

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
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3 ONE HUNDRED AND TWELFTH LEGISLATURE  
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5 Legislative Document

No. 1331

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7 H.P. 924

House of Representatives, April 16, 1985

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

10 EDWIN H. PERT, Clerk

Presented by Representative Stevens of Sabattus

11 Cosponsored by Senator Berube of Androscoggin and Representative  
Cote of Auburn.

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

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17 AN ACT Concerning Pleas of Insanity.  
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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 or found guilty but  
25 suffering from mental disease or defect

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

1     propriate institution and in the event of transfer  
2     from one such institution to another of persons com-  
3     mitted under this section, notice thereof shall be  
4     given by the commissioner to the committing 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 acquitted by reason of mental  
11     disease or defect is placed under section 103 shall,  
12     annually, forward to the Commissioner of Mental  
13     Health and Mental Retardation a report containing the  
14     opinion of a staff psychiatrist as to the mental con-  
15     dition of that person, stating specifically whether  
16     he may be released or discharged without likelihood  
17     that he will cause injury to himself or to others due  
18     to mental disease or ~~mental~~ defect. The report shall  
19     also contain a brief statement of the reasons for the  
20     opinion. The commissioner shall forthwith file the  
21     report in the Superior Court for the county in which  
22     the person is hospitalized. The court shall review  
23     each report and, if it is made to appear by the re-  
24     port that any person may be ready for release or dis-  
25     charge, the court shall set a date for and hold a  
26     hearing on the issue of the person's readiness for  
27     release or discharge. At the hearing, the court shall  
28     receive the testimony of at least one psychiatrist  
29     who has observed or treated that person and any other  
30     relevant testimony. If, after hearing, the court  
31     finds that the person may be released or discharged  
32     without likelihood that he will cause injury to him-  
33     self or to others due to mental disease or ~~mental~~ de-  
34     fect, the court shall order, as applicable:

35             A. Release from the institution, subject to con-  
36     ditions deemed appropriate by the court which  
37     conditions:

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

40                     (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.

10 2. Modified release treatment. Any individual  
11 acquitted by reason of mental disease or defect and  
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.

1           The term "release" as used in this section means  
2 termination of institutional inpatient residency and  
3 return to permanent residency in the community.

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

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

32           Any person released under subsection 1, paragraph  
33 A, who fails to comply with the conditions of release  
34 ordered by the court or whose rehospitalization, due  
35 to the likelihood that he will cause injury to him-  
36 self or others due to mental disease or ~~mental~~ de-  
37 fect, is considered necessary, upon the verified pe-  
38 tition of any interested person, may be brought be-  
39 fore any Justice of the Superior Court upon his or-  
40 der. In each case, hearing shall be held for the pur-  
41 pose of reviewing the mental condition of the person  
42 and the order for release. The court may order the  
43 person detained for observation and treatment, if ap-  
44 propriate, at the hospital from which he was released

1 pending the hearing, which detention shall not exceed  
2 14 days. The psychiatrist responsible for the obser-  
3 vation and treatment, if any, shall report to the  
4 court prior to the hearing as to the mental condition  
5 of the person, indicating specifically whether the  
6 person can remain in the ~~eeumunity~~ community without  
7 likelihood that he will cause injury to himself or  
8 others due to mental disease or ~~mentai~~ defect. The  
9 court shall receive the testimony of a psychiatrist  
10 who observed or treated the person during the period  
11 of detention and any other relevant testimony. Fol-  
12 lowing hearing, the court may reissue, modify or re-  
13 scind the previous order of release. Any person re-  
14 leased under subsection 1, paragraph A may be admit-  
15 ted to a hospital under any provisions of Title 34,  
16 chapter 191 while the order for release is in effect.

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

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

35 Sec. 3. 15 MRSA §104-C is enacted to read:

36 §104-C. Persons found guilty but suffering from men-  
37 tal disease or defect; discharge

38 1. Discharge. The head of the institution in  
39 which a person found guilty, but suffering from men-  
40 tal disease or defect is placed under section 103  
41 shall, annually, forward to the Commissioner of Men-  
42 tal Health and Mental Retardation a report containing

1 the opinion of a staff psychiatrist as to the mental  
2 condition of that person, stating specifically wheth-  
3 er he may be discharged without likelihood that he  
4 will cause injury to himself or to others due to men-  
5 tal disease or defect. The report shall also contain  
6 a brief statement of the reasons for the opinion.  
7 The commissioner shall forthwith file the report in  
8 the Superior Court for the county in which the person  
9 is hospitalized. The court shall review each report  
10 and, if it is made to appear by the report that any  
11 person may be ready for discharge, the court shall  
12 set a date for and hold a hearing on the issue of the  
13 person's readiness for discharge. At the hearing,  
14 the court shall receive the testimony of at least one  
15 psychiatrist who has observed or treated that person  
16 and any other relevant testimony. If, after hearing,  
17 the court finds that the person may be discharged  
18 without likelihood that he will cause injury to him-  
19 self or to others due to mental disease or defect,  
20 the court shall order, discharge from the institution  
21 and placement in a correctional facility where the  
22 remainder of the person's sentence is to be served.

23 The term "discharge" as used in this section means  
24 termination of institutional inpatient residency.

25 A report shall be forwarded and filed and hearings  
26 shall be held in accordance with this subsection,  
27 without unnecessary delay when, at any time, it is  
28 the opinion of a staff psychiatrist that a patient  
29 found guilty, but suffering from mental disease or  
30 defect and hospitalized under section 103 may be dis-  
31 charged without likelihood that he will cause injury  
32 to himself or to others due to mental disease or de-  
33 fect.

34 A person found guilty, but suffering from mental dis-  
35 ease or defect and hospitalized under section 103, or  
36 his spouse or next of kin, may petition the Superior  
37 Court for the county in which that person is hospi-  
38 talized for a hearing under this section. Upon re-  
39 ceiving the petition, the court shall request and be  
40 furnished by the Commissioner of Mental Health and  
41 Mental Retardation a report on the mental condition  
42 of that person, as described in this subsection. A  
43 hearing shall be held on each petition, and dis-  
44 charge, if ordered, shall be in accordance with this

1 subsection. If discharge is not ordered, a petition  
2 shall not be filed again for the release or discharge  
3 of that person for 6 months.

4 Notice of any hearing under this section shall be  
5 given to the district attorney and the Attorney Gen-  
6 eral at least 7 days before the hearing date.

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

22 Sec. 4. 17-A MRSA §39, sub-§3 is enacted to  
23 read:

24 3. This section shall not apply in any prosecu-  
25 tion for murder or felony murder.

26 Sec. 5. 17-A MRSA §40-A is enacted to read:

27 §40-A. Procedure upon plea of not guilty coupled  
28 with plea of guilty but suffering from mental  
29 disease or defect

30 1. Plea; trial. When the defendant enters a  
31 plea of not guilty together with a plea of guilty,  
32 but suffering from mental disease or defect, he shall  
33 also elect whether the trial shall be in 2 stages as  
34 provided for in this section, or a unitary trial in  
35 which both the issues of guilt and of mental disease  
36 or defect are submitted simultaneously to the jury.  
37 At the defendant's election, the jury shall be in-  
38 formed that the 2 pleas have been made and that the  
39 trial will be in 2 stages.



1           2. Two-stage trial. If a 2-stage trial is  
2 electd by the defendant, there shall be a separation  
3 of the issue of guilt from the issue of mental dis-  
4 ease or defect in the following manner.

5           A. The issue of guilt shall be tried first and  
6 the issue of mental disease or defect tried only  
7 if the jury returns a verdict of guilty. If the  
8 jury returns a verdict of not guilty, the pro-  
9 ceedings shall terminate.

10           B. Evidence of mental disease or defect shall  
11 not be admissible in the guilt or innocence phase  
12 of the trial for the purpose of establishing men-  
13 tal disease or defect. The evidence shall be ad-  
14 missible for that purpose only in the 2nd phase  
15 following a verdict of guilty. For the purposes  
16 of this section, "mental disease or defect" means  
17 any abnormal condition of the mind which substan-  
18 tially affects mental or emotional processes and  
19 substantially impairs the processes and capacity  
20 of a person to control his actions. An abnormal-  
21 ity manifested only by repeated criminal conduct  
22 or excessive use of alcohol, drugs or similar  
23 substances, in and of itself, does not constitute  
24 a mental disease or defect.

25           3. Mental disease or defect. The issue of men-  
26 tal disease or defect shall be tried before the same  
27 jury as tried the issue of guilt. Alternate jurors  
28 who were present during the first phase of the trial,  
29 but who did not participate in the deliberations and  
30 verdict of this trial may be substituted for jurors  
31 who did participate. The defendant may elect to have  
32 the issue of mental disease or defect tried by the  
33 court without a jury.

34           4. Jury; verdict. If the jury in the first  
35 phase returns a guilty verdict, the trial shall pro-  
36 ceed to the 2nd phase. The defendant and the State  
37 may rely upon evidence admitted during the first  
38 phase or they may recall witnesses. Any evidence  
39 relevant to mental disease or defect is admissible.  
40 The order of proof shall reflect that the defendant  
41 has the burden of establishing his mental disease or  
42 defect. The jury shall return a verdict that the de-  
43 fendant is guilty or guilty but suffering from mental

1 disease or defect. If the defendant is found guilty,  
2 the court shall sentence him according to law. If  
3 the defendant is found guilty, but suffering from  
4 mental disease or defect, the court shall sentence  
5 him according to law and after sentencing shall order  
6 him committed under Title 15, section 103.

7 5. Trial without jury. This section does not  
8 apply to cases tried before the court without a jury.

9 STATEMENT OF FACT

10 The purpose of this bill is to establish the ver-  
11 dict of guilty, but suffering from mental disease or  
12 defect in the case of murder or felony murder. A  
13 person found guilty, but suffering from mental dis-  
14 ease or defect would be sentenced and would also be  
15 committed to an institution for the mentally ill or  
16 retarded. If the person's commitment is terminated  
17 before his sentence has run, he would be returned to  
18 a correctional facility to serve out the remainder of  
19 his sentence.

20 1411031885