

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1400

6
7 H.P. 965

House of Representatives, April 25, 1985

8 On motion of Representative Paradis of Augusta, referred to the
9 Committee on Judiciary. Sent up for concurrence and ordered printed.
Ordered sent forthwith.

10 EDWIN H. PERT, Clerk

Presented by Representative Stevens of Sabattus.

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

12 STATE OF MAINE
13

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

17 AN ACT Concerning Murder Cases and Cases of
18 Sexual Abuse of Minors.
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 or found guilty but
26 suffering from mental disease or defect

27 When a respondent is acquitted, by reason of men-
28 tal disease or ~~mental~~ defect excluding responsibili-
29 ty, or is, in the case of murder of a minor, felony
30 murder of a minor or a violation of Title 17-A, chap-
31 ter 11, where the victim was a minor, found guilty
32 but suffering from mental disease or defect, the ver-
33 dict and judgment shall so state. In such case the
34 court shall order such person committed to the custo-
35 dy of the Commissioner of Mental Health and Mental

1 Retardation to be placed in an appropriate institu-
2 tion for the mentally ill or the mentally retarded
3 for care and treatment. Upon placement in such ap-
4 propriate institution and in the event of transfer
5 from one such institution to another of persons com-
6 mitted under this section, notice thereof shall be
7 given by the commissioner to the committing court.

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

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

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

38 A. Release from the institution, subject to con-
39 ditions deemed appropriate by the court which
40 conditions:

41 (1) 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 af-
8 ter the expiration of the first year; or

9 B. Discharge from the custody of the Commission-
10 er of Mental Health and Mental Retardation.

11 2. Modified release treatment. Any individual
12 acquitted by reason of mental disease or defect and
13 hospitalized pursuant to section 103 may petition the
14 Superior Court for the county in which that person is
15 hospitalized for a release treatment program allowing
16 the individual to be off institutional grounds for a
17 period of time, not to exceed 14 days at any one
18 time. The petition shall contain a report from the
19 institutional staff including at least one psychia-
20 trist, and the report shall define the patient's
21 present condition; the planned treatment program in-
22 volving absence from the institution; the duration of
23 the absence from the institution; the amount of su-
24 pervision during the absence; the expectation of re-
25 sults from the program change and the estimated dura-
26 tion of the treatment program before further change.
27 This petition shall be forwarded to the court no la-
28 ter than 60 days prior to the beginning of the modi-
29 fied treatment program. If the court considers that
30 the individual being off the grounds as described in
31 the treatment plan is inappropriate, it shall notify
32 the hospital that the plan is not approved and shall
33 schedule a hearing on the matter. The clerk of courts
34 upon receipt of the proposed treatment program shall
35 give notice thereof by mailing a copy to the district
36 attorney and Attorney General, who may file objec-
37 tions and request hearing on the matter. If the court
38 does not respond within 60 days to the proposed
39 treatment plan and no objections and request for
40 hearing are filed by the district attorney or Attor-
41 ney General, it may then be put into effect by the
42 administrator of the hospital on the assumption that
43 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 community without likelihood
7 that he will cause injury to himself or others due to
8 mental disease or ~~mental~~ defect. The court shall re-
9 ceive the testimony of a psychiatrist who observed or
10 treated the person during the period of detention and
11 any other relevant testimony. Following hearing, the
12 court may reissue, modify or rescind the previous or-
13 der of release. Any person released under subsection
14 1, paragraph A may be admitted to a hospital under
15 any provisions of Title 34, chapter 191 while the or-
16 der 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 MRS.A §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
31 discharged without likelihood that he will cause in-
32 jury to himself or to others due to mental disease or
33 defect.

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 Attorney General
6 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 there-
15 in, and the fees of any expert witnesses called by
16 the district attorney, Attorney General or on behalf
17 of the person whose discharge is in issue, if indi-
18 gent, shall be paid by the State. Any such fee to be
19 in order for payment shall be first approved by the
20 justice presiding at the hearing held under this sec-
21 tion.

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

24 3. This section does not apply in any prosecu-
25 tion for murder of a minor, felony murder of a minor
26 or any prosecution for a violation of chapter 11
27 where the victim was a minor.

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

29 §40-A. Procedure upon plea of not guilty coupled
30 with pleas of guilty but suffering from men-
31 tal disease or defect

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

1 2. If a 2-stage trial is elected by the defend-
2 ant, there shall be a separation of the issue of
3 guilt from the issue of mental disease or defect in
4 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. The issue of mental disease or defect shall
26 be tried before the same jury as tried the issue of
27 guilt. Alternate jurors who were present during the
28 first phase of the trial, but who did not participate
29 in the deliberations and verdict of this trial may be
30 substituted for jurors who did participate. The de-
31 fendant may elect to have the issue of mental disease
32 or defect tried by the court without a jury.

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

1 shall sentence him according to law. If the defend-
2 ant is found guilty, but suffering from mental dis-
3 ease or defect, the court shall sentence him accord-
4 ing to law and after sentencing shall order him com-
5 mitted under Title 15, section 103.

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

8 Sec. 6. 17-A MRSA §202-A is enacted to read:

9 §202-A. Plea negotiations in criminal proceedings
10 involving murder of a minor

11 1. In any criminal proceeding for murder or fel-
12 ony murder where the victim was a minor, the attorney
13 for the State and the attorney for the defendant or
14 the defendant when acting pro se shall make any
15 agreement that, in return for a plea of guilty or no-
16 lo contendere to any charge or crime, the attorney
17 for the State will:

18 A. Recommend unconditional dismissal of the com-
19 plaint or any count of it;

20 B. Recommend conditional dismissal or suspension
21 of the complaint or any count of it;

22 C. File an information or indictment charging a
23 specified crime;

24 D. Otherwise agree to a reduction in the charges
25 being brought against the defendant; or

26 E. Recommend a specified sentence.

27 2. Before accepting a plea of guilty or nolo
28 contendere in any case involving the death of a mi-
29 nor, the court shall determine by personally address-
30 ing the attorney for the State, the attorney for the
31 defendant and the defendant, in open court, that the
32 plea is a product of the defendant's free choice and
33 not the result of any plea agreement.

34 Sec. 7. 17-A MRSA §256 is enacted to read:

1 §256. Plea negotiations in criminal proceedings in-
2 volving sex offenses where the victim was a
3 minor

4 1. In any criminal proceeding for a violation of
5 this chapter where the victim was a minor, the attor-
6 ney for the State and the attorney for the defendant
7 or the defendant when acting pro se shall make any
8 agreement that, in return for a plea of guilty or no-
9 lo contendere to any charge or crime, the attorney
10 for the State will:

11 A. Recommend unconditional dismissal of the com-
12 plaint or any count of it;

13 B. Recommend conditional dismissal or suspension
14 of the complaint or any count of it;

15 C. File an information or indictment charging a
16 specified crime;

17 D. Otherwise agree to a reduction in the charges
18 being brought against the defendant; or

19 E. Recommend a specified sentence.

20 2. Before accepting a plea of guilty or nolo
21 contendere in any case involving a violation of this
22 chapter where the victim was a minor, the court shall
23 determine by personally addressing the attorney for
24 the State, the attorney for the defendant and the de-
25 fendant, in open court, that the plea is a product of
26 the defendant's free choice and not the result of any
27 plea agreement.

28 Sec. 8. 17-A MRSA §1251, as repealed and re-
29 placed by PL 1983, c. 673, §3, is amended to read:

30 §1251. Imprisonment for murder

31 A person convicted of the crime of murder shall
32 be sentenced to imprisonment for life or for any term
33 of years that is not less than 25, except that a per-
34 son convicted of the crime of murder where that vic-
35 tim was a minor shall be sentenced to imprisonment
36 for life. The sentence of the court shall specify
37 the length of the sentence to be served and shall

1 commit the person to the Department of Corrections.

2 STATEMENT OF FACT

3 The purposes of this bill are to:

4 1. Provide that, in the case of a murder of a
5 minor, the sentence of imprisonment is life;

6 2. Prohibit plea bargaining in cases of murder
7 of a minor or sex offenses where the victim is a mi-
8 nor; and

9 3. Establish a plea of guilty but suffering from
10 mental disease or defect in lieu of the insanity de-
11 fense for the murder of a minor or sex offenses where
12 the victim is a minor.

13

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