

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2108

6
7 H.P. 1494

House of Representatives, March 3, 1986

8 Reported by Representative Brannigan from the Committee on Judiciary.
9 Sent up for concurrence and ordered printed. Approved by the Legislative
10 Council on June 18, 1985.

EDWIN H. PERT, Clerk

Reported from the Joint Standing Committee on Judiciary under Joint Rule
11 19.

12 STATE OF MAINE
13

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

17 AN ACT to Amend the Insanity Defense and
18 Certain Procedures Relating to
19 Committed Insanity Acquittees.
20

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

23 Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(58-A)
24 is enacted to read:

25 (58-A) Mental Health Release Review Expenses 34-B MRSA
26 and Mental Advisory Only §1213
27 Retardation Committee

28 Sec. 2. 15 MRSA §101, first ¶, as amended by PL
29 1983, c. 580, §2, is further amended to read:

30 The District Court or the Superior Court having
31 jurisdiction in any criminal case for cause shown may
32 order the defendant examined to determine his mental
33 condition with reference to the issues of criminal
34 responsibility and competence to stand trial. The

1 Commissioner of Mental Health and Mental Retardation
2 shall designate the examiner in the case. The exami-
3 nation may be conducted at the Augusta Mental Health
4 Institute, Bangor Mental Health Institute, Pineland
5 Center or at a mental health clinic of, or recom-
6 mended by, the Department Commissioner of Mental
7 Health and Mental Retardation, and when conducted at
8 any such facility shall be the responsibility of a
9 psychiatrist or of a licensed clinical psychologist,
10 who may join with him in such examination other psy-
11 chiatrists or licensed clinical psychologists, as in
12 his opinion are required the State Forensic Service.
13 The examination may be conducted by a psychiatrist or
14 licensed clinical psychologist independent from any
15 such facility, but designated by the Commissioner of
16 Mental Health and Mental Retardation, employed for
17 such that purpose by the court. The court in select-
18 ing the examination site shall consider proximity to
19 the court, availability of an examiner or examiners,
20 and the necessity for security precautions. No person
21 may be presented for examination under this paragraph
22 without arrangements therefor with the head of the
23 institution or clinic or with the individual examiner
24 being first made by the court, clerk of courts or
25 sheriff. The opinion of the examiner or examiners
26 relative to the mental condition of the respondent
27 shall be reported forthwith to the court following
28 examination.

29 Sec. 3. 15 MRSA §101, 2nd ¶, as amended by PL
30 1983, c. 580, §3, is further amended to read:

31 If it is made to appear to the court by the re-
32 port of any such examiner that the defendant suffers
33 or suffered from a mental disease or mental defect
34 affecting his criminal responsibility or his compe-
35 tence to stand trial or that further observation is
36 indicated, the court shall order the defendant to be
37 further examined by a psychiatrist and a licensed
38 clinical psychologist member or members of the State
39 Forensic Service designated by the Commissioner of
40 Mental Health and Mental Retardation, with such as-
41 sistance as the designated examiners may deem neces-
42 sary, who shall determine the mental condition of the
43 defendant. The court may order that observations, in-
44 terviews and investigative reports regarding the be-
45 havior of the defendant made by law enforcement offi-

1 cials be made available to the designated psychia-
2 trist and licensed clinical psychologist examiners
3 for the limited purpose of this examination. If the
4 examination by such the designees can be completed
5 without admission, a report of the results of such
6 the completed examination shall be forwarded to the
7 court forthwith. If the designated examiners of the
8 Commissioner of Mental Health and Mental Retardation
9 determine that admission to an appropriate institu-
10 tion for the mentally ill or mentally retarded is
11 necessary for complete examination, the examiners
12 shall so notify the court which may order the defend-
13 ant committed to the custody of the Commissioner of
14 Mental Health and Mental Retardation to be placed in
15 an appropriate institution for the mentally ill or
16 the mentally retarded, to be there detained and ob-
17 served by the superintendent, or his delegate, and
18 professional staff for a period of time not to exceed
19 60 days, for the purpose of ascertaining the mental
20 condition of the defendant. When further detention
21 for observation is deemed no longer necessary, the
22 commissioner shall report such this fact to the
23 court. The court shall then order the person returned
24 to the appropriate court for disposition; if the
25 court ordering commitment for observation has pro-
26 vided for remand to the county jail following comple-
27 tion of the observation in the commitment order, the
28 sheriff or any one or more of his deputies shall exe-
29 cute the remand order upon advice from the commis-
30 sioner of completion of the observation. A report of
31 the results of the observation shall be forwarded
32 promptly to the court by the commissioner.

33 **Sec. 4.** 15 MRSA §104-A, as repealed and replaced
34 by PL 1985, c. 131, §1, is amended to read:

35 §104-A. Release and discharge, hearing, payment of
36 fees

37 1. Release and discharge. The term "release,"
38 as used in this section, means termination of insti-
39 tutional in-patient residency and return to permanent
40 residency in the community. The head of the institu-
41 tion in which a person is placed, under section 103,
42 shall, annually, forward to the Commissioner of Men-
43 tal Health and Mental Retardation a report containing
44 the opinion of a staff psychiatrist as to the mental

1 conditions of that person, stating specifically
2 whether he may be released or discharged without
3 likelihood that he will cause injury to himself or to
4 others due to mental disease or mental defect. The
5 report shall also contain a brief statement of the
6 reasons for the opinion. The commissioner shall
7 forthwith file the report in the Superior Court for
8 the county in which the person is hospitalized. The
9 court shall review each report and, if it is made to
10 appear by the report that any person may be ready for
11 release or discharge, the court shall set a date for
12 and hold a hearing on the issue of the person's read-
13 iness for release or discharge. The court shall give
14 notice of the hearing and mail a copy of the report
15 to the Attorney General and office of the district
16 attorney which prosecuted the criminal charges for
17 which the person was acquitted by reason of insanity.
18 Representatives of the Attorney General and the of-
19 fice that prosecuted the person may appear at the
20 hearing. At the hearing, the court shall receive the
21 testimony of at least one psychiatrist who has ~~ob-~~
22 ~~erved or~~ treated ~~that~~ the person and a member of the
23 State Forensic Service who has examined the person,
24 the testimony of any independent psychiatrist or li-
25 icensed clinical psychologist who is employed by the
26 prosecuter and has examined the person and any other
27 relevant testimony. If, after hearing, the court
28 finds that the person may be released or discharged
29 without likelihood that he will cause injury to him-
30 self or to others due to mental disease or mental de-
31 fect, the court shall order, as applicable:

32 A. Release from the institution, provided that:

33 (1) The order for release may include con-
34 ditions deemed appropriate by the court, in-
35 cluding, but not limited to, out-patient
36 treatment and supervision by the Department
37 of ~~Correction, Division of Probation and~~
38 ~~Parole~~ Mental Health and Mental Retardation,
39 Bureau of Mental Health; and

40 (2) The order for release shall include the
41 condition that the person shall be returned
42 to the institution forthwith upon the order
43 of the commissioner whenever the person
44 fails to comply with other conditions of re-
45 lease ordered by the court; or

1 B. Discharge from the custody of the Commission-
2 er of Mental Health and Mental Retardation.

3 Release from the institution shall be subject to an-
4 nual review by the court and, except for return as
5 ordered by the commissioner under paragraph A, sub-
6 paragraph (1), shall continue until terminated by the
7 court. Each person released under this section shall
8 remain in the custody of the commissioner. The Com-
9 missioner of Mental Health and Mental Retardation
10 shall inform the public safety officer of the municip-
11 ality or the sheriff's office of the county into
12 which the person is released of the release.

13 2. Modified release treatment. Any individual
14 hospitalized pursuant to section 103, may petition
15 the Superior Court for the county in which that per-
16 son is hospitalized for a release treatment program
17 allowing the individual to be off institutional
18 grounds for a period of time, not to exceed 14 days
19 at any one time. The petition shall contain a report
20 from the institutional staff, including at least one
21 psychiatrist, and the report shall define the
22 patient's present condition; the planned treatment
23 program involving absence from the institution; the
24 duration of the absence from the institution; the
25 amount of supervision during the absence; the expec-
26 tation of results from the program change; and the
27 estimated duration of the treatment program before
28 further change. This petition shall be forwarded to
29 the court no later than 60 days prior to the begin-
30 ning of the modified treatment program. If the court
31 considers that the individual being off the grounds,
32 as described in the treatment plan, is inappropriate,
33 it shall notify the hospital that the plan is not ap-
34 proved and shall schedule a hearing on the matter.
35 The clerk of courts upon receipt of the proposed
36 treatment program shall give notice of the receipt of
37 this program by mailing a copy to the office of the
38 district attorney which prosecuted the criminal
39 charges of which the person was acquitted by reason
40 of insanity and Attorney General, who may file objec-
41 tions and request a hearing on the matter. Represent-
42 atives of the Attorney General and the office that
43 prosecuted the person may appear at any hearing on
44 the matter. At the hearing, the court shall receive
45 the testimony of a member of the State Forensic Ser-

1 vice who has examined the person, any independent
2 psychiatrist or licensed clinical psychologist who is
3 employed by the prosecuter and has examined the per-
4 son and any other relevant testimony. If the court
5 does not respond within 60 days to the proposed
6 treatment plan and no objections and request for
7 hearing are filed by the district attorney or Attor-
8 ney General, it may then be put into effect by the
9 administrator of the hospital on the assumption that
10 the court approved the treatment plan. The Commis-
11 sioner of Mental Health and Mental Retardation shall
12 inform the public safety officer of the municipality
13 or the sheriff's office of the county in which the
14 person will spend any unsupervised time under the re-
15 lease treatment program of that program.

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

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

1 4. Return to institution upon commissioner's or-
2 der. The commissioner may order any person released
3 under subsection 1, paragraph A, who fails to comply
4 with the conditions of release ordered by the court,
5 as evidenced by the affidavit of any interested per-
6 son, to return to the institution from which he was
7 released. A hearing shall be held for the purpose of
8 reviewing the order for release within 7 days of the
9 person's return if the person will be detained for 7
10 or more days. At the hearing, the court shall re-
11 ceive testimony of the psychiatrist who observed or
12 treated the person upon the person's return to the
13 institution, any member of the State Forensic Service
14 who has examined the person upon the person's return,
15 and any other relevant testimony. Following hearing,
16 the court may reissue or modify the previous order of
17 release.

18 5. Reinstitutionalization due to likelihood of
19 causing injury. Any person released under subsection
20 1, paragraph A, whose reinstitutionalization, due to
21 the likelihood that he will cause injury to himself
22 or others due to mental disease or mental defect, is
23 considered necessary, upon the verified petition of
24 any interested person, may be brought before any Jus-
25 tice of the Superior Court upon his order. A hearing
26 shall be held for the purpose of reviewing the mental
27 condition of the person and the order for release.
28 The court may order the person detained for observa-
29 tion and treatment, if appropriate, at the institu-
30 tion from which he was released pending the hearing,
31 which detention shall not exceed 14 days. The psy-
32 chiatrist responsible for the observation and or
33 treatment of the person shall report to the court
34 prior to the hearing as to the mental condition of
35 the person, indicating specifically whether the per-
36 son can remain in the community without likelihood
37 that he will cause injury to himself or others due to
38 mental disease or mental defect. The court shall re-
39 ceive the testimony of the psychiatrist who observed
40 or treated the person during the period of detention,
41 any member of the State Forensic Service who has ex-
42 amined the person during the period of detention,
43 and any other relevant testimony. Following the
44 hearing, the court may reissue, modify or rescind the
45 previous order of release.

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

7 Notice of any hearing under subsection 1, 2, 3 or 5
8 shall be given to the office of the district attorney
9 which prosecuted the criminal charges against the
10 person for which the person was acquitted by reason
11 of insanity and Attorney General at least 7 days be-
12 fore the hearing date. Notice of any hearing under
13 subsection 4 shall be given to the office of the dis-
14 trict attorney and Attorney General as soon as possi-
15 ble before the hearing date.

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

31 Sec. 5. 17-A MRSA §39, sub-§1, as enacted by PL
32 1981, c. 324, §14, is amended to read:

33 1. A defendant is not criminally responsible if,
34 at the time of the criminal conduct, as a result of
35 mental disease or defect, he ~~either lacked substan-~~
36 ~~tial capacity to conform his conduct to the require-~~
37 ~~ments of the law, or~~ lacked substantial capacity to
38 appreciate the wrongfulness of his conduct. The de-
39 fendant shall have the burden of proving, by a pre-
40 ponderance of the evidence, that he lacks criminal
41 responsibility as described in this subsection.

42 Sec. 6. 17-A MRSA §40, sub-§§1 and 4, as enacted
43 by PL 1981, c. 324, §14, are amended to read:

1 1. When the defendant enters a plea of not
2 guilty together with a plea of not ~~guilty~~ criminally
3 responsible by reason of insanity, he shall also
4 elect whether the trial shall be in 2 stages as pro-
5 vided for in this section, or a unitary trial in
6 which both the issues of guilt and of insanity are
7 submitted simultaneously to the jury. At the defend-
8 ant's election, the jury shall be informed that the 2
9 pleas have been made and that the trial will be in 2
10 stages.

11 4. If the jury in the first phase returns a
12 guilty verdict, the trial shall proceed to the 2nd
13 phase. The defendant and the State may rely upon evi-
14 dence admitted during the first phase or they may re-
15 call witnesses. Any evidence relevant to insanity is
16 admissible. The order of proof shall reflect that the
17 defendant has the burden of establishing his lack of
18 criminal responsibility. The jury shall return a ver-
19 dict that the defendant is criminally responsible or
20 not ~~guilty~~ criminally responsible by reason of mental
21 disease or defect excluding ~~responsibility~~. If the
22 defendant is found criminally responsible, the court
23 shall sentence him according to law.

24 Sec. 7. 34-B MRSA §§1212 and 1213 are enacted to
25 read:

26 §1212. State Forensic Service

27 1. Establishment and membership. The Commission-
28 er of Mental Health and Mental Retardation shall es-
29 tablish a State Forensic Service and appoint its mem-
30 bers. Members shall be psychiatrists and licensed
31 clinical psychologists experienced in forensic ser-
32 vice and not directly involved in the treatment of
33 persons committed to the department under Title 15,
34 chapter 5. These psychiatrists and psychologist may
35 be employed by the department directly or as independ-
36 ent contractors.

37 2. Duties. The State Forensic Service shall have
38 the following duties:

39 A. To perform examinations of the mental condi-
40 tion of a defendant with reference to competency

1 to stand trial and criminal responsibility under
2 Title 15, section 101; and

3 B. To perform examinations of the mental condi-
4 tion of persons committed to the custody of the
5 commissioner under Title 15, section 103, for the
6 purposes specified in Title 15, section 104-A.

7 §1213. Release Review Advisory Committee

8 The commissioner shall establish a Release Review
9 Advisory Committee consisting of 5 members, 3 of whom
10 are not affiliated with the department. The committee
11 shall examine the results of the modified release
12 treatment, release and discharge of persons committed
13 to the custody of the commissioner under Title 15,
14 chapter 5. From the information gained in this re-
15 view, and any other study the committee deems neces-
16 sary to its task, the committee shall annually report
17 to the commissioner its recommendations concerning
18 criteria for predicting the future dangerousness of
19 persons committed to the custody of the commissioner
20 under Title 15, chapter 5. Members of the committee
21 shall be compensated according to the provisions of
22 Title 5, chapter 379.

23 STATEMENT OF FACT

24 This bill contains those recommendations requir-
25 ing legislation and agreed to by all members of the
26 Insanity Defense and Related Statutes and Procedures
27 Study Subcommittee of the Judiciary Committee.

28 The bill requires initial examinations of the
29 mental condition of criminal defendants prior to tri-
30 al to be conducted by the State Forensic Service or
31 by an independent psychiatrist or psychologist desig-
32 nated by the Commissioner of Mental Health and Mental
33 Retardation. More extensive evaluations of these de-
34 fendants are to be conducted by the State Forensic Ser-
35 vice. Evaluations of insanity acquittees eligible for
36 possible release conducted for the court are to be
37 performed by the State Forensic Service. The estab-
38 lishment of the State Forensic Service means that the
39 jury and the court will receive mental health infor-

1 mation prepared by professionals who are not involved
2 in the treatment of the people being examined for
3 court purposes.

4 The bill requires that the Attorney General and
5 the office of the district attorney, which prosecuted
6 an insanity acquittee, be notified of any petition or
7 hearing for modified release treatment or release
8 from hospitalization of the insanity acquittee. The
9 prosecutor is given authority to employ and present
10 at any release hearing the testimony of an independ-
11 ent mental health professional who has examined the
12 insanity acquittee.

13 The bill corrects a reference to supervision of
14 released insanity acquittees by the Division of Pro-
15 bation and Parole. Released insanity acquittees are,
16 and should, be supervised by the Bureau of Mental
17 Health.

18 The bill requires the Commissioner of Mental
19 Health and Mental Retardation to inform local law en-
20 forcement officials of the community into which an
21 insanity acquittee is released of that release.

22 The bill requires the establishment of a Release
23 Review Advisory Committee by the Commissioner of Men-
24 tal Health and Mental Retardation to develop criteria
25 to be applied in assessing whether an insanity
26 acquittee proposed for release is dangerous.

27 The bill eliminates the volitional element of the
28 insanity defense. The volitional test permits a crim-
29 inal defendant to argue that, due to mental disease
30 or defect, he lacked substantial capacity at the time
31 of the crime to conform his conduct to the require-
32 ments of the law. The elimination of this "inability
33 to control" test from the insanity defense will leave
34 only the cognitive test. The cognitive test permits
35 the defendant to argue that, due to mental disease or
36 defect, he lacked substantial capacity at the time of
37 the crime to appreciate the wrongfulness of his con-
38 duct.

1 The bill changes the terminology of an insanity
2 acquittal from "not guilty by reason of insanity" to
3 "not criminally responsible by reason of insanity."

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