

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 416

H.P. 304

House of Representatives, February 23, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.

Cosponsored by Representative SMITH of Island Falls, Representative STEVENS of Sabattus and Senator BRANNIGAN of Cumberland.

STATE OF MAINE

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

**An Act to Provide a Mandatory Jail Term to Persons Who Have
Committed Murder but Have Been Acquitted by Reason of Insanity.**



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

3 **Sec. 1. 15 MRSA §103**, as amended by PL 1981, c. 493, §101, is
further amended to read:

5 **§103. Commitment of persons acquitted on basis of mental disease**
7 **or defect**

9 When a respondent is acquitted, ~~by reason of mental disease~~
11 ~~or mental defect excluding responsibility~~ found guilty, but
suffering from mental disease or defect, the verdict and judgment
13 shall so state. In such case the court shall order such person
committed to the custody of the Commissioner of Mental Health and
15 Mental Retardation to be placed in an appropriate institution for
the mentally ill or the mentally retarded for care and treatment.
17 Upon placement in such appropriate institution and in the event
of transfer from one such institution to another of persons
19 committed under this section, notice thereof shall be given by
the commissioner to the committing court.

21 **Sec. 2. 15 MRSA §104-A**, as amended by PL 1985, c. 796, §4, is
further amended to read:

23 **§104-A. Release and discharge, hearing, payment of fees**

25
27 1. **Release and discharge.** The term "release," as used in
this section, means termination of institutional ~~in-patient~~
29 inpatient residency and ~~return to permanent residency in the~~
~~community.~~ The head of the institution in which a person is
placed, under section 103, shall, annually, forward to the
31 Commissioner of Mental Health and Mental Retardation a report
containing the opinion of a staff psychiatrist as to the mental
33 ~~conditions~~ condition of that person, stating specifically whether
he that person may be released or discharged without likelihood
35 that he the person will cause ~~injury to himself~~ self-injury or
injury to others due to mental disease or mental defect. The
37 report shall also contain a brief statement of the reasons for
the opinion. The commissioner shall forthwith file the report in
39 the Superior Court for the county in which the person is
hospitalized. The court shall review each report and, if it is
41 made to appear by the report that any person may be ready for
release or discharge, the court shall set a date for and hold a
43 hearing on the issue of the person's readiness for release or
discharge. The court shall give notice of the hearing and mail a
45 copy of the report to the Attorney General, offices of the
district attorney which prosecuted the criminal charges for which
47 the person was ~~acquitted by reason of insanity~~ found guilty, but
suffering from mental disease or defect and the offices of the
49 district attorneys in whose district the release petition was
filed or in whose district release may occur. At the hearing,
51 the court shall receive the testimony of at least one
psychiatrist who has treated the person and a member of the State

1 Forensic Service who has examined the person, the testimony of
3 any independent psychiatrist or licensed clinical psychologist
5 who is employed by the prosecutor and has examined the person and
7 any other relevant testimony. If, after hearing, the court finds
that the person may be released or discharged without likelihood
that he the person will cause ~~injury to himself~~ self-injury or
injury to others due to mental disease or mental defect, the
court shall order, as applicable:

9
11 A. Release from the institution, ~~provided that:~~ and
placement in a correctional facility where the remainder of
the person's sentence is to be served; or

13 (1) ~~The order for release may include conditions~~
15 ~~deemed appropriate by the court, including, but not~~
~~limited to, out-patient treatment and supervision by~~
17 ~~the Department of Mental Health and Mental Retardation,~~
~~Bureau of Mental Health; and~~

19 (2) ~~The order for release shall include the condition~~
21 ~~that the person shall be returned to the institution~~
~~forthwith upon the order of the commissioner whenever~~
23 ~~the person fails to comply with other conditions of~~
~~release ordered by the court; or~~

25 B. ~~Discharge from the custody of the Commissioner of Mental~~
27 ~~Health and Mental Retardation~~ Placement under the custody of
the Department of Corrections which may provide for release
29 with supervision by the Division of Probation and Parole for
the remainder of the person's sentence.

31 ~~Release from the institution shall be subject to annual~~
33 ~~review by the court and, except for return as ordered by the~~
~~commissioner under paragraph A, subparagraph (1), shall~~
35 ~~continue until terminated by the court. Each person~~
~~released under this section shall remain in the custody of~~
37 ~~the commissioner. The Commissioner of Mental Health and~~
~~Mental Retardation shall inform the public safety officer of~~
39 ~~the municipality or the sheriff's office of the county into~~
~~which the person is released of the release. The court may~~
41 attach any other conditions it deems appropriate to the
person's release. The remainder of the person's sentence is
43 determined by deducting the period of time spent in the
institution after conviction from the person's sentence.

45 2. ~~Modified release treatment. Any individual hospitalized~~
47 ~~pursuant to section 103, may petition the Superior Court for the~~
~~county in which that person is hospitalized for a release~~
49 ~~treatment program allowing the individual to be off-institutional~~
~~grounds for a period of time, not to exceed 14 days at any one~~
51 ~~time. The petition shall contain a report from the institutional~~
~~staff, including at least one psychiatrist, and the report shall~~

1 define--the--patient's--present--condition;--the--planned--treatment
3 program--involving--absence--from--the--institution;--the--duration--of
the--absence--from--the--institution;--the--amount--of--supervision
5 during--the--absence;--the--expectation--of--results--from--the--program
change;--and--the--estimated--duration--of--the--treatment--program
7 before--further--change.---This--petition--shall--be--forwarded--to--the
court--no--later--than--60--days--prior--to--the--beginning--of--the
9 modified--treatment--program.---If--the--court--considers--that--the
individual--being--off--the--grounds,--as--described--in--the--treatment
11 plan,--is--inappropriate,--it--shall--notify--the--hospital--that--the
plan--is--not--approved--and--shall--schedule--a--hearing--on--the--matter.
13 The--clerk--of--courts--upon--receipt--of--the--proposed--treatment
program--shall--give--notice--of--the--receipt--of--this--program--by
15 mailing--a--copy--to--the--office--of--the--district--attorney--which
prosecuted--the--criminal--charges--of--which--the--person--was--acquitted
17 by--reason--of--insanity,--the--offices--of--the--district--attorneys--in
whose--district--the--release--petition--was--filed--or--in--whose
19 district--release--may--occur--and--Attorney--General,--who--may--file
objections--and--request--a--hearing--on--the--matter.---Representatives
21 of--the--Attorney--General--and--the--office--that--prosecuted--the--person
may--appear--at--any--hearing--on--the--matter.---At--the--hearing,--the
23 court--shall--receive--the--testimony--of--a--member--of--the--State
Forensic--Service--who--has--examined--the--person,--any--independent
25 psychiatrist--or--licensed--clinical--psychologist--who--is--employed--by
the--prosecuter--and--has--examined--the--person--and--any--other--relevant
27 testimony.---If--the--court--does--not--respond--within--60--days--to--the
proposed--treatment--plan--and--no--objections--and--request--for--hearing
29 are--filed--by--the--district--attorney--or--Attorney--General,--it--may
then--be--put--into--effect--by--the--administrator--of--the--hospital--on
31 the--assumption--that--the--court--approved--the--treatment--plan.---The
Commissioner--of--Mental--Health--and--Mental--Retardation--shall--inform
33 the--public--safety--officer--of--the--municipality--or--the--sheriff's
office--of--the--county--in--which--the--person--will--spend--any
35 unsupervised--time--under--the--release--treatment--program--of--that
program.

37 3. Other provisions concerning initial release or
39 discharge. A report shall be forwarded and filed and hearings
shall be held in accordance with subsection 1, without
41 unnecessary delay when, at any time, it is the opinion of a staff
psychiatrist that a patient hospitalized under section 103, may
43 be released or discharged without likelihood that he the person
will cause ~~injury to himself~~ self-injury or injury to others due
45 to mental disease or mental defect.

47 A person hospitalized under section 103, or his that person's
spouse or next of kin, may petition the Superior Court for the
49 county in which that person is hospitalized for a hearing under
subsection 1. Upon receiving the petition, the court shall
51 request and be furnished by the Commissioner of Mental Health and
Mental Retardation a report on the mental condition of that
person, as described in subsection 1. A hearing shall be held on

1 each petition, and release or discharge, if ordered, shall be in
2 accordance with subsection 1. If release or discharge is not
3 ordered, a petition shall not be filed again for the release or
4 discharge of that person for 6 months. Any person released under
5 subsection 1 who does not have any part of a sentence remaining
6 to be served or his the person's spouse or next of kin may, at
7 any time after 6 months from the release, petition the Superior
8 Court for the county in which he the person was hospitalized for
9 his discharge under ~~subsection 1~~ this section. If discharge is
10 not ordered, a petition for discharge may not be filed again for
11 6 months.

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

27 **5. Reinstitutionalization due to likelihood of causing**
28 **injury.** Any person released under subsection 1, ~~paragraph-A,~~
29 whose reinstitutionalization, due to the likelihood that he the
30 person will cause ~~injury to himself~~ self-injury or injury to
31 others due to mental disease or mental defect, is considered
32 necessary, upon the verified petition of any interested person,
33 may be brought before any Justice of the Superior Court upon his
34 ~~order~~ orders. A hearing shall be held for the purpose of
35 reviewing the mental condition of the person and the order for
36 release. The court may order the person detained for observation
37 and treatment, if appropriate, at the institution from which he
38 the person was released pending the hearing, which detention
39 shall not exceed 14 days. The psychiatrist responsible for the
40 observation or treatment of the person shall report to the court
41 prior to the hearing as to the mental condition of the person,
42 indicating specifically whether the person can remain in the
43 community without likelihood that he the person will cause ~~injury~~
44 ~~to himself~~ self-injury or injury to others due to mental disease
45 or mental defect. The court shall receive the testimony of the
46 psychiatrist who observed or treated the person during the period
47 of detention, any member of the State Forensic Service who has
48 examined the person during the period of detention, and any
49 other relevant testimony. Following the hearing, the court may
50 reissue, modify or rescind the previous order of release.
51

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

6
7 Notice of any hearing under subsection 1, 2, 3 or 5 shall be
8 given to the offices of the district attorney which prosecuted
9 the criminal charges against the person for which the person was
10 ~~acquitted by reason of insanity~~ found guilty, but suffering from
11 mental disease or defect, the offices of the district attorneys
12 in whose district the release petition was filed or in whose
13 district release may occur and the Attorney General at least 7
14 days before the hearing date. Notice of any hearing under
15 subsection 4 shall be given to the office of the district
16 attorney and the Attorney General as soon as possible before the
17 hearing date.

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

31
32 **Sec. 3. 17-A MRSA §39,** as amended by PL 1985, c. 796, §5, is
33 repealed.

34 **Sec. 4. 17-A MRSA §40,** as amended by PL 1985, c. 796, §6, is
35 further amended to read:

36
37 **§40. Procedure upon plea of not guilty coupled with plea of**
38 **guilty but suffering from mental disease or defect**

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40
41 1. When the defendant enters a plea of not guilty together
42 with a plea of ~~not criminally responsible by reason of insanity,~~
43 he guilty, but suffering from mental disease or defect, the
44 person shall also elect whether the trial shall be in stages as
45 provided for in this section, or a unitary trial in which both
46 the issues of guilt and of ~~insanity~~ mental disease or defect are
47 submitted simultaneously to the jury. At the defendant's
48 election, the jury shall be informed that the 2 pleas have been
49 made and that the trial will be in 2 stages.

1 2. If a 2-stage trial is elected by the defendant, there
shall be a separation of the issue of guilt from the issue of
3 insanity mental disease or defect in the following manner.

5 A. The issue of guilt shall be tried first and the issue of
insanity mental disease or defect tried only if the jury
7 returns a verdict of guilty. If the jury returns a verdict
of not guilty, the proceedings shall terminate.

9 B. Evidence of mental disease or defect, ~~as defined in~~
11 ~~section 39, subsection 2,~~ shall not be admissible in the
guilt or innocence phase of the trial for the purpose of
13 establishing insanity mental disease or defect. Such
evidence shall be admissible for that purpose only in the
15 2nd phase following a verdict of guilty. For the purposes
17 of this section, "mental disease or defect" means any
abnormal condition of the mind which substantially affects
19 mental or emotional processes and substantially impairs the
processes and capacity of a person to control the person's
21 own actions. An abnormality manifested only by repeated
criminal conduct or excessive use of alcohol, drugs or
23 similar substances, in and of itself, does not constitute a
mental disease or defect.

25 3. The issue of insanity mental disease or defect shall be
tried before the same jury as tried the issue of guilt.
27 Alternate jurors who were present during the first phase of the
trial but who did not participate in the deliberations and
29 verdict thereof may be substituted for jurors who did
participate. The defendant may elect to have the issue of
31 insanity mental disease or defect tried by the court without a
jury.

33 4. If the jury in the first phase returns a guilty verdict,
35 the trial shall proceed to the 2nd phase. The defendant and the
State may rely upon evidence admitted during the first phase or
37 they may recall witnesses. Any evidence relevant to insanity
mental disease or defect is admissible. The order of proof shall
39 reflect that the defendant has the burden of establishing his
~~lack of criminal responsibility~~ evidence of mental disease or
41 defect. The jury shall return a verdict that the defendant is
~~criminally responsible guilty~~ or ~~not criminally responsible by~~
43 ~~reason of~~ guilty, but suffering from mental disease or defect. If
45 the defendant is found ~~criminally responsible~~ guilty, the court
shall sentence him the person according to law. If the defendant
47 is found guilty, but suffering from mental disease or defect, the
court shall sentence the person according to law and after
49 sentencing shall order the person committed under Title 15,
section 103.

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

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STATEMENT OF FACT

The purpose of this bill is to eliminate the insanity defense from the Maine Criminal Code and to establish the verdict of guilty, but suffering from mental disease or defect. A person found guilty, but suffering from mental disease or defect, will be sentenced and will also be committed to an institution for the mentally ill or retarded. If the person's commitment is terminated before the sentence has run, that person will be returned to a correctional facility to serve out the remainder of the sentence or placed under the custody of the Department of Corrections which may place that person on probation for the remainder of the sentence.