

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1237

H.P. 911

House of Representatives, March 6, 2003

An Act To Promote Justice for Those Not Guilty of Crimes Due to Mental Disease or Defect

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.
Cosponsored by Senator STRIMLING of Cumberland and
Representatives: BUNKER of Kossuth Township, CANAVAN of Waterville, LAVERRIERE-
BOUCHER of Biddeford, MILLS of Cornville, NORBERT of Portland.

2
3 **Be enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §104-A**, as corrected by RR 1995, c. 2, §§28
5 to 30 and as amended by PL 2001, c. 354, §3, is further amended
6 to read:

7 **§104-A. Release and discharge, hearing, payment of**
8 **fees**

9
10 **1. Release and discharge.** The term "release," as used in
11 this section, means termination of institutional in-patient
12 residency and return to permanent residency in the community.
13 The head of the institution in which a person is placed, under
14 section 103, shall, annually, forward to the Commissioner of
15 Behavioral and Developmental Services a report containing the
16 opinion of a staff psychiatrist as to the mental conditions of
17 that person, stating specifically whether the person may be
18 released or discharged without likelihood that the person will
19 cause injury to that person or to others due to mental disease or
20 mental defect. The report must also contain a brief statement of
21 the reasons for the opinion. The commissioner shall immediately
22 file the report in the Superior Court for the county in which the
23 person is hospitalized. The court shall review each report and,
24 if it is made to appear by the report that any person may be
25 ready for release or discharge, the court shall set a date for
26 and hold a hearing on the issue of the person's readiness for
27 release or discharge. The court shall give notice of the hearing
28 and mail a copy of the report to the ~~Attorney-General, offices of~~
29 ~~the district attorney~~ prosecutorial office that prosecuted the
30 criminal charges for which the person was ~~acquitted~~ found not
31 criminally responsible by reason of ~~insanity~~ mental disease or
32 mental defect and the offices of the district attorneys in whose
33 district the release petition was filed or in whose district
34 release may occur. At the hearing, the court shall receive the
35 testimony of at least one psychiatrist who has treated the person
36 and a member of the State Forensic Service who has examined the
37 person, the testimony of any independent psychiatrist or licensed
38 clinical psychologist who is employed by the ~~prosecutor~~
39 prosecutor or the petitioner and has examined the person and any
40 other relevant testimony. If, after hearing, the court finds
41 that the person may be released or discharged without likelihood
42 that the person will cause injury to that person or to others due
43 to mental disease or mental defect, the court shall order, as
44 applicable:

45 A. Release from the institution, provided that:

46
47 (1) The order for release may include conditions
48 determined appropriate by the court, including, but not
49 limited to, out-patient treatment and supervision by
50

2 the Department of Behavioral and Developmental
3 Services, Division of Mental Health that monitors and
4 ensures prescribed medications are taken; and

5 (2) The order for release includes the condition that
6 the person must be returned to the institution
7 immediately upon the order of the commissioner whenever
8 the person fails to comply with other conditions of
9 release ordered by the court; or

10 B. Discharge from the custody of the Commissioner of
11 Behavioral and Developmental Services.

12
13 Release from the institution is subject to annual review by the
14 court and, except for return as ordered by the commissioner under
15 paragraph A, ~~subparagraph (1)~~, must continue until terminated by
16 the court. Each person released under this section ~~shall~~ must
17 remain in the custody of the commissioner. The Commissioner of
18 Behavioral and Developmental Services shall inform the ~~public~~
19 ~~safety officer~~ law enforcement agency of the municipality or the
20 sheriff's office of the county into which the person is released
21 of the release.
22

23 **2. Modified release treatment.** Any An individual
24 hospitalized pursuant to section 103 may petition the Superior
25 Court for the county in which that person is hospitalized for a
26 release treatment program allowing the individual to be off
27 institutional grounds for a period of time, not to exceed 14 days
28 at any one time. The petition must contain a report from the
29 institutional staff, including at least one psychiatrist, and the
30 report must define the patient's present condition; the planned
31 treatment program involving absence from the institution; the
32 duration of the absence from the institution; the amount of
33 supervision during the absence; the expectation of results from
34 the program change; and the estimated duration of the treatment
35 program before further change. This petition must be forwarded
36 to the court no later than 60 days prior to the beginning of the
37 modified treatment program. If the court considers that the
38 ~~individual~~ individual's being off the grounds, as described in
39 the treatment plan, is inappropriate, it shall notify the
40 hospital that the plan is not approved and shall schedule a
41 hearing on the matter. The clerk of courts upon receipt of the
42 proposed treatment program shall give notice of the receipt of
43 this program by mailing a copy to the ~~office of the district~~
44 ~~attorney~~ prosecutorial office that prosecuted the criminal
45 charges of which the person was ~~acquitted~~ found not criminally
46 responsible by reason of insanity mental disease or mental
47 defect, the offices of the district attorneys in whose district
48 the release petition was filed or in whose district release may
49 occur and the Attorney General who may file objections and
50

2 request a hearing on the matter. Representatives of the ~~Attorney~~
3 ~~General-and-the~~ prosecutorial office that prosecuted the person
4 may appear at any hearing on the matter. At the hearing, the
5 court shall receive the testimony of at least one psychiatrist
6 who has treated the person and of a member of the State Forensic
7 Service who has examined the person, the testimony of any
8 independent psychiatrist or licensed clinical psychologist who is
9 employed by the ~~proseעות~~ prosecutor or petitioner and has
10 examined the person and any other relevant testimony. If the
11 court does not respond within 60 days to the proposed treatment
12 plan and no objections and request for hearing are filed by the
13 district attorney or Attorney General, it may then be put into
14 effect by the administrator of the hospital on the assumption
15 that the court approved the treatment plan. The Commissioner of
16 Behavioral and Developmental Services shall inform the ~~public~~
17 ~~safety-officer~~ law enforcement agency of the municipality or the
18 sheriff's office of the county in which the person will spend any
19 unsupervised time under the release treatment program ~~ef--that~~
20 ~~program~~.

21 **3. Other provisions concerning initial release or**
22 **discharge.** A report must be forwarded and filed and hearings
23 must be held in accordance with subsection 1, without unnecessary
24 delay when, at any time, it is the opinion of a staff
25 psychiatrist that a patient hospitalized under section 103, may
26 be released or discharged without likelihood that the patient
27 will cause injury to that patient or to others due to mental
28 disease or mental defect.

29 A person hospitalized under section 103, or the person's spouse
30 or next of kin, may petition the Superior Court for the county in
31 which that person is hospitalized for a hearing under subsection
32 1. Upon receiving the petition, the court shall request and must
33 be furnished by the Commissioner of Behavioral and Developmental
34 Services a report on the mental condition of that person, as
35 described in subsection 1. A hearing must be held on each
36 petition, and release or discharge, if ordered, must be in
37 accordance with subsection 1. If release or discharge is not
38 ordered, a petition may not be filed again for the release or
39 discharge of that person for 6 months. Any A person released
40 under subsection 1 or the person's spouse or next of kin may at
41 any time after 6 months from the release petition the Superior
42 Court for the county in which that person was hospitalized for
43 that person's discharge under subsection 1. If discharge is not
44 ordered, a petition for discharge may not be filed again for 6
45 months.

46 **3-A. Petitioner's burden of proof.** In a hearing pursuant
47 to subsection 1, 2 or 3, the petitioner's burden of proof is as
48 follows.
49

2 A. If the person hospitalized was found not criminally
4 responsible by reason of mental disease or mental defect for
6 murder or a Class A offense, the petitioner must demonstrate
8 by clear and convincing evidence that the modified release
 treatment program, release on conditions or discharge may be
 granted without likelihood that the person will cause injury
 to that person or to others due to mental disease or mental
 defect.

10 B. If the person hospitalized was found not criminally
12 responsible by reason of mental disease or mental defect for
14 a Class B, C, D or E offense, the petitioner must
16 demonstrate by a preponderance of the evidence that the
18 modified release treatment program, release on conditions or
 discharge may be granted without likelihood that the person
 will cause injury to that person or to others due to mental
 disease or mental defect.

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

36 **5. Reinstitutionalization due to likelihood of causing**
38 **injury.** Any A person released under subsection 1, paragraph A,
40 whose reinstitutionalization, due to the likelihood that he the
42 person will cause injury to ~~himself~~ that person or others due to
44 mental disease or mental defect, is considered necessary, upon
46 the verified petition of any interested person, may be brought
48 before any a Justice of the Superior Court upon ~~his~~ the justice's
50 order. A hearing ~~shall~~ must be held for the purpose of reviewing
 the mental condition of the person and the order for release.
 The court may order the person detained for observation and
 treatment, if appropriate, at the institution from which he the
 person was released pending the hearing, which detention ~~shall~~
 may not exceed 14 days. The psychiatrist responsible for the
 observation or treatment of the person shall report to the court
 prior to the hearing as to the mental condition of the person,
 indicating specifically whether the person can remain in the

2 disease or mental defect for committing a Class B, C, D or E
crime. For discharge or release, a petitioner must demonstrate
4 by a preponderance of the evidence that the modified release
treatment program, release on conditions or discharge may be
6 granted without likelihood that the person will cause injury to
that person or to others due to mental disease or mental defect.
8 The petitioner's burden of proof in a case for release or
discharge where a person was found not criminally responsible by
reason of mental disease or defect for murder or a Class A crime
10 remains proof by clear and convincing evidence. (Taylor v.
Commissioner of Mental Health and Mental Retardation, 481 A.2d
12 139 (1984)) The bill also makes technical changes to the
statutes.