

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1035

6
7 H.P. 726

House of Representatives, March 13, 1985

8 On motion of Representative Kane of S. Portland, referred to the
9 Committee on Judiciary. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Clark of Millinocket.

11 Cosponsored by Representative Ridley of Shapleigh, Representative Paul
of Sanford and Representative Soucy of Kittery.

12 STATE OF MAINE
13

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

17 AN ACT Concerning the Plea of Innocent by
18 Reason of Insanity.
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, §2, is further amended to read:

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

26 When a respondent is ~~acquitted, by reason of men-~~
27 ~~tal disease or mental defect excluding responsibility~~
28 ~~found guilty, but suffering from mental disease or~~
29 ~~defect~~, the verdict and judgment shall so state. In
30 such case the court shall order such person committed
31 to the custody of the Commissioner of Mental Health
32 and Mental Retardation to be placed in an appropriate
33 institution for the mentally ill or the mentally re-
34 tardated for care and treatment. Upon placement in
35 such appropriate institution and in the event of

1 transfer from one such institution to another of per-
2 sons committed under this section, notice thereof
3 shall be given by the commissioner to the committing
4 court.

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

7 §104-A. Release and discharge, hearing, payment of
8 fees

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

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

39 {1} May include, but are not limited to,
40 out-patient treatment;

41 {2} Continue until terminated by the court;

1 (3) Are subject to annual review by the
2 court, and

3 (4) May include supervision by the State
4 Division of Probation and Parole for one
5 year, which period may be extended for an
6 additional year by the court upon review af-
7 ter the expiration of the first year, or

8 B. Discharge from the custody of the Commission-
9 er of Mental Health and Mental Retardation Place-
10 ment under the custody of the Department of Cor-
11 rections which may provide for release with su-
12 pervision by the Division of Probation and Parole
13 for the remainder of the person's sentence.

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

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

1 tions and request hearing on the matter. If the court
2 does not respond within 60 days to the proposed
3 treatment plan and no objections and request for
4 hearing are filed by the district attorney or Atter-
5 ney General, it may then be put into effect by the
6 administrator of the hospital on the assumption that
7 the court approved the treatment plan.

8 The term "release" as used in this section means
9 termination of institutional inpatient residency and
10 return to permanent residency in the community.

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

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

40 Any person released under subsection 1, paragraph
41 A, who fails to comply with the conditions of release
42 ordered by the court or whose rehospitalization, due
43 to the likelihood that he will cause injury to him-

1 self or others due to mental disease or ~~mental~~ de-
2 fect, is considered necessary, upon the verified pe-
3 tition of any interested person, may be brought be-
4 fore any Justice of the Superior Court upon his or-
5 der. In each case, hearing shall be held for the pur-
6 pose of reviewing the mental condition of the person
7 and the order for release. The court may order the
8 person detained for observation and treatment, if ap-
9 propriate, at the hospital from which he was released
10 pending the hearing, which detention shall not exceed
11 14 days. The psychiatrist responsible for the obser-
12 vation and treatment, if any, shall report to the
13 court prior to the hearing as to the mental condition
14 of the person, indicating specifically whether the
15 person can remain in the ~~community~~ community without
16 likelihood that he will cause injury to himself or
17 others due to mental disease or mental defect. The
18 court shall receive the testimony of a psychiatrist
19 who observed or treated the person during the period
20 of detention and any other relevant testimony. Fol-
21 lowing hearing, the court may reissue, modify or re-
22 scind the previous order of release. Any person re-
23 leased under subsection 1, ~~paragraph~~ A may be admit-
24 ted to a hospital under any provisions of Title 34,
25 chapter 191 while the order for release is in effect.

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

29 Whenever a hearing is to be held under this sec-
30 tion, the court shall determine whether the person
31 whose release or discharge is in issue, is indigent.
32 If the court finds that the person is indigent, it
33 shall appoint counsel to represent the person in con-
34 nection with the hearing. Fees for court-appointed
35 counsel for services rendered in connection with any
36 hearing held under this section, or appeal from a de-
37 cision therein, and the fees of any expert witnesses
38 called by the district attorney, Attorney General or
39 on behalf of the person whose release or discharge is
40 in issue, if indigent, shall be paid by the State.
41 Any such fee to be in order for payment shall be
42 first approved by the justice presiding at the hear-
43 ing held under this section.

44 Sec. 3. 17-A MRSA §39, as enacted by PL 1981, c.
45 324, §14, is repealed.

1 Sec. 4. 17-A MRSA §40, as enacted by PL 1981, c.
2 324, §14, is amended to read:

3 §40. Procedure upon plea of not guilty coupled with
4 plea of guilty, but suffering from mental dis-
5 ease or defect

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

17 2. If a 2-stage trial is elected by the defend-
18 ant, there shall be a separation of the issue of
19 guilt from the issue of ~~insanity~~ mental disease or
20 defect in the following manner.

21 A. The issue of guilt shall be tried first and
22 the issue of ~~insanity~~ mental disease or defect
23 tried only if the jury returns a verdict of
24 guilty. If the jury returns a verdict of not
25 guilty, the proceedings shall terminate.

26 B. Evidence of mental disease or defect, ~~as de-~~
27 ~~defined in section 39, subsection 2,~~ shall not be
28 admissible in the guilt or innocence phase of the
29 trial for the purpose of establishing ~~insanity~~
30 mental disease or defect. Such evidence shall be
31 admissible for that purpose only in the 2nd phase
32 following a verdict of guilty. For the purposes
33 of this section, "mental disease or defect" means
34 any abnormal condition of the mind which substan-
35 tially affects mental or emotional processes and
36 substantially impairs the processes and capacity
37 of a person to control his actions. An abnormal-
38 ity manifested only by repeated criminal conduct
39 or excessive use of alcohol, drugs or similar
40 substances, in and of itself, does not constitute
41 a mental disease or defect.

1 3. The issue of insanity mental disease or
2 defect shall be tried before the same jury as tried
3 the issue of guilt. Alternate jurors who were present
4 during the first phase of the trial but who did not
5 participate in the deliberations and verdict thereof
6 may be substituted for jurors who did participate.
7 The defendant may elect to have the issue of insanity
8 mental disease or defect tried by the court without a
9 jury.

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

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

1

STATEMENT OF FACT

2 The purpose of this bill is to eliminate the in-
3 sanity defense from the Maine Criminal Code and to
4 establish the verdict of guilty, but suffering from
5 mental disease or defect. A person found guilty, but
6 suffering from mental disease or defect will be sen-
7 tenced and will also be committed to an institution
8 for the mentally ill or retarded. If the person's
9 commitment is terminated before his sentence has run,
10 he will be returned to a correctional facility to
11 serve out the remainder of his sentence or placed un-
12 der the custody of the Department of Corrections
13 which may place him on probation for the remainder of
14 his sentence.

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