

MAINE STATE LEGISLATURE

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No. 1517

H.P. 1062

House of Representatives, March 30, 2005

An Act Amending the Laws Regarding Persons Not Criminally Responsible by Reason of Insanity

Reported by Representative BLANCHETTE of Bangor for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

4 **Sec. 1. 15 MRSA §103**, as corrected by RR 1995, c. 2, §27 and
5 amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §7, is
6 further amended to read:

7 **§103. Commitment following acceptance of negotiated insanity**
8 **plea or following verdict or finding of insanity**

9
10 When a ~~respondent~~ court accepts a negotiated plea of not
11 criminally responsible by reason of insanity when a defendant is
12 found not criminally responsible by reason of mental-disease-or
13 mental-defect-the insanity by jury verdict and or court finding,
14 the judgment must so state. In that-case those cases the court
15 shall order the person committed to the custody of the
16 Commissioner of Health and Human Services to be placed in an
17 appropriate institution for the mentally ill or the mentally
18 retarded for care and treatment. Upon placement in the
19 appropriate institution and in the event of transfer from one
20 institution to another of persons committed under this section,
21 notice of the placement or transfer must be given by the
22 commissioner to the committing court.

23
24 As used in this section, "not criminally responsible by
25 reason of insanity" has the same meaning as in Title 17-A,
26 section 39 and includes any comparable plea, finding or verdict
27 in this State under former section 102; under a former version of
28 Title 17-A, section 39; under former Title 17-A, section 58; or
29 under former section 17-B, chapter 149 of the Revised Statutes of
30 1954.

31 **Sec. 2. 15 MRSA §104-A, sub-§1**, as corrected by RR 1995, c. 2,
32 §28 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt.
33 B, §§6 and 7, is further amended to read:

34
35 **1. Release and discharge.** The term "release," as used in
36 this section, means termination of institutional in-patient
37 residency and return to permanent residency in the community.
38 The head of the institution in which a person is placed, under
39 section 103, shall, annually, forward to the Commissioner of
40 Health and Human Services a report containing the opinion of a
41 staff psychiatrist as to the mental conditions of that person,
42 stating specifically whether the person may be released or
43 discharged without likelihood that the person will cause injury
44 to that person or to others due to mental disease or mental
45 defect. The report must also contain a brief statement of the
46 reasons for the opinion. The commissioner shall immediately file
47 the report in the Superior Court for the county in which the
48 person is hospitalized committed. The court shall review each
49 report and, if it is made to appear by the report that any person
50

2 may be ready for release or discharge, the court shall set a date
3 for and hold a hearing on the issue of the person's readiness for
4 release or discharge. The court shall give notice of the hearing
5 and mail a copy of the report to the Attorney General, offices of
6 the district attorney that prosecuted the criminal charges for
7 which the person was ~~acquitted-by-reason-of-insanity~~ committed
8 under section 103 and the offices of the district attorneys in
9 whose district the release petition was filed or in whose
10 district release may occur. At the hearing, the court shall
11 receive the testimony of at least one psychiatrist who has
12 treated the person and a member of the State Forensic Service who
13 has examined the person, the testimony of any independent
14 psychiatrist or licensed clinical psychologist who is employed by
15 the ~~prosecuter~~ prosecutor and has examined the person and any
16 other relevant testimony. If, after hearing, the court finds
17 that the person may be released or discharged without likelihood
18 that the person will cause injury to that person or to others due
19 to mental disease or mental defect, the court shall order, as
20 applicable:

21 A. Release from the institution, provided that:

22 (1) The order for release may include conditions
23 determined appropriate by the court, including, but not
24 limited to, out-patient treatment and supervision by
25 the Department of Health and Human Services, Division
26 of Mental Health; and

27 (2) The order for release includes the condition that
28 the person must be returned to the institution
29 immediately upon the order of the commissioner whenever
30 the person fails to comply with other conditions of
31 release ordered by the court; or

32 B. Discharge from the custody of the Commissioner of Health
33 and Human Services.

34 Release from the institution is subject to annual review by the
35 court and, except for return as ordered by the commissioner under
36 paragraph A, subparagraph (1), must continue until terminated by
37 the court. Each person released under this section shall remain
38 in the custody of the commissioner. The Commissioner of Health
39 and Human Services shall inform the public safety officer of the
40 municipality or the sheriff's office of the county into which the
41 person is released of the release.

42 **Sec. 3. 15 MRSA §104-A, sub-§2**, as corrected by RR 1995, c. 2,
43 §29 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt.
44 B, §7, is further amended to read:

2 **2. Modified release treatment.** Any individual hospitalized
3 committed pursuant to section 103 may petition the Superior Court
4 for the county in which that person is hospitalized committed for
5 a release treatment program allowing the individual to be off
6 institutional grounds for a period of time, not to exceed 14 days
7 at any one time. The petition must contain a report from the
8 institutional staff, including at least one psychiatrist, and the
9 report must define the patient's present condition; the planned
10 treatment program involving absence from the institution; the
11 duration of the absence from the institution; the amount of
12 supervision during the absence; the expectation of results from
13 the program change; and the estimated duration of the treatment
14 program before further change. This petition must be forwarded
15 to the court no later than 60 days prior to the beginning of the
16 modified treatment program. If the court considers that the
17 individual being off the grounds, as described in the treatment
18 plan, is inappropriate, it shall notify the hospital that the
19 plan is not approved and shall schedule a hearing on the matter.
20 The clerk of courts upon receipt of the proposed treatment
21 program shall give notice of the receipt of this program by
22 mailing a copy to the office of the district attorney that
23 prosecuted the criminal charges ~~of~~ for which the person was
24 acquitted ~~by reason of insanity~~ committed under section 103, the
25 offices of the district attorneys in whose district the release
26 petition was filed or in whose district release may occur and the
27 Attorney General who may file objections and request a hearing on
28 the matter. Representatives of the Attorney General and the
29 office that prosecuted the person may appear at any hearing on
30 the matter. At the hearing, the court shall receive the
31 testimony of a member of the State Forensic Service who has
32 examined the person, any independent psychiatrist or licensed
33 clinical psychologist who is employed by the ~~proseuter~~
34 prosecutor and has examined the person and any other relevant
35 testimony. If the court does not respond within 60 days to the
36 proposed treatment plan and no objections and request for hearing
37 are filed by the district attorney or Attorney General, it may
38 then be put into effect by the administrator of the hospital on
39 the assumption that the court approved the treatment plan. The
40 Commissioner of Health and Human Services shall inform the public
41 safety officer of the municipality or the sheriff's office of the
42 county in which the person will spend any unsupervised time under
43 the release treatment program of that program.

44 **Sec. 4. 15 MRSA §104-A, sub-§3**, as corrected by RR 1995, c. 2,
45 §30 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt.
46 B, §7, is further amended to read:

47 **3. Other provisions concerning initial release or**
48 **discharge.** A report must be forwarded and filed and hearings
49 must be held in accordance with subsection 1, without unnecessary
50

2 delay when, at any time, it is the opinion of a staff
3 psychiatrist that a patient hospitalized committed under section
4 103, may be released or discharged without likelihood that the
5 patient will cause injury to that patient or to others due to
6 mental disease or mental defect.

7
8 A person hospitalized committed under section 103, or the
9 person's spouse or next of kin, may petition the Superior Court
10 for the county in which that person is hospitalized committed for
11 a hearing under subsection 1. Upon receiving the petition, the
12 court shall request and must be furnished by the Commissioner of
13 Health and Human Services a report on the mental condition of
14 that person, as described in subsection 1. A hearing must be
15 held on each petition, and release or discharge, if ordered, must
16 be in accordance with subsection 1. If release or discharge is
17 not ordered, a petition may not be filed again for the release or
18 discharge of that person for 6 months. Any person released under
19 subsection 1 or the person's spouse or next of kin may at any
20 time after 6 months from the release petition the Superior Court
21 for the county in which that person was hospitalized committed
22 for that person's discharge under subsection 1. If discharge is
23 not ordered, a petition for discharge may not be filed again for
24 6 months.

25 **Sec. 5. 17-A MRSA §39, sub-§1**, as amended by PL 1985, c. 796,
26 §5, is further amended to read:

27 1. A defendant is not criminally responsible by reason of
28 insanity if, at the time of the criminal conduct, as a result of
29 mental disease or defect, he the defendant lacked substantial
30 capacity to appreciate the wrongfulness of his the criminal
31 conduct. ~~The defendant shall have the burden of proving, by a~~
32 ~~preponderance of the evidence, that he lacks criminal~~
33 ~~responsibility as described in this subsection.~~

34
35 **Sec. 6. 17-A MRSA §39, sub-§3** is enacted to read:

36
37 3. Lack of criminal responsibility by reason of insanity is
38 an affirmative defense.

39
40 **Sec. 7. 17-A MRSA §40**, as amended by PL 1985, c. 796, §6, is
41 further amended to read:

42
43 **§40. Procedure upon plea of not guilty coupled with plea of not**
44 **criminally responsible by reason of insanity**

45
46 1. When the defendant enters a plea of not guilty together
47 with a plea of not criminally responsible by reason of insanity,
48 he the defendant shall also elect whether the trial shall must be
49 in 2 stages as provided for in this section, or a unitary trial

in which both the issues of guilt and of insanity are submitted
2 simultaneously to the jury. At the defendant's election, the jury
shall must be informed that the 2 pleas have been made and that
4 the trial will be in 2 stages.

6 2. If a 2-stage trial is elected by the defendant, there
shall must be a separation of the issue of guilt from the issue
8 of insanity in the following manner.

10 A. The issue of guilt shall must be tried first and the
issue of insanity tried only if the jury returns a verdict
12 of guilty. If the jury returns a verdict of not guilty, the
proceedings shall must terminate.

14 B. Evidence of mental disease or defect, as defined in
16 section 39, subsection 2, shall is not be admissible in the
guilt or innocence phase of the trial for the purpose of
18 establishing insanity. Such evidence shall must be
admissible for that purpose only in the 2nd phase following
20 a verdict of guilty.

22 3. The issue of insanity shall must be tried before the
same jury as tried the issue of guilt. Alternate jurors who were
24 present during the first phase of the trial but who did not
participate in the deliberations and verdict thereof may be
26 substituted for jurors who did participate. The defendant may
elect to have the issue of insanity tried by the court without a
28 jury.

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

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

46 SUMMARY

48 This bill replaces disparate references to the affirmative
defense of insanity in the Maine Revised Statutes, Title 15,
50 section 103 and in Title 17-A, sections 39 and 40 with the more

2 accurate and understandable phrase "not criminally responsible by
reason of insanity," which is consistent with the Maine Rules of
4 Criminal Procedure, Rules 11(a)(1) and 11A(h) relative to the
plea of insanity. The bill also defines "not criminally
6 responsible by reason of insanity," which clarifies that Title
15, section 103 has application to any insanity plea, finding or
8 verdict stemming from former Title 15, section 102; current Title
17-A, section 39 or any earlier version of that section; former
10 Title 17-A, section 58; or former section 17-B, chapter 149 of
the Revised Statutes of 1954. The bill amends Title 15, section
12 104-A by striking the words "acquitted by reason of insanity" and
replacing them with a reference to Title 15, section 103, which
14 directs a defendant's being committed following the acceptance of
a negotiated insanity plea or following a verdict or finding of
16 insanity. The bill also identifies insanity as an affirmative
defense and makes technical language changes to conform to
legislative drafting guidelines.