

MAINE STATE LEGISLATURE

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1 (EMERGENCY)
2 (New Draft of H.P. 69, L.D. 90)
3 FIRST REGULAR SESSION
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE
6

7 Legislative Document

No. 1213

9 H.P. 856

House of Representatives, April 4, 1985

10 Reported by Representative Allen from the Committee on Judiciary and
11 printed under Joint Rule 2. Original bill sponsored by Representative Melendy
12 of Rockland. Cosponsored by Representative Paradis of Augusta,
Representative Kimball of Buxton and Senator Bustin of Kennebec.

EDWIN H. PERT, Clerk

13
14 STATE OF MAINE
15

16 IN THE YEAR OF OUR LORD
17 NINETEEN HUNDRED AND EIGHTY-FIVE
18

19 AN ACT Concerning Persons on Partial Release
20 from a Mental Health Institution.
21

22 Emergency preamble. Whereas, Acts of the Legis-
23 lature do not become effective until 90 days after
24 adjournment unless enacted as emergencies; and

25 Whereas, failure to comply with the conditions of
26 release ordered by the court may increase the risk of
27 danger of injury to the person or others due to men-
28 tal disease or defect; and

29 Whereas, current law does not provide for emer-
30 gency return of person acquitted by reason of insani-
31 ty who are released by the court, or set forth stan-
32 dards to be used by the court in ordering
33 rehospitalization; and

34 Whereas, in the judgment of the Legislature,
35 these facts create an emergency within the meaning of

1 the Constitution of Maine and require the following
2 legislation as immediately necessary for the preser-
3 vation of the public peace, health and safety; now,
4 therefore,

5 Be it enacted by the People of the State of Maine as
6 follows:

7 Sec. 1. 15 MRSA §104-A, as amended by PL 1981,
8 c. 493, §2, is repealed and the following enacted in
9 its place:

10 §104-A. Release and discharge, hearing, payment of
11 fees

12 1. Release and discharge. The term "release,"
13 as used in this section, means termination of insti-
14 tutional in-patient residency and return to permanent
15 residency in the community. The head of the institu-
16 tion in which a person is placed, under section 103,
17 shall, annually, forward to the Commissioner of Men-
18 tal Health and Mental Retardation a report containing
19 the opinion of a staff psychiatrist as to the mental
20 conditions of that person, stating specifically
21 whether he may be released or discharged without
22 likelihood that he will cause injury to himself or to
23 others due to mental disease or mental defect. The
24 report shall also contain a brief statement of the
25 reasons for the opinion. The commissioner shall
26 forthwith file the report in the Superior Court for
27 the county in which the person is hospitalized. The
28 court shall review each report and, if it is made to
29 appear by the report that any person may be ready for
30 release or discharge, the court shall set a date for
31 and hold a hearing on the issue of the person's read-
32 iness for release or discharge. At the hearing, the
33 court shall receive the testimony of at least one
34 psychiatrist who has observed or treated that person
35 and any other relevant testimony. If, after hearing,
36 the court finds that the person may be released or
37 discharged without likelihood that he will cause in-
38 jury to himself or to others due to mental disease or
39 mental defect, the court shall order, as applicable:

40 A. Release from the institution, provided that:

1 (1) The order for release may include con-
2 ditions appropriated by the court, includ-
3 ing, but not limited to, out-patient treat-
4 ment and supervision by the Department of
5 Correction, Division of Probation and Pa-
6 role; and

7 (2) The order for release shall include the
8 conditions that the person shall be returned
9 to the institution forthwith upon the order
10 of the commissioner whenever the person
11 fails to comply with other conditions of re-
12 lease ordered by the court; or

13 B. Discharge from the custody of the Commission-
14 er of Mental Health and Mental Retardation.

15 Release from the institution shall be subject to an-
16 annual review by the court and, except for return as
17 ordered by the commissioner under paragraph A, sub-
18 paragraph (1), shall continue until terminated by the
19 court. Each person released under this section shall
20 remain in the custody of the commissioner.

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

1 treatment program shall give notice of the receipt of
2 this program by mailing a copy to the district attor-
3 ney and Attorney General, who may file objections and
4 request a hearing on the matter. If the court does
5 not respond within 60 days to the proposed treatment
6 plan and no objections and request for hearing are
7 filed by the district attorney or Attorney General,
8 it may then be put into effect by the administrator
9 of the hospital on the assumption that the court ap-
10 proved the treatment plan.

11 3. Other provisions concerning initial release
12 or discharge. A report shall be forwarded and filed
13 and hearings shall be held in accordance with subsec-
14 tion 1, without unnecessary delay when, at any time,
15 it is the opinion of a staff psychiatrist that a pa-
16 tient hospitalized under section 103, may be released
17 or discharged without likelihood that he will cause
18 injury to himself or to others due to mental disease
19 or mental defect.

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

40 4. Return to institution upon commissioner's or-
41 der. The commissioner may order any person released
42 under subsection 1, paragraph A, who fails to comply
43 with the conditions of release ordered by the court,
44 as evidence by the affidavit of any interested per-

1 son, to return to the institution from which he was
2 released. A hearing shall be held for the purpose of
3 reviewing the order for release within 7 days of the
4 person's return if the person will be detained for 7
5 or more days. At the hearing, the court shall re-
6 ceive testimony of the psychiatrist who observed or
7 treated the person upon the person's return to the
8 institution and any other relevant testimony. Fol-
9 lowing hearing, the court may reissue or modify the
10 previous order of release.

11 5. Reinstitutionalization due to likelihood of
12 causing injury. Any person released under subsection
13 1, paragraph A, whose reinstitutionalization, due to
14 the likelihood that he will cause injury to himself
15 or others due to mental disease or mental defect, is
16 considered necessary, upon the verified petition of
17 any interested person, may be brought before any Jus-
18 tice of the Superior Court upon his order. A hearing
19 shall be held for the purpose of reviewing the mental
20 condition of the person and the order for release.
21 The court may order the person detained for observa-
22 tion and treatment, if appropriate, at the institu-
23 tion from which he was released pending the hearing,
24 which detention shall not exceed 14 days. The psy-
25 chiatrist responsible for the observation and treat-
26 ment of the person shall report to the court prior to
27 the hearing as to the mental condition of the person,
28 indicating specifically whether the person can remain
29 in the community without likelihood that he will
30 cause injury to himself or others due to mental dis-
31 ease or mental defect. The court shall receive the
32 testimony of the psychiatrist who observed or treated
33 the person during the period of detention and any
34 other relevant testimony. Following the hearing, the
35 court may reissue, modify or rescind the previous or-
36 der of release.

37 6. Involuntary hospitalization; notice; ap-
38 pointed counsel. Any person released under subsec-
39 tion 1, paragraph A, may be admitted to a hospital
40 under any provision of Title 34-B, chapter 3, sub-
41 chapter IV, Article 3, while the order for release is
42 in effect.

43 Notice of any hearing under subsection 1, 2, 3 or 5
44 shall be given to the district attorney and Attorney

1 General at least 7 days before the hearing date. No-
2 tice of any hearing under subsection 4 shall be given
3 to the district attorney and Attorney General as soon
4 as possible before the hearing date.

5 Whenever a hearing is to be held under this section,
6 the court shall determine whether the person whose
7 release or discharge is in issue is indigent. If the
8 court finds that the person is indigent, it shall ap-
9 point counsel to represent the person in connection
10 with the hearing. Fees for court-appointed counsel
11 for services rendered in connection with any hearing
12 held under this section, or appeal from a decision in
13 any hearing, and the fees of any expert witnesses
14 called by the district attorney, Attorney General or
15 on behalf of the person whose release or discharge is
16 in issue, if indigent, shall be paid by the State.
17 Any such fee to be in order for payment shall be
18 first approved by the justice presiding at the hear-
19 ing held under this section.

20 Sec. 2. 15 MRSA §104-B, as amended by PL 1981,
21 c. 493, §2 is repealed and the following enacted in
22 its place:

23 §104-B. Failure of patient to return

24 If any patient committed to the Department of
25 Mental Health and Mental Retardation for care and
26 treatment, under section 103 or 105, is ordered to
27 return to the hospital by the Commissioner of Mental
28 Health and Mental Retardation, law enforcement per-
29 sonnel of the State or of any of its subdivisions
30 shall, upon request of the commissioner, assist in
31 the return of the patient to the hospital.

32 Emergency clause. In view of the emergency cited
33 in the preamble, this Act shall take effect when ap-
34 proved.

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STATEMENT OF FACT

2 The purpose of this new draft is to provide the
3 Commissioner of Mental Health and Mental Retardation
4 with authority to order a person released from a men-
5 tal health institution on court order, after having
6 been placed in the institution upon being found not
7 guilty of a crime by reason of mental disease or de-
8 fect, to return to the institution upon the person's
9 failure to comply with a court-ordered condition of
10 release.

11 Under this new draft, the commissioner may order
12 any person released from a mental health institution
13 under the Maine Revised Statutes, Title 15, section
14 104-A, to return to the institution when the commis-
15 sioner receives an affidavit from an interested per-
16 son stating that the released person has failed to
17 comply with a condition of release. Law enforcement
18 officials shall, upon request of the commissioner,
19 assist in the return of the person ordered to return
20 to the institution by the commissioner.

21 If a person returned to the institution on order
22 of the commissioner is to be kept in the institution
23 for as long as 7 or more days, a court hearing must
24 be held to review the order for release within 7 days
25 of the person's return. Following the hearing, the
26 court may modify or reissue the release order.

27 This new draft retains all the provisions of the
28 current law concerning the reinstitutionalization of
29 a person released under the Maine Revised Statutes,
30 Title 15, section 104-A, who comes to pose a likeli-
31 hood that he will cause injury to himself or others
32 due to mental disease or defect.

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