

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 1494, L.D. 2108)  
SECOND REGULAR SESSION

ONE HUNDRED AND TWELFTH LEGISLATURE

Legislative Document

No. 2397

H.P. 1702

House of Representatives, April 14, 1986

Reported by Representative Allen from the Committee on Judiciary and printed under Joint Rule 2. Original bill submitted by the Joint Standing Committee on Judiciary as approved by the Legislative Council on June 18, 1985.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

AN ACT to Amend the Insanity Defense and  
Certain Procedures Relating to  
Committed Insanity Acquittees.

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

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

(58-A)	Mental Health	Release Review	Expenses	34-B MF
	and Mental	Advisory	Only	§1213
	Retardation	Committee		

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

The District Court or the Superior Court having jurisdiction in any criminal case for cause shown may order the defendant examined to determine his mental condition with reference to the issues of criminal

responsibility and competence to stand trial. The examination may be conducted at the Augusta Mental Health Institute, Bangor Mental Health Institute, Pineland Center or at a mental health clinic of, or recommended by, the Department Commissioner of Mental Health and Mental Retardation, and when conducted at any such facility shall be the responsibility of a psychiatrist or of a licensed clinical psychologist, who may join with him in such examination other psychiatrists or licensed clinical psychologists, as in his opinion are required the State Forensic Service. The examination may be conducted by a psychiatrist or licensed clinical psychologist independent from any such facility, employed for such that purpose by the court. The court in selecting the examination site shall consider proximity to the court, availability of an examiner or examiners, and the necessity for security precautions. No person may be presented for examination under this paragraph without arrangements therefor with the head of the institution or clinic or with the individual examiner being first made by the court, clerk of courts or sheriff. The opinion of the examiner or examiners relative to the mental condition of the respondent shall be reported forthwith to the court following examination.

Sec. 3. 15 MRSA §101, 2nd ¶, as amended by PL 1983, c. 580, §3, is repealed and the following enacted to read:

The court shall order the defendant to be further examined by a psychiatrist and a clinical psychologist from the State Forensic Service if:

1. It appears to the court, based on the report of any such examiner that:

A. The defendant suffers or suffered from a mental disease or defect affecting his criminal responsibility or his competence to stand trial; or

B. Further observation is required; or

2. The defendant enters or persists in a plea of not guilty by reason of insanity for a period in excess of 21 days after the report in the first paragraph is filed.

1       The court may order that observations, interviews  
2 and investigative reports regarding the behavior of  
3 the defendant made by law enforcement officials be  
4 made available to the designated psychiatrist and li-  
5 censed clinical psychologist of the State Forensic  
6 Service for the limited purpose of this examination.  
7 If the examination by the designees can be completed  
8 without admission, a report of the results of the  
9 completed examination shall be forwarded to the court  
10 forthwith. If the designated examiners of the Commis-  
11 sioner of Mental Health and Mental Retardation deter-  
12 mine that admission to an appropriate institution for  
13 the mentally ill or mentally retarded is necessary  
14 for complete examination, the examiners shall so no-  
15 tify the court which may order the defendant commit-  
16 ted to the custody of the Commissioner of Mental  
17 Health and Mental Retardation to be placed in an ap-  
18 propriate institution for the mentally ill or the  
19 mentally retarded, to be there detained and observed  
20 by the superintendent, or his delegate, and profes-  
21 sional staff for a period of time not to exceed 60  
22 days, for the purpose of ascertaining the mental con-  
23 dition of the defendant. When further detention for  
24 observation is deemed no longer necessary, the com-  
25 missioner shall report this fact to the court. The  
26 court shall then order the person returned to the ap-  
27 propriate court for disposition; if the court order-  
28 ing commitment for observation has provided for re-  
29 mand to the county jail following completion of the  
30 observation in the commitment order, the sheriff or  
31 any one or more of his deputies shall execute the re-  
32 mand order upon advice from the commissioner of com-  
33 pletion of the observation. A report of the results  
34 of the observation shall be forwarded promptly to the  
35 court by the commissioner.

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

38       §104-A. Release and discharge, hearing, payment of  
39       fees

40       1. Release and discharge. The term "release,"  
41 as used in this section, means termination of insti-  
42 tutional in-patient residency and return to permanent  
43 residency in the community. The head of the institu-  
44 tion in which a person is placed, under section 103,

1 shall, annually, forward to the Commissioner of Mental  
2 tal Health and Mental Retardation a report containing  
3 the opinion of a staff psychiatrist as to the mental  
4 conditions of that person, stating specifically  
5 whether he may be released or discharged without  
6 likelihood that he will cause injury to himself or to  
7 others due to mental disease or mental defect. The  
8 report shall also contain a brief statement of the  
9 reasons for the opinion. The commissioner shall  
10 forthwith file the report in the Superior Court for  
11 the county in which the person is hospitalized. The  
12 court shall review each report and, if it is made to  
13 appear by the report that any person may be ready for  
14 release or discharge, the court shall set a date for  
15 and hold a hearing on the issue of the person's read-  
16 iness for release or discharge. The court shall give  
17 notice of the hearing and mail a copy of the report  
18 to the Attorney General, offices of the district at-  
19 torney which prosecuted the criminal charges for  
20 which the person was acquitted by reason of insanity  
21 and the offices of the district attorneys in whose  
22 district the release petition was filed or in whose  
23 district release may occur. At the hearing, the  
24 court shall receive the testimony of at least one  
25 psychiatrist who has ~~observed~~ or treated ~~that~~ the  
26 person and a member of the State Forensic Service who  
27 has examined the person, the testimony of any inde-  
28 pendent psychiatrist or licensed clinical psycholo-  
29 gist who is employed by the prosecuter and has exam-  
30 ined the person and any other relevant testimony.  
31 If, after hearing, the court finds that the person  
32 may be released or discharged without likelihood that  
33 he will cause injury to himself or to others due to  
34 mental disease or mental defect, the court shall order,  
35 as applicable:

36 A. Release from the institution, provided that:

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

1 (2) The order for release shall include the  
2 condition that the person shall be returned  
3 to the institution forthwith upon the order  
4 of the commissioner whenever the person  
5 fails to comply with other conditions of re-  
6 lease ordered by the court; or

7 B. Discharge from the custody of the Commission-  
8 er of Mental Health and Mental Retardation.

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

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

1 charges of which the person was acquitted by reason  
2 of insanity, the offices of the district attorneys in  
3 whose district the release petition was filed or in  
4 whose district release may occur and Attorney General,  
5 who may file objections and request a hearing on  
6 the matter. Representatives of the Attorney General  
7 and the office that prosecuted the person may appear  
8 at any hearing on the matter. At the hearing, the  
9 court shall receive the testimony of a member of the  
10 State Forensic Service who has examined the person,  
11 any independent psychiatrist or licensed clinical  
12 psychologist who is employed by the prosecutor and  
13 has examined the person and any other relevant testi-  
14 mony. If the court does not respond within 60 days to  
15 the proposed treatment plan and no objections and re-  
16 quest for hearing are filed by the district attorney  
17 or Attorney General, it may then be put into effect  
18 by the administrator of the hospital on the assump-  
19 tion that the court approved the treatment plan. The  
20 Commissioner of Mental Health and Mental Retardation  
21 shall inform the public safety officer of the municipi-  
22 ality or the sheriff's office of the county in which  
23 the person will spend any unsupervised time under the  
24 release treatment program of that program.

25 3. Other provisions concerning initial release  
26 or discharge. A report shall be forwarded and filed  
27 and hearings shall be held in accordance with subsec-  
28 tion 1, without unnecessary delay when, at any time,  
29 it is the opinion of a staff psychiatrist that a pa-  
30 tient hospitalized under section 103, may be released  
31 or discharged without likelihood that he will cause  
32 injury to himself or to others due to mental disease  
33 or mental defect.

34 A person hospitalized under section 103, or his  
35 spouse or next of kin, may petition the Superior  
36 Court for the county in which that person is hospi-  
37 talized for a hearing under subsection 1. Upon re-  
38 ceiving the petition, the court shall request and be  
39 furnished by the Commissioner of Mental Health and  
40 Mental Retardation a report on the mental condition  
41 of that person, as described in subsection 1. A  
42 hearing shall be held on each petition, and release  
43 or discharge, if ordered, shall be in accordance with  
44 subsection 1. If release or discharge is not or-  
45 dered, a petition shall not be filed again for the

1 release or discharge of that person for 6 months.  
2 Any person released under subsection 1 or his spouse  
3 or next of kin may at any time after 6 months from  
4 the release petition the Superior Court for the coun-  
5 ty in which he was hospitalized for his discharge un-  
6 der subsection 1. If discharge is not ordered, a pe-  
7 tition for discharge may not be filed again for 6  
8 months.

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

26 5. Reinstitutionalization due to likelihood of  
27 causing injury. Any person released under subsection  
28 1, paragraph A, whose reinstitutionalization, due to  
29 the likelihood that he will cause injury to himself  
30 or others due to mental disease or mental defect, is  
31 considered necessary, upon the verified petition of  
32 any interested person, may be brought before any Jus-  
33 tice of the Superior Court upon his order. A hearing  
34 shall be held for the purpose of reviewing the mental  
35 condition of the person and the order for release.  
36 The court may order the person detained for observa-  
37 tion and treatment, if appropriate, at the institu-  
38 tion from which he was released pending the hearing,  
39 which detention shall not exceed 14 days. The psy-  
40 chiatrist responsible for the observation and or  
41 treatment of the person shall report to the court  
42 prior to the hearing as to the mental condition of  
43 the person, indicating specifically whether the per-  
44 son can remain in the community without likelihood  
45 that he will cause injury to himself or others due to



1 mental disease or mental defect. The court shall re-  
2 ceive the testimony of the psychiatrist who observed  
3 or treated the person during the period of detention,  
4 any member of the State Forensic Service who has ex-  
5 amined the person during the period of detention,  
6 and any other relevant testimony. Following the  
7 hearing, the court may reissue, modify or rescind the  
8 previous order of release.

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

15 Notice of any hearing under subsection 1, 2, 3 or 5  
16 shall be given to the offices of the district attor-  
17 ney which prosecuted the criminal charges against the  
18 person for which the person was acquitted by reason  
19 of insanity, the offices of the district attorneys in  
20 whose district the release petition was filed or in  
21 whose district release may occur and Attorney General  
22 at least 7 days before the hearing date. Notice of  
23 any hearing under subsection 4 shall be given to the  
24 office of the district attorney and Attorney General  
25 as soon as possible before the hearing date.

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

41 Sec. 5. 17-A MRSA §39, as enacted by PL 1981, c.  
42 324, §14, is amended to read:

1     §39. Insanity

2           1. A defendant is not criminally responsible if,  
3     at the time of the criminal conduct, as a result of  
4     mental disease or defect, he ~~either lacked substan-~~  
5     ~~tial capacity to conform his conduct to the require-~~  
6     ~~ments of the law, or~~ lacked substantial capacity to  
7     appreciate the wrongfulness of his conduct. The de-  
8     fendant shall have the burden of proving, by a pre-  
9     ponderance of the evidence, that he lacks criminal  
10    responsibility as described in this subsection.

11          2. As used in this section, "mental disease or  
12    defect" means ~~any abnormal condition of the mind~~  
13    ~~which substantially affects mental or emotional pro-~~  
14    ~~cesses and substantially impairs the processes and~~  
15    ~~capacity of a person to control his actions only~~  
16    ~~those severely abnormal mental conditions that gross-~~  
17    ~~ly and demonstrably impair a person's perception or~~  
18    ~~understanding of reality.~~ An abnormality manifested  
19    only by repeated criminal conduct or excessive use of  
20    alcohol, drugs or similar substances, in and of it-  
21    self, does not constitute a mental disease or defect.

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

24          1. When the defendant enters a plea of not  
25    guilty together with a plea of not guilty criminally  
26    responsible by reason of insanity, he shall also  
27    elect whether the trial shall be in 2 stages as pro-  
28    vided for in this section, or a unitary trial in  
29    which both the issues of guilt and of insanity are  
30    submitted simultaneously to the jury. At the defend-  
31    ant's election, the jury shall be informed that the 2  
32    pleas have been made and that the trial will be in 2  
33    stages.

34          4. If the jury in the first phase returns a  
35    guilty verdict, the trial shall proceed to the 2nd  
36    phase. The defendant and the State may rely upon evi-  
37    dence admitted during the first phase or they may re-  
38    call witnesses. Any evidence relevant to insanity is  
39    admissible. The order of proof shall reflect that the  
40    defendant has the burden of establishing his lack of  
41    criminal responsibility. The jury shall return a ver-  
42    dict that the defendant is criminally responsible or

1 not ~~guilty~~ criminally responsible by reason of mental  
2 disease or defect ~~excluding responsibility~~. If the  
3 defendant is found criminally responsible, the court  
4 shall sentence him according to law.

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

7 §1212. State Forensic Service

8 1. Establishment and membership. The Commission-  
9 er of Mental Health and Mental Retardation shall es-  
10 tablish a State Forensic Service and appoint its mem-  
11 bers. Members shall be psychiatrists and licensed  
12 clinical psychologists experienced in forensic ser-  
13 vice and not directly involved in the treatment of  
14 persons committed to the department under Title 15,  
15 chapter 5. These psychiatrists and psychologist may  
16 be employed by the department directly or as indepen-  
17 dent contractors.

18 2. Duties. The State Forensic Service shall have  
19 the following duties:

20 A. To perform examinations of the mental condi-  
21 tion of a defendant with reference to competency  
22 to stand trial and criminal responsibility under  
23 Title 15, section 101; and

24 B. To perform examinations of the mental condi-  
25 tion of persons committed to the custody of the  
26 commissioner under Title 15, section 103, for the  
27 purposes specified in Title 15, section 104-A.

28 §1213. Release Review Advisory Committee

29 The commissioner shall establish a Release Review  
30 Advisory Committee consisting of 5 members, 3 of whom  
31 are not affiliated with the department. The committee  
32 shall examine the results of the modified release  
33 treatment, release and discharge of persons committed  
34 to the custody of the commissioner under Title 15,  
35 chapter 5. From the information gained in this re-  
36 view, and any other study the committee deems neces-  
37 sary to its task, the committee shall annually report  
38 to the commissioner its recommendations concerning  
39 criteria for predicting the future dangerousness of

1 persons committed to the custody of the commissioner  
2 under Title 15, chapter 5. Members of the committee  
3 shall be compensated according to the provisions of  
4 Title 5, chapter 379.

5 FISCAL NOTE

6 The proposed legislation will potentially cost  
7 the Department of Mental Health and Mental Retarda-  
8 tion additional expenses in the areas of the Release  
9 Review Advisory Committee and the Forensic Service  
10 Accounts, but the costs are presently indeterminable  
11 and have been stated by the department as being  
12 absorbable within their existing budget.

1 STATEMENT OF FACT

2 This new draft removes the requirement in the  
3 bill that the Commissioner of Mental Health and Men-  
4 tal Retardation designate the psychiatrist or psy-  
5 chologist to make the examination of the defendant  
6 claiming the insanity defense. The State Forensic  
7 Service is retained.

8 This new draft provides that the court shall or-  
9 der the defendant to be further examined if the  
10 examiner's report indicates that further observation  
11 is required or the defendant suffers from a mental  
12 disease or defect affecting his criminal responsibil-  
13 ity or his competence to stand trial, or if the de-  
14 fendant enters or insists on a plea of not guilty by  
15 reason of insanity more than 21 days after the  
16 examiner's report is filed.

17 In addition, the offices of the district attor-  
18 neys in which the petition for release was filed or  
19 in which release may occur must be provided with the  
20 notices and the reports which are provided to the At-  
21 torney General and the prosecuting district attorney.

22 The revision of the definition of "mental disease  
23 or defect" does 2 things. First, it makes "mental  
24 disease or defect" consistent with the elimination of  
25 the volitional element of the insanity defense. Sec-  
26 ond, the change will make it easier for juries to de-  
27 cide if the defendant is mentally ill but still re-  
28 sponsible or if the defendant is mentally ill and  
29 lacking substantial capacity at the time of the crime  
30 to appreciate the wrongfulness of his conduct.

31 The bill requires that the Attorney General and  
32 the office of the district attorney, which prosecuted  
33 an insanity acquittee, be notified of any petition or  
34 hearing for modified release treatment or release  
35 from hospitalization of the insanity acquittee. The  
36 prosecutor is given authority to employ and present  
37 at any release hearing the testimony of an indepen-  
38 dent mental health professional who has examined the  
39 insanity acquittee.

The bill corrects a reference to supervision of released insanity acquittees by the Division of Probation and Parole. Released insanity acquittees are, and should, be supervised by the Bureau of Mental Health.

The bill requires the Commissioner of Mental Health and Mental Retardation to inform local law enforcement officials of the community into which an insanity acquittee is released of that release.

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

The bill eliminates the volitional element of the insanity defense. The volitional test permits a criminal defendant to argue that, due to mental disease or defect, he lacked substantial capacity at the time of the crime to conform his conduct to the requirements of the law. The elimination of this "inability to control" test from the insanity defense will leave only the cognitive test. The cognitive test permits the defendant to argue that, due to mental disease or defect, he lacked substantial capacity at the time of the crime to appreciate the wrongfulness of his conduct.

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

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