

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)



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 29

H.P. 32

House of Representatives, January 6, 2005

**An Act To Provide Justice to Those Found Not Guilty Due to Mental
Disease or Defect and Decrease Costs to the State**

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FAIRCLOTH of Bangor.

2
3 **Be it 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, §§29
5 and 30 and amended by PL 2003, c. 689, Pt. B, §§6 and 7, is
6 further amended to read:

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

8
9
10 **1. Release and discharge.** The term "release," as used in
11 this section, means termination of institutional ~~in-patient~~
12 inpatient residency and return to permanent residency in the
13 community. The head of the institution in which a person is
14 placed, under section 103, shall, annually, forward to the
15 Commissioner of Health and Human 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 of a member of the State Forensic Service who has examined
37 the person, the testimony of any independent psychiatrist or
38 licensed clinical psychologist who is employed by the ~~prosecuter~~
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~~ if:**

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

2 and Human Services, Division of Mental Health, which
3 shall monitor and ensure that prescribed medications
4 are taken; and

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

12 B. Discharge from the custody of the Commissioner of Health
13 and Human Services.

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

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

2 objections and request a hearing on the matter. Representatives
3 of the ~~Attorney--General--and--the~~ prosecutorial office that
4 prosecuted the person may appear at any hearing on the matter.
5 At the hearing, the court shall receive the testimony of at least
6 one psychiatrist who has treated the person and of a member of
7 the State Forensic Service who has examined the person, the
8 testimony of any independent psychiatrist or licensed clinical
9 psychologist who is employed by the ~~proseעות~~ prosecutor or
10 petitioner and has examined the person and any other relevant
11 testimony. If the court does not respond within 60 days to the
12 proposed treatment plan and no objections and request for hearing
13 are filed by the district attorney or the Attorney General, it
14 may then be put into effect by the administrator of the hospital
15 on the assumption that the court approved the treatment plan.
16 The Commissioner of Health and Human Services shall inform the
17 ~~public-safety-officer~~ law enforcement agency of the municipality
18 or the sheriff's office of the county in which the person will
19 spend any unsupervised time under the release treatment program
20 ~~ef-that-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 Health and Human Services
34 shall furnish to the court a report on the mental condition of
35 that person, as described in subsection 1. A hearing must be
36 held on each petition, and release or discharge, if ordered, must
37 be in accordance with subsection 1. If release or discharge is
38 not 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
50

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 crime, 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 crime, the petitioner must demonstrate
16 by a preponderance of the evidence that the modified release
18 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.