody of the Commis-
3 sioner of Mental Health and Mental Retardation to be
4 placed in an appropriate institution for the mentally
5 ill or the mentally retarded, to be there detained
6 and observed by the superintendent, or his delegate,
7 and professional staff for a period of time not to
8 exceed 60 days, for the purpose of ascertaining the
9 mental condition of the defendant. When further de-
10 tention for observation is deemed no longer neces-
11 sary, the commissioner shall report such fact to the
12 court. The court shall then order the person returned
13 to the appropriate court for disposition; if the
14 court ordering commitment for observation has pro-
15 vided for remand to the county jail following comple-
16 tion of the observation in the commitment order, the
17 sheriff or any one or more of his deputies shall exe-
18 cute the remand order upon advice from the commis-
19 sioner of completion of the observation. A report of
20 the results of the observation shall be forwarded
21 promptly to the court by the commissioner.

22 Sec. 3. 15 MRSA §103, as amended by PL 1981, c.
23 493, §2, is further amended to read:

24 §103. Commitment of persons on basis of mental dis-
25 ease or defect

26 When a ~~respondent~~ defendant is ~~acquitted, by rea-~~
27 ~~son of found guilty but suffering from~~ mental disease
28 or mental defect ~~excluding responsibility~~, the ver-
29 dict and judgment shall so state. ~~in such case the~~
30 The court shall order ~~such the~~ person committed to
31 the custody of the Commissioner of Mental Health and
32 Mental Retardation to be placed in an appropriate in-
33 stitution for the mentally ill or the mentally re-
34 tarded for care and treatment. Upon placement in
35 ~~such an~~ appropriate institution and in the event of
36 transfer from one such institution to another of per-
37 sons committed under this section, notice thereof
38 shall be given by the commissioner to the committing
39 court.

40 Sec. 4. 15 MRSA §104-A, as amended by PL 1981,
41 c. 493, §2, is further amended to read:

42 §104-A. Release, hearing, payment of fees

1 1. Release. The head of the institution in which
2 a person is placed under section 103 shall, annually,
3 forward to the Commissioner of Mental Health and Men-
4 tal Retardation a report containing the opinion of a
5 staff psychiatrist as to the mental condition of that
6 person, stating specifically whether he may be re-
7 leased ~~or discharged~~ without likelihood that he will
8 cause injury to himself or to others due to mental
9 disease or mental defect. The report shall also con-
10 tain a brief statement of the reasons for the opin-
11 ion. The commissioner shall forthwith file the report
12 in the Superior Court for the county in which the
13 person is hospitalized. The court shall review each
14 report and, if it is made to appear by the report
15 that any person may be ready for release ~~or~~
16 ~~discharge~~, the court shall set a date for and hold a
17 hearing on the issue of the person's readiness for
18 release ~~or discharge~~. At the hearing, the court shall
19 receive the testimony of at least one psychiatrist
20 who has observed or treated that person and any other
21 relevant testimony. If, after hearing, the court
22 finds that the person may be released ~~or discharged~~
23 without likelihood that he will cause injury to him-
24 self or to others due to mental disease or mental de-
25 fect, the court shall order, as applicable:

26 A. Release from the institution, ~~subject to con-~~
27 ~~ditions deemed appropriate by the court which~~
28 ~~conditions, and placement in a correctional fa-~~
29 ~~cility where the person's sentence is to be~~
30 served; or

31 (1) May include, but are not limited to,
32 out-patient treatment;

33 (2) Continue until terminated by the court;

34 (3) Are subject to annual review by the
35 court; and

36 (4) May include supervision by the State
37 Division of Probation and Parole for one
38 year, which period may be extended for an
39 additional year by the court upon review af-
40 ter the expiration of the first year; or

1 B. Discharge from the custody of the Commission-
2 er of Mental Health and Mental Retardation Re-
3 lease from the institution with supervision by
4 the Division of Probation and Parole.

5 The court may attach any other conditions it deems
6 appropriate to the person's release. The period of
7 time spent by the person in the institution after
8 conviction may not be deducted from any period of im-
9 prisonment or probation imposed at the person's sen-
10 tencing.

11 2. Modified release treatment. Any individual
12 hospitalized pursuant to section 103 may petition the
13 Superior Court for the county in which that person is
14 hospitalized for a release treatment program allowing
15 the individual to be off institutional grounds for a
16 period of time, not to exceed 14 days at any one
17 time. The petition shall contain a report from the
18 institutional staff including at least one psychia-
19 trist, and the report shall define the patient's
20 present condition; the planned treatment program in-
21 volving absence from the institution; the duration of
22 the absence from the institution; the amount of su-
23 pervision during the absence; the expectation of re-
24 sults from the program change and the estimated dura-
25 tion of the treatment program before further change.
26 This petition shall be forwarded to the court no la-
27 ter than 60 days prior to the beginning of the modi-
28 fied treatment program. If the court considers that
29 the individual being off the grounds as described in
30 the treatment plan is inappropriate, it shall notify
31 the hospital that the plan is not approved and shall
32 schedule a hearing on the matter. The clerk of courts
33 upon receipt of the proposed treatment program shall
34 give notice thereof by mailing a copy to the district
35 attorney and Attorney General, who may file objec-
36 tions and request hearing on the matter. If the court
37 does not respond within 60 days to the proposed
38 treatment plan and no objections and request for
39 hearing are filed by the district attorney or Attor-
40 ney General, it may then be put into effect by the
41 administrator of the hospital on the assumption that
42 the court approved the treatment plan.

43 The term "release" as used in this section means
44 termination of institutional inpatient residency and
45 return to permanent residency in the community.

1 A report shall be forwarded and filed and hear-
2 ings shall be held in accordance with the first para-
3 graph of subsection 1 without unnecessary delay when,
4 at any time, it is the opinion of a staff psychia-
5 trist that a patient hospitalized under section 103
6 may be released ~~or discharged~~ without likelihood that
7 he will cause injury to himself or to others due to
8 mental disease or mental defect.

9 A person hospitalized under section 103, or his
10 spouse or next of kin, may petition the Superior
11 Court for the county in which that person is hospi-
12 talized for a hearing under this section. Upon re-
13 ceiving the petition, the court shall request and be
14 furnished by the Commissioner of Mental Health and
15 Mental Retardation a report on the mental condition
16 of that person, as described in the first paragraph
17 of subsection 1. A hearing shall be held on each pe-
18 tition, and release ~~or discharge~~, if ordered, shall
19 be in accordance with the first paragraph of subsec-
20 tion 1. If release ~~or discharge~~ is not ordered, a pe-
21 tition shall not be filed again for the release ~~or~~
22 ~~discharge~~ of that person for 6 months. Any person re-
23 leased under this section or his spouse or next of
24 kin may at any time after 6 months from the release
25 petition the Superior Court for the county in which
26 he was hospitalized for his discharge under this sec-
27 tion. If discharge is not ordered, a petition for
28 discharge may not be filed again for 6 months.

29 Any person released under subsection 1, paragraph
30 A7, who fails to comply with the conditions of release
31 ordered by the court or whose rehospitalization, due
32 to the likelihood that he will cause injury to him-
33 self or others due to mental disease or mental de-
34 fect, is considered necessary, upon the verified pe-
35 tition of any interested person, may be brought be-
36 fore any Justice of the Superior Court upon his or-
37 der. In each case, hearing shall be held for the pur-
38 pose of reviewing the mental condition of the person
39 and the order for release. The court may order the
40 person detained for observation and treatment, if ap-
41 propriate, at the hospital from which he was released
42 pending the hearing, which detention shall not exceed
43 14 days. The psychiatrist responsible for the obser-
44 vation and treatment, if any, shall report to the
45 court prior to the hearing as to the mental condition

1 of the person, indicating specifically whether the
2 person can remain in the community unhospitalized
3 without likelihood that he will cause injury to him-
4 self or others due to mental disease or mental de-
5 fect. The court shall receive the testimony of a psy-
6 chiatrist who observed or treated the person during
7 the period of detention and any other relevant testi-
8 mony. Following hearing, the court may reissue, modi-
9 fy or rescind the previous order of release. Any per-
10 son released under subsection 17, paragraph A may be
11 admitted to a hospital under any provisions of Title
12 34, chapter 191 while the order for release is in ef-
13 fect.

14 Notice of any hearing under this section shall be
15 given to the district attorney and Attorney General
16 at least 7 days before the hearing date.

17 Whenever a hearing is to be held under this sec-
18 tion, the court shall determine whether the person
19 whose release or discharge is in issue, is indigent.
20 If the court finds that the person is indigent, it
21 shall appoint counsel to represent the person in con-
22 nection with the hearing. Fees for court-appointed
23 counsel for services rendered in connection with any
24 hearing held under this section, or appeal from a de-
25 cision therein, and the fees of any expert witnesses
26 called by the district attorney, Attorney General or
27 on behalf of the person whose release or discharge is
28 in issue, if indigent, shall be paid by the State.
29 Any such fee to be in order for payment shall be
30 first approved by the justice presiding at the hear-
31 ing held under this section.

32 Sec. 5. 17-A MRSA §§39 and 40, as enacted by PL
33 1981, c. 324, §14, are repealed.

34 Sec. 6. 17-A MRSA §41 is enacted to read:

35 §41. Guilty but suffering from mental disease or de-
36 fect

37 1. Definition. As used in this section, "mental
38 disease or defect" means any abnormal condition of
39 the mind which substantially affects mental or emo-
40 tional processes and substantially impairs the pro-

1 cesses and capacity of a person to control his ac-
2 tions. An abnormality manifested only by repeated
3 criminal conduct or excessive use of alcohol, drugs
4 or similar substances, in and of itself, does not
5 constitute a mental disease or defect.

6 2. Evidence. Any evidence relevant to mental
7 disease or defect is admissible at trial.

8 3. Verdict. The jury shall return a verdict of
9 not guilty, guilty or guilty but suffering from men-
10 tal disease or defect. If the defendant is found
11 guilty, the court shall sentence him according to
12 law. If the defendant is found guilty and suffering
13 from mental disease or defect, the court shall sen-
14 tence him according to law and after sentencing shall
15 order him committed under Title 15, section 103.

16 4. Trial without jury. This section does not ap-
17 ply to cases tried before the court without a jury.

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STATEMENT OF FACT

The purposes of this bill are to:

1. Abolish the insanity defense which currently permits criminal defendants in this State to be found not guilty by reason of insanity;
2. Permit a criminal defendant to be found guilty but suffering from mental disease or defect and to receive treatment; and
3. Require a criminal defendant found guilty but suffering from mental disease or defect to serve the period of imprisonment or probation imposed at sentencing after hospitalized treatment without deductions from the sentence for the time hospitalized.

The bill amends provisions of the Maine Revised Statutes, Title 15, concerning the hospitalization and treatment of a criminal defendant suffering from mental disease or defect. The changes are necessary because the bill abolishes the insanity defense and to make it clear that a person found guilty but suffering from mental disease or defect must serve his entire sentence upon release from hospitalized treatment.

The bill repeals the sections of the Maine Criminal Code that currently provide for an insanity defense.

This bill adds a new section to the Maine Criminal Code permitting a verdict of guilty but suffering from mental disease or defect. That section makes it clear that a person found guilty but suffering from mental disease or defect must be sentenced according to law before being committed for treatment.

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