

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 1150

H.P. 822

House of Representatives, April 12, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

Ed Pert

EDWIN H. PERT, Clerk

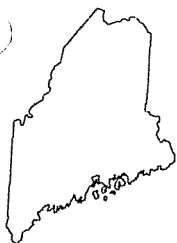
Presented by Representative PARADIS of Augusta.

Cosponsored by Representative PRIEST of Brunswick and Representative PINEAU of Jay.

STATE OF MAINE

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

An Act to Strengthen the State Forensic Service.



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

3 **Sec. 1. 15 MRSA §101-B, sub-§§1 and 3, as enacted by PL 1987,**
5 **c. 402, Pt. A, §109, are amended to read:**

7 **1. Court order; permissive.** The District Court or the
9 Superior Court having jurisdiction in any criminal case for cause
11 shown may order the defendant examined to determine his the
13 defendant's mental condition with reference to the issues of
15 competency, criminal responsibility and competence to stand trial
17 , abnormal condition of mind and any other issue involving the
19 mental or emotional condition of the defendant. The examination
21 may is to be conducted at ~~the Augusta Mental Health Institute,~~
23 ~~Banger Mental Health Institute, Pineland Center or at a mental~~
25 ~~health clinic of, or recommended by, the Commissioner of Mental~~
27 ~~Health and Mental Retardation and, when conducted at any such~~
29 ~~facility, shall be the responsibility of~~ by the State Forensic
31 Service. The examination If an additional evaluation is desired
33 by the court, it may be ordered, and may be conducted by a
35 psychiatrist or licensed clinical psychologist independent from
37 any such facility, employed for that purpose by the court of the
39 State Forensic Service. The court in selecting the examination
41 site shall consider proximity to the court, availability of an
43 examiner or examiners and the necessity for security precautions.
45 The defendant shall notify the court within 60 days of initial
47 appearance before the District Court or Superior Court, at least
49 45 days prior to trial or any pretrial proceeding, that the issue
51 of the defendant's competency, criminal responsibility, abnormal
 condition of mind or any other mental or emotional condition of
 the defendant will be raised. If such an examination has not
 already been performed by the State Forensic Service, the court
 shall order an examination pursuant to this section. No person
 may be presented for examination under this subsection without
 arrangements ~~therefor~~ for that examination with the head of the
 ~~institution or clinic or with the individual examiner~~ State
 Forensic Service being first made by the court, clerk of courts
 or sheriff. If the defendant is incarcerated, the examination is
 to be completed within 90 days. The opinion of the examiner or
 examiners relative to the competence, criminal responsibility,
 abnormal condition of mind or any other mental or emotional
 condition of the respondent shall be reported forthwith without
 delay to the court following examination, together with copies to
 counsel for the respondent and counsel for the State.

45 **3. Availability of reports.** The court may order that
47 observations, interviews and investigative reports regarding the
49 behavior of the defendant made by law enforcement officials be
51 made available to the designated psychiatrist and licensed
 clinical psychologist of the State Forensic Service for the
 limited purpose of this examination. If the defendant is
 incarcerated, an initial examination to determine whether
 commitment to the custody of the Commissioner of Mental Health

1 and Mental Retardation is necessary shall be made within 90
2 days. If the defendant is incarcerated and it is determined that
3 no long-term observation for the purpose of diagnosis is needed,
4 his the defendant's examinations shall be completed within 30
5 days. If the examination by the designees can be completed
6 without admission, a report of the results of the completed
7 examination shall be forwarded to the court ~~forthwith~~ without
8 delay. If the designated examiners of the Commissioner of Mental
9 Health and Mental Retardation determine that admission to an
10 appropriate institution for the mentally ill or mentally retarded
11 is necessary for complete examination, the examiners shall so
12 notify the court which may order the defendant committed to the
13 custody of the Commissioner of Mental Health and Mental
14 Retardation to be placed in an appropriate institution for the
15 mentally ill or the mentally retarded, to be there detained and
16 observed by the superintendent, or his the superintendent's
17 delegate, and professional staff for a period of time not to
18 exceed 60 days, for the purpose of ascertaining the mental
19 condition of the defendant. When further detention for
20 observation is deemed no longer necessary, the commissioner shall
21 report this fact to the court. The court shall then order the
22 person returned to the appropriate court for disposition; if the
23 court ordering commitment for observation has provided for remand
24 to the county jail following completion of the observation in the
25 commitment order, the sheriff or any one or more of his the
26 sheriff's deputies shall execute the remand order upon advice
27 from the commissioner of completion of the observation. A report
28 of the results of the observation shall be forwarded promptly to
29 the court by the commissioner. Subsection 1 governs the
30 distribution of reports of examination pursuant to this
31 subsection.

33 **Sec. 2. 15 MRSA §101-B, sub-§4, ¶A,** as enacted by PL 1987, c.
34 402, Pt. A, §109, is amended to read:

35
36 A. Commit the defendant to the custody of the Commissioner
37 of Mental Health and Mental Retardation to be placed in an
38 appropriate institution for the mentally ill or the mentally
39 retarded for observation, care and treatment. The commitment
40 shall not exceed one year in duration. At the end of 30 days
41 or sooner, and again in the event of recommitment, at the
42 end of 60 days and one year, ~~the superintendent--of--the~~
43 ~~institution--in--which--the--defendant--is--placed~~ State Forensic
44 Service shall forward a report to the Commissioner of Mental
45 Health and Mental Retardation relative to the defendant's
46 competence to stand trial and his its reasons therefor. The
47 commissioner shall ~~forthwith~~ without delay file the report
48 with the court having jurisdiction of the case. The court
49 shall ~~forthwith~~ without delay set a date for, and shall
50 hold, a hearing on the question of the defendant's
51 competence to stand trial and shall receive all relevant
testimony bearing on the question. If the court determines

1 that the defendant is not competent to stand trial, but
2 there does exist a substantial probability that the
3 defendant will be competent to stand trial in the
4 foreseeable future, it shall recommit the defendant to the
5 custody of the Commissioner of Mental Health and Mental
6 Retardation to be placed in an appropriate institution for
7 the mentally ill or the mentally retarded for observation,
8 care and treatment. If the court determines that the
9 defendant is not competent to stand trial and there does not
10 exist a substantial probability that he the defendant will
11 be competent in the foreseeable future, the court shall
12 dismiss all charges against the defendant and notify the
13 appropriate authorities who may institute civil commitment
14 procedures for the individual; or

15 **Sec. 3. 15 MRSA §101-B, sub-§4, ¶B,** as amended by PL 1987, c.
16 758, §11, is further amended to read:

17
18 B. Issue a bail order in accordance with chapter 105-A,
19 with or without the further order that the defendant undergo
20 observation at a state mental hospital or mental health
21 facility approved by the Department of Mental Health and
22 Mental Retardation, or by arrangement with a private
23 psychiatrist and treatment when it is deemed appropriate by
24 the ~~head of the hospital or clinic or by the private~~
25 psychiatrist State Forensic Service. When such the
26 outpatient observation and treatment is ordered, the ~~head of~~
27 the hospital or clinic or the psychiatrist shall State
28 Forensic Service, within the time specified in subsection 1,
29 shall forward a report to the court containing the opinion
30 of the ~~head of the hospital or clinic or of the~~
31 psychiatrist, State Forensic Service relative to the
32 defendant's competence to stand trial and his its reasons
33 therefor. The court shall ~~forthwith~~ without delay set a
34 date for and shall hold a hearing on the question of the
35 defendant's competence to stand trial, which shall be held
36 pursuant to and consistent with the standards set out in
37 paragraph A.

38
39 **Sec. 4. 15 MRSA §101-B, sub-§6,** as enacted by PL 1987, c. 402,
40 Pt. A, §109, is amended to read:

41
42 **6. No release during commitment period; violation.** Any No
43 person ordered or committed for examination, observation, care or
44 treatment pursuant to this section shall ~~not~~ may be released from
45 the examining designated institution during the period of
46 examination. Any individual responsible for or permitting the
47 release of a respondent from the examining designated institution
48 who has been committed pursuant to this section commits a civil
49 violation for which a forfeiture not to exceed \$1,000 may be
50 adjudged.
51

1 **Sec. 5. 15 MRSA §101-B, sub-§7** is enacted to read:

3 7. Examination after conviction. If the issue of criminal
5 responsibility, mental competence, abnormal condition of mind or
7 any other issue involving the mental or emotional condition of
9 the defendant is raised after conviction, the court may order the
11 convicted person to be examined by the State Forensic Service.
 If at the time an examination order is entered by the court the
 convicted person is in execution of any sentence imposed for any
 criminal conduct, the time limits and bail provisions of this
 section do not apply.

13 **Sec. 6. 15 MRSA §101-C, sub-§4**, as enacted by PL 1987, c. 402,
15 Pt. A, §109, is amended to read:

17 4. Definition. "Records" means information about a person,
19 in whatever medium preserved. It includes, but is not limited
21 to, medical histories, social histories, military histories,
 government histories, educational histories, drug and alcohol
 treatment histories, criminal record histories, penal institution
 histories and documentation pertaining to diagnosis or treatment.

23 **Sec. 7. 15 MRSA §105**, as amended by PL 1981, c. 493, §2, is
25 repealed.

27 **Sec. 8. 15 MRSA §3318, sub-§1, ¶B**, as amended by PL 1987, c.
 402, Pt. A, §113, is further amended to read:

29 B. Order that the juvenile be examined by a ~~physician or~~
31 ~~psychologist and refer the juvenile to a suitable facility~~
 ~~or program for the purpose of examination, the costs of such~~
 ~~examination to be paid by the court~~ the State Forensic
33 Service. If the report of such an examination is that the
35 juvenile is mentally ill or incapacitated to the extent that
37 short-term or long-term hospitalization or institutional
 confinement is required, the ~~juvenile court~~ Juvenile Court
 shall initiate proceedings for voluntary or involuntary
39 commitment as provided in section 101-B and in Title 34
 ~~34-B, sections 2290 and 2333~~ chapter 3, subchapter IV. The
41 court shall continue the proceedings when a juvenile is
 voluntarily or involuntarily committed.

43 **Sec. 9. 34-B MRSA §1212**, as enacted by PL 1985, c. 796, §7,
45 is amended to read:

47 **§1212. State Forensic Service**

49 1. Establishment and membership. The Commissioner of Mental
51 Health and Mental Retardation shall establish a State Forensic
 Service and appoint its members. Members shall be psychiatrists
 and licensed clinical psychologists experienced in forensic
 service and not directly involved in the treatment of persons

1 committed to the department under Title 15, chapter 5. These
2 psychiatrists and ~~psycheologist~~ psychologists may be employed by
3 the department directly or as independent contractors.

5 2. Duties. The State Forensic Service shall have the
6 following duties:

7
8 A. To perform examinations of the mental condition of a
9 defendant ~~with reference to competency to stand trial and~~
10 ~~criminal responsibility under~~ pursuant to Title 15, section
11 101 101-B and to do the evaluations or examinations on
12 behalf of any court of record, pursuant to agreement between
13 the commissioner and the jurisdiction requesting that the
14 evaluation be performed; and

15
16 B. To perform examinations of the mental condition of
17 persons committed to the custody of the commissioner under
18 Title 15, section 103, for the purposes specified in Title
19 15, section 104-A.

21 22 STATEMENT OF FACT

23
24 This bill revises certain provisions of the laws pertaining
25 to the State Forensic Service. Section 1 reflects that the State
26 Forensic Service is an entity separate and distinct from the
27 bureaus in the Department of Mental Health and Mental
28 Retardation. Section 1 of the bill also adds abnormal condition
29 of mind and other mental and emotional conditions as issues
30 necessitating examination by the State Forensic Service.
31 Finally, the phrase "competence to stand trial" has been revised
32 to reflect the broader sense of "competency" to include
33 competency to plead, to be tried, to waive rights and to
34 represent oneself. The revision also reflects the broader
35 function of the State Forensic Service. Section 1 of this bill
36 also provides that when a defendant is admitted to an institution
37 for purposes of the examination, the examination reports will
38 still be governed by the Maine Revised Statutes, Title 15,
39 section 101-B, subsection 1.

40
41 Sections 2 and 3 of the bill authorize the State Forensic
42 Service instead of the head of the institution to issue reports
43 to the department concerning the competency of the defendant.

44
45 Section 4 amends Title 15, section 101-B, subsection 6, to
46 accurately reflect that the examination is given by the State
47 Forensic Service in a designated institution.

48
49 Section 5 of the bill pertains to competency for trial and
50 criminal responsibility. Currently, in a petition for
51 postconviction review and in a motion for new trial, a convicted

1 person may initiate or reiterate allegation that the convicted
3 person was not mentally competent to be tried, to plead, to waive
5 counsel and self-represent. The convicted person also may allege
7 to not be criminally responsible because of a claimed mental
9 disease or defect at the time of the offense. This change to
11 Title 15, section 101-B, makes it clear that the State Forensic
13 Service is available to the courts when issues of mental
15 competence are raised after conviction.

17 Section 6 adds specific items to the list of records
19 available to the examiner for purposes of the evaluation.

21 Section 7 repeals the separate provision for evaluation of
23 federal defendants under the 1967 statutory scheme.

25 Section 8 conforms the provision regarding examination of
27 juveniles for competence, criminal responsibility and mental and
29 emotional conditions to that of adult defendants, requires that
31 the examination be done by or through the auspices of the State
Forensic Service and corrects the reference to repealed Title 34
sections.

Section 9 corrects the reference to evaluations of criminal
defendants from the repealed Title 15, section 101, to its
successor provision, section 101-B. Additionally, authority for
the evaluation of individuals for federal or another court has
been added to the duties of the State Forensic Service, through
arrangements to be made by the Commissioner of Mental Health and
Mental Retardation with federal officials and those of another
jurisdiction which may ask that an evaluation be done.