

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

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**

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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 **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  
amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §7, is  
6 further amended to read:

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

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

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

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

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

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 ~~prösecuter~~ 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  
50

1 in which both the issues of guilt and of insanity are submitted  
2 simultaneously to the jury. At the defendant's election, the jury  
3 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  
7 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  
11 issue of insanity tried only if the jury returns a verdict  
12 of guilty. If the jury returns a verdict of not guilty, the  
13 proceedings shall must terminate.

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

22 3. The issue of insanity shall must be tried before the  
23 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  
25 participate in the deliberations and verdict thereof may be  
26 substituted for jurors who did participate. The defendant may  
27 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,  
31 the trial shall must proceed to the 2nd phase. The defendant and  
32 the State may rely upon evidence admitted during the first phase  
33 or they may recall witnesses. Any evidence relevant to insanity  
34 is admissible. The order of proof shall must reflect that the  
35 defendant has the burden of establishing his the defendant's lack  
36 of criminal responsibility by reason of insanity. The jury shall  
37 return a verdict that the defendant is criminally responsible or  
38 not criminally responsible by reason of mental-disease-or-defect  
39 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  
43 court without a jury.

## 46 SUMMARY

48 This bill replaces disparate references to the affirmative  
49 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.