

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1091

S.P. 363

In Senate, March 4, 2003

An Act To Amend the Not Guilty by Reason of Insanity Verdict

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WOODCOCK of Franklin.

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

2
4 **Sec. 1. 15 MRSA §103**, as corrected by RR 1995, c. 2, §27 and amended by PL 2001, c. 354, §3, is further amended to read:

6 **§103. Commitment of persons found guilty but insane**

8 When a respondent is found not criminally responsible by
10 reason of mental disease or mental defect the verdict and
12 judgment must ~~se~~ state that the person is guilty but insane. In
14 that case the court shall order the person committed to the
16 custody of the Commissioner of Behavioral and Developmental
18 Services to be placed in an appropriate institution for the
 mentally ill or the mentally retarded for care and treatment.
 Upon placement in the appropriate institution and in the event of
 transfer from one institution to another of persons committed
 under this section, notice of the placement or transfer must be
 given by the commissioner to the committing court.

20 **Sec. 2. 15 MRSA §104-A, sub-§1**, as corrected by RR 1995, c. 2,
22 §28 and amended by PL 2001, c. 354, §3, is further amended to
 read:

24 **1. Release and discharge.** The term "release," as used in
26 this section, means termination of institutional in-patient
28 residency and return to permanent residency in the community.
30 The head of the institution in which a person is placed, under
32 section 103, shall, annually, forward to the Commissioner of
34 Behavioral and Developmental Services a report containing the
36 opinion of a staff psychiatrist as to the mental conditions of
38 that person, stating specifically whether the person may be
40 released or discharged without likelihood that the person will
42 cause injury to that person or to others due to mental disease or
44 mental defect. The report must also contain a brief statement of
46 the reasons for the opinion. The commissioner shall immediately
48 file the report in the Superior Court for the county in which the
50 person is hospitalized. The court shall review each report and,
 if it is 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 hearing on the issue of the person's readiness for
 release or discharge. The court shall give notice of the hearing
 and mail a copy of the report to the Attorney General, offices of
 the district attorney that prosecuted the criminal charges for
 which the person was ~~acquitted-by-reason-of-insanity~~ found to be
 guilty but insane and the offices of the district attorneys in
 whose district the release petition was filed or in whose
 district release may occur. At the hearing, the court shall
 receive the testimony of at least one psychiatrist who has
 treated the person and a member of the State Forensic Service who
 has examined the person, the testimony of any independent

2 psychiatrist or licensed clinical psychologist who is employed by
3 the ~~prosecuter~~ prosecutor and has examined the person and any
4 other relevant testimony. If, after hearing, the court finds
5 that the person may be released or discharged without likelihood
6 that the person will cause injury to that person or to others due
7 to mental disease or mental defect, the court shall order, as
8 applicable:

9 A. Release from the institution, provided that:

10 (1) The order for release may include conditions
11 determined appropriate by the court, including, but not
12 limited to, out-patient treatment and supervision by
13 the Department of Behavioral and Developmental
14 Services, Division of Mental Health; and

15 (2) The order for release includes the condition that
16 the person must be returned to the institution
17 immediately upon the order of the commissioner whenever
18 the person fails to comply with other conditions of
19 release ordered by the court; or

20 B. Discharge from the custody of the Commissioner of
21 Behavioral and Developmental Services.

22 Release from the institution is subject to annual review by the
23 court and, except for return as ordered by the commissioner under
24 paragraph A, subparagraph (1), must continue until terminated by
25 the court. Each person released under this section shall remain
26 in the custody of the commissioner. The Commissioner of
27 Behavioral and Developmental Services shall inform the public
28 safety officer of the municipality or the sheriff's office of the
29 county into which the person is released of the release.

30 **Sec. 3. 15 MRSA §104-A, sub-§2**, as corrected by RR 1995, c. 2,
31 §29 and amended by PL 2001, c. 354, §3, is further amended to
32 read:

33 **2. Modified release treatment.** Any individual hospitalized
34 pursuant to section 103 may petition the Superior Court for the
35 county in which that person is hospitalized for a release
36 treatment program allowing the individual to be off institutional
37 grounds for a period of time, not to exceed 14 days at any one
38 time. The petition must contain a report from the institutional
39 staff, including at least one psychiatrist, and the report must
40 define the patient's present condition; the planned treatment
41 program involving absence from the institution; the duration of
42 the absence from the institution; the amount of supervision
43 during the absence; the expectation of results from the program
44 change; and the estimated duration of the treatment program

2 before further change. This petition must be forwarded to the
court no later than 60 days prior to the beginning of the
4 modified treatment program. If the court considers that the
individual being off the grounds, as described in the treatment
6 plan, is inappropriate, it shall notify the hospital that the
plan is not approved and shall schedule a hearing on the matter.
8 The clerk of courts upon receipt of the proposed treatment
program shall give notice of the receipt of this program by
10 mailing a copy to the office of the district attorney that
prosecuted the criminal charges of which the person was ~~acquitted~~
~~by-reason-of-insanity~~ found to be guilty but insane, the offices
12 of the district attorneys in whose district the release petition
was filed or in whose district release may occur and the Attorney
14 General who may file objections and request a hearing on the
matter. Representatives of the Attorney General and the office
16 that prosecuted the person may appear at any hearing on the
matter. At the hearing, the court shall receive the testimony of
18 a member of the State Forensic Service who has examined the
person, any independent psychiatrist or licensed clinical
20 psychologist who is employed by the ~~prosecuter~~ prosecutor and has
examined the person and any other relevant testimony. If the
22 court does not respond within 60 days to the proposed treatment
plan and no objections and request for hearing are filed by the
24 district attorney or Attorney General, it may then be put into
effect by the administrator of the hospital on the assumption
26 that the court approved the treatment plan. The Commissioner of
Behavioral and Developmental Services shall inform the public
28 safety officer of the municipality or the sheriff's office of the
county in which the person will spend any unsupervised time under
30 the release treatment program of that program.

32 **Sec. 4. 15 MRSA §104-A, sub-§6**, as amended by PL 1985, c. 796,
§4, is further amended to read:

34 **6. Involuntary hospitalization; notice; appointed counsel.**
36 Any person released under subsection 1, paragraph A, may be
admitted to a hospital under any provision of Title 34-B, chapter
38 3, subchapter IV 4, Article 3, while the order for release is in
effect.

40 Notice of any hearing under subsection 1, 2, 3 or 5 ~~shall~~ must be
42 given to the offices of the district attorney ~~which~~ that
prosecuted the criminal charges against the person for which the
44 person was ~~acquitted-by-reason-of-insanity~~ found guilty but
insane, the offices of the district attorneys in whose district
46 the release petition was filed or in whose district release may
occur and Attorney General at least 7 days before the hearing
48 date. Notice of any hearing under subsection 4 ~~shall~~ must be
given to the office of the district attorney and Attorney General
50 as soon as possible before the hearing date.

2 Whenever a hearing is to be held under this section, the court
4 shall determine whether the person whose release or discharge is
6 in issue is indigent. If the court finds that the person is
8 indigent, it shall appoint counsel to represent the person in
10 connection with the hearing. Fees for court-appointed counsel
12 for services rendered in connection with any hearing held under
14 this section, or appeal from a decision in any hearing, and the
fees of any expert witnesses called by the district attorney,
Attorney General or on behalf of the person whose release or
discharge is in issue, if indigent, shall must be paid by the
State. Any such fee to be in order for payment shall must be
first approved by the justice presiding at the hearing held under
this section.

16 **Sec. 5. 15 MRSA §393, sub-§1**, as amended by PL 2001, c. 549,
18 §2, is further amended to read:

20 **1. Possession prohibited.** A person may not own, possess or
22 have under that person's control a firearm, unless that person
has obtained a permit under this section, if that person:

24 A-1. Has been convicted of committing or found not
~~eriminally-responsible-by-reason-of-mental-disease-or-defect~~
26 guilty but insane of committing:

28 (1) A crime in this State that is punishable by
imprisonment for a term of one year or more;

30 (2) A crime under the laws of the United States that
32 is punishable by imprisonment for a term exceeding one
year;

34 (3) A crime under the laws of any other state that, in
36 accordance with the laws of that jurisdiction, is
punishable by a term of imprisonment exceeding one
38 year. This subparagraph does not include a crime under
the laws of another state that is classified by the
40 laws of that state as a misdemeanor and is punishable
by a term of imprisonment of 2 years or less;

42 (4) A crime under the laws of any other state that, in
44 accordance with the laws of that jurisdiction, does not
come within subparagraph (3) but is elementally
46 substantially similar to a crime in this State that is
punishable by a term of imprisonment for one year or
48 more; or

50 (5) A crime under the laws of the United States, this
State or any other state or the Passamaquoddy Tribe or

2 Penobscot Nation in a proceeding in which the
prosecuting authority was required to plead and prove
that the person committed the crime with the use of:

4 (a) A firearm against a person; or

6 (b) Any other dangerous weapon;

8
C. Has been adjudicated in this State or under the laws of
10 the United States or any other state to have engaged in
conduct as a juvenile that, if committed by an adult, would
12 have been a disqualifying conviction:

14 (1) Under paragraph A-1, subparagraphs (1) to (4) and
bodily injury to another person was threatened or
16 resulted; or

18 (3) Under paragraph A-1, subparagraph (5); or

20 D. Is subject to an order of a court of the United States
or a state, territory, commonwealth or tribe that restrains
22 that person from harassing, stalking or threatening an
intimate partner, as defined in 18 United States Code,
24 Section 921(a), of that person or a child of the intimate
partner of that person, or from engaging in other conduct
26 that would place the intimate partner in reasonable fear of
bodily injury to the intimate partner or the child, except
28 that this paragraph applies only to a court order that was
issued after a hearing for which that person received actual
30 notice and at which that person had the opportunity to
participate and that:

32 (1) Includes a finding that the person represents a
34 credible threat to the physical safety of an intimate
partner or a child; or

36 (2) By its terms, explicitly prohibits the use,
38 attempted use or threatened use of physical force
against an intimate partner or a child that would
40 reasonably be expected to cause bodily injury.

42 For the purposes of this subsection, a person is deemed to have
been convicted upon the acceptance of a plea of guilty or nolo
44 contendere or a verdict or finding of guilty, or of the
equivalent in a juvenile case, by a court of competent
46 jurisdiction.

48 For the purposes of this subsection, a person is deemed to have
been found ~~not-eriminally-responsible-by-reason-of-mental-disease~~
50 ~~or-defect~~ guilty but insane upon the acceptance of a plea of not

2 criminally responsible by reason of insanity or a verdict or
3 finding of ~~not-criminally-responsible-by-reason-of-mental-disease~~
4 ~~or-defect~~ guilty but insane, or of the equivalent in a juvenile
case, by a court of competent jurisdiction.

6 **Sec. 6. 15 MRSA §393. sub-§7.** as repealed and replaced by PL
2001, c. 549, §4, is amended to read:

8
10 7. **Definitions.** As used in this section, unless the
context otherwise indicates, the following terms have the
following meanings.

12 A. "Firearm" has the same meaning as in Title 17-A, section
14 2, subsection 12-A.

16 B. ~~"Not-criminally-responsible-by-reason-of-mental-disease~~
18 ~~or-defect"~~ "Guilty but insane" has the same meaning as used
in Title 17-A, section 39 and includes the former finding in
20 this State of "not criminally responsible by reason of
mental disease or defect" under Title 17-A, section 39 as
22 well as the former finding under former provisions of
section 103 of "not guilty by reason of mental disease or
24 defect excluding responsibility" as well as any comparable
finding under the laws of the United States or any other
state.

26 C. "State" means the State of Maine and "state" means any
28 other state of the United States and includes the District
of Columbia, the Commonwealth of Puerto Rico and the
30 possessions of the United States.

32 D. "Use of a dangerous weapon" has the same meaning as in
Title 17-A, section 2, subsection 9, paragraph A.

34 **Sec. 7. 17-A MRSA §39. sub-§1,** as amended by PL 1985, c. 796,
36 §5, is further amended to read:

38 1. A defendant is ~~not-criminally-responsible~~ guilty but
40 insane if, at the time of the criminal conduct, as a result of
mental disease or defect, he the defendant lacked substantial
42 capacity to appreciate the wrongfulness of ~~his~~ the defendant's
conduct. The defendant ~~shall-have~~ has the burden of proving, by a
44 preponderance of the evidence, that he the defendant lacks
criminal responsibility as described in this subsection.

46 **Sec. 8. 17-A MRSA §40. sub-§4.** as amended by PL 1985, c. 796,
§6, is further amended to read:

48
50 4. If the jury in the first phase returns a guilty verdict,
the trial ~~shall~~ must proceed to the 2nd phase. The defendant and

2 the State may rely upon evidence admitted during the first phase
or they may recall witnesses. Any evidence relevant to insanity
is admissible. The order of proof ~~shall~~ must reflect that the
4 defendant has the burden of establishing ~~his~~ the defendant's lack
of criminal responsibility. The jury shall return a verdict that
6 the defendant is criminally responsible or ~~not--criminally~~
~~responsible--by--reason--of--mental--disease--or--defect~~ guilty but
8 insane. If the defendant is found criminally responsible, the
court shall sentence ~~him~~ the defendant according to law.

10

12

SUMMARY

14

This bill changes the verdict of "not criminally responsible
by reason of insanity" to "guilty but insane."