

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

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Legislative Document

No. 1200

H.P. 824

House of Representatives, March 25, 2009

**An Act To Streamline the Process for Court-ordered Mental Health
Examinations in Criminal Cases**

Reported by Representative PRIEST of Brunswick for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2. Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule 218.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

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

2 **Sec. 1. 15 MRSA §101-B**, as amended by PL 2001, c. 634, §1 and PL 2003, c.
3 689, Pt. B, §§6 and 7, is repealed.

4 **Sec. 2. 15 MRSA §101-C, sub-§1**, as enacted by PL 1987, c. 402, Pt. A, §109, is
5 amended to read:

6 **1. Written demand for records.** When a person or entity has been ordered to
7 perform an examination or evaluation pursuant to section ~~101-B~~ **101-D**, and the person to
8 be examined has sought the examination, joined in a request or order for the examination
9 or has entered a plea of not criminally responsible by reason of insanity, that person may
10 make written demand upon any individual, partnership, association, corporation,
11 institution or governmental entity to produce the records or copies of the records, in
12 whatever medium preserved, of the subject of the examination or evaluation.

13 **Sec. 3. 15 MRSA §101-D** is enacted to read:

14 **§101-D. Mental examination of persons accused of crime**

15 **1. Competency to proceed.** The court may for cause shown order that the defendant
16 be examined to evaluate the defendant's competency to proceed as provided in this
17 subsection.

18 A. Upon motion by the defendant or by the State, or upon its own motion, a court
19 having jurisdiction in any criminal case may for cause shown order that the defendant
20 be examined by the State Forensic Service for evaluation of the defendant's
21 competency to proceed. When ordered to evaluate a defendant under this paragraph,
22 the State Forensic Service shall promptly examine the defendant and report its initial
23 determination regarding the defendant's competency to proceed to the court. If,
24 based upon its examination, the State Forensic Service concludes that further
25 examination is necessary to fully evaluate the defendant's competency to proceed, the
26 report must so state and must set forth recommendations as to the nature and scope of
27 any further examination. The court shall forward any report filed by the State
28 Forensic Service to the defendant or the defendant's attorney and to the attorney for
29 the State.

30 B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A
31 must take place within 21 days of the court's order, and the report of that examination
32 must be filed within 30 days of the court's order. If further examination is ordered
33 pursuant to paragraph C, the report of that examination must be filed within 60 days
34 of the court's order. If the State Forensic Service requires an extension of the
35 deadlines set forth above, it shall communicate its request and the reasons for that
36 request to the court and to counsel for the parties. The court shall accommodate any
37 party's request to be heard on the issue of whether an extension should be granted and
38 may grant any extension of time that is reasonable under the circumstances. The
39 examination may take place at the correctional facility where the defendant is
40 incarcerated if the State Forensic Service determines that the correctional facility can
41 provide an appropriate setting for the examination. If the State Forensic Service

1 determines otherwise, the examination will be conducted at a time and place
2 designated by the State Forensic Service. For examinations that take place outside
3 the correctional facility, the correctional facility shall provide transportation and
4 security for the examination.

5 C. If the report submitted pursuant to paragraph A recommends further evaluation of
6 the defendant or upon motion by the defendant or by the State for good cause shown,
7 the court may order further evaluation of the defendant by the State Forensic Service.
8 Any order for further evaluation may designate the specialty of the person to perform
9 the evaluation. In addition, if at any time during a criminal proceeding an issue of
10 competency to proceed arises with respect to a defendant initially determined to be
11 competent, the court may order such further examination by the State Forensic
12 Service as the court finds necessary and appropriate. The court shall forward any
13 further report filed by the State Forensic Service to the defendant or the defendant's
14 attorney and to the attorney for the State.

15 **2. Insanity; abnormal condition of the mind.** The court may for cause shown
16 order that the defendant be evaluated with reference to insanity or abnormal condition of
17 the mind as provided in this subsection.

18 A. Upon motion by the defendant or by the State, a court having jurisdiction in any
19 criminal case may for cause shown order that the defendant be examined by the State
20 Forensic Service for evaluation of the defendant's mental state at the time of the
21 crime with reference to criminal responsibility under Title 17-A, section 39 and
22 abnormal condition of the mind under Title 17-A, section 38. When ordered to
23 evaluate a defendant under this paragraph, the State Forensic Service shall promptly
24 examine the defendant and the circumstances of the crime and provide a report of its
25 evaluation to the court. If, based upon its examination, the State Forensic Service
26 concludes that further examination is necessary to fully evaluate the defendant's
27 mental state at the time of the crime, the report must so state and must set forth
28 recommendations as to the nature and scope of any further examination. The court
29 shall forward any report filed by the State Forensic Service to the defendant or the
30 defendant's attorney and, unless the defendant had objected to the order for
31 examination, to the attorney for the State.

32 The court may order an examination under this paragraph over the objection of the
33 defendant, but any report filed by the State Forensic Service must be impounded and
34 may not be shared with the attorney for the State, unless with reference to criminal
35 responsibility the defendant enters a plea of not criminally responsible by reason of
36 insanity or with reference to an abnormal condition of mind the defendant provides
37 notice to the attorney for the State of the intention to introduce testimony as to the
38 defendant's abnormal condition of mind pursuant to the Maine Rules of Criminal
39 Procedure, Rule 16A(a).

40 B. If the defendant enters a plea of not criminally responsible by reason of insanity,
41 the court shall order evaluation under paragraph A.

42 C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A
43 must take place within 45 days of the court's order and the report of that examination
44 must be filed within 60 days of the court's order. If further examination is ordered

1 pursuant to paragraph D, the report of that examination must be filed within 90 days
2 of the court's order. If the State Forensic Service requires an extension of the
3 deadlines set forth above, it shall communicate its request and the reasons for that
4 request to the court and to counsel for the parties. The court shall accommodate a
5 party's request to be heard on the issue of whether an extension should be granted and
6 may grant any extension of time that is reasonable under the circumstances. The
7 examination may take place at the correctional facility where the defendant is
8 incarcerated if the State Forensic Service determines that the correctional facility can
9 provide an appropriate setting for the examination. If the State Forensic Service
10 determines otherwise, the examination must be conducted at a time and place
11 designated by the State Forensic Service. For examinations that take place outside
12 the correctional facility, the correctional facility shall provide transportation and
13 security for the examination.

14 D. If the report submitted pursuant to paragraph A recommends further evaluation of
15 the defendant or upon motion by the defendant or by the State for good cause shown,
16 the court may order further evaluation of the defendant by the State Forensic Service.
17 An order for further evaluation may designate the specialty of the person to perform
18 the evaluation. The court shall forward any further report filed by the State Forensic
19 Service to the defendant or the defendant's attorney and, unless the defendant had
20 objected to the order for examination, to the attorney for the State.

21 The court may order an examination under this paragraph over the objection of the
22 defendant, but any report filed by the State Forensic Service must be impounded and
23 may not be shared with the attorney for the State, unless with reference to criminal
24 responsibility the defendant enters a plea of not criminally responsible by reason of
25 insanity or with reference to an abnormal condition of mind the defendant provides
26 notice to the attorney for the State of the intention to introduce testimony as to the
27 defendant's abnormal condition of mind pursuant to the Maine Rules of Criminal
28 Procedure, Rule 16A(a).

29 **3. Mental condition relevant to other issues.** The court may for good cause shown
30 order that the defendant be examined to evaluate the defendant's mental condition with
31 reference to issues other than competency, insanity or abnormal condition of the mind as
32 provided in this subsection.

33 A. Upon motion by the defendant or by the State or upon its own motion a court
34 having jurisdiction in any criminal case may for cause shown order that the defendant
35 be examined by the State Forensic Service for evaluation with respect to any issue
36 necessary for determination in the case, including the appropriate sentence. The
37 court's order shall set forth the issue or issues to be addressed by the State Forensic
38 Service. When ordered to evaluate a defendant under this paragraph, the State
39 Forensic Service shall promptly examine the defendant and the circumstances
40 relevant to the issues identified in the court's order and report to the court regarding
41 the defendant's mental condition as it pertains to those issues. Prior to a verdict or
42 finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the
43 court may not order examination under this subsection over the objection of the
44 defendant unless the defendant has asserted, or intends to assert, the defendant's
45 mental condition as a basis for an objection, a defense or for mitigation at sentencing.

1 The court shall forward any report filed by the State Forensic Service to the
2 defendant or the defendant's attorney and to the attorney for the State.

3 B. If the defendant is incarcerated the examination ordered pursuant to paragraph A
4 must take place within 45 days of the court's order and the report of that examination
5 must be filed within 60 days of the court's order. If the State Forensic Service
6 requires an extension of the deadlines set forth above it shall communicate its request
7 and the reasons for that request to the court and to counsel for the parties. The court
8 shall accommodate a party's request to be heard on the issue of whether an extension
9 should be granted and may grant an extension of time that is reasonable under the
10 circumstances. The examination may take place at the correctional facility where the
11 defendant is incarcerated if the State Forensic Service determines that the correctional
12 facility can provide an appropriate setting for the examination. If the State Forensic
13 Service determines otherwise, the examination must be conducted at a time and place
14 designated by the State Forensic Service. For examinations that take place outside
15 the correctional facility, the correctional facility shall provide transportation and
16 security for the examination.

17 **4. Commitment for observation.** The court may commit the defendant to the
18 custody of the Commissioner of Health and Human Services for placement in an
19 appropriate institution for the care and treatment of people with mental illness or mental
20 retardation as set forth in this subsection.

21 A. If the State Forensic Service determines that observation of the defendant in an
22 appropriate institution for the care of people with mental illness or mental retardation
23 will materially enhance its ability to perform an evaluation ordered pursuant to
24 subsection 1, 2, 3 or 9 the State Forensic Service shall so advise the court. The State
25 Forensic Service may make this determination based upon consultation with the
26 defendant's attorney and the attorney for the State and the court and upon such other
27 information as it determines appropriate. In addition, the State Forensic Service may
28 include such a determination in a report to the court that recommends further
29 evaluation of the defendant.

30 B. Upon a determination by the State Forensic Service under paragraph A, a court
31 having jurisdiction in a criminal case may commit the defendant to the custody of the
32 Commissioner of Health and Human Services for placement in an appropriate
33 institution for the care and treatment of people with mental illness or mental
34 retardation for observation for a period not to exceed 60 days. If the State Forensic
35 Service requires additional time for observation, it shall communicate its request and
36 the reasons for that request to the court and to counsel for the parties. The court shall
37 accommodate a party's request to be heard on the issue of whether an extension
38 should be granted and may extend the commitment for up to an additional 90 days.
39 Unless the defendant objects, an order under this paragraph must authorize the
40 institution where the defendant is placed by the Commissioner of Health and Human
41 Services to provide treatment to the defendant. When further observation of the
42 defendant is determined no longer necessary by the State Forensic Service, the
43 commissioner shall report that determination to the court and the court shall terminate
44 the commitment.

1 C. If the court has provided for remand to a correctional facility following the
2 commitment under paragraph B, the correctional facility shall execute the remand
3 order upon advice from the Commissioner of Health and Human Services that
4 commitment is determined no longer necessary.

5 **5. Finding of incompetence; custody; bail.** If, after hearing upon motion of the
6 attorney for the defendant or upon the court's own motion, the court finds that any
7 defendant is incompetent to stand trial, the court shall continue the case until such time as
8 the defendant is determined by the court to be competent to stand trial and may either:

9 A. Commit the defendant to the custody of the Commissioner of Health and Human
10 Services to be placed in an appropriate institution for the care and treatment of people
11 with mental illness or mental retardation for observation, care and treatment. At the
12 end of 30 days or sooner, and again in the event of recommitment, at the end of 60
13 days and one year, the State Forensic Service shall forward a report to the
14 Commissioner of Health and Human Services relative to the defendant's competence
15 to stand trial and its reasons. The Commissioner of Health and Human Services shall
16 without delay file the report with the court having jurisdiction of the case. The court
17 shall without delay set a date for and hold a hearing on the question of the defendant's
18 competence to stand trial and receive all relevant testimony bearing on the question.
19 If the court determines that the defendant is not competent to stand trial, but there
20 does exist a substantial probability that the defendant will be competent to stand trial
21 in the foreseeable future, the court shall recommit the defendant to the custody of the
22 Commissioner of Health and Human Services to be placed in an appropriate
23 institution for the care and treatment of people with mental illness or mental
24 retardation for observation, care and treatment. When a person who has been
25 evaluated on behalf of the court by the State Forensic Service is committed into the
26 custody of the Commissioner of the Department of Human Services under this
27 paragraph, the court shall order that the State Forensic Service share any information
28 that it has collected or generated with respect to the person with the institution in
29 which the person is placed. If the defendant is charged with an offense under Title
30 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court
31 determines that the defendant is not competent to stand trial and there does not exist a
32 substantial probability that the defendant can be competent in the foreseeable future,
33 the court shall dismiss all charges against the defendant and order the Commissioner
34 of Health and Human Services to commence involuntary commitment proceedings
35 pursuant to Title 34-B, chapter 3, subchapter 4 or chapter 5, subchapter 3. If the
36 defendant is charged with offenses not listed in the previous sentence and the court
37 determines that the defendant is not competent to stand trial and there does not exist a
38 substantial probability that the defendant can be competent in the foreseeable future,
39 the court shall dismiss all charges against the defendant and notify the appropriate
40 authorities who may institute civil commitment procedures for the individual; or

41 B. Issue a bail order in accordance with chapter 105-A, with or without the further
42 order that the defendant undergo observation at a state mental hospital or mental
43 health facility approved by the Department of Health and Human Services or by
44 arrangement with a private psychiatrist or licensed clinical psychologist and
45 treatment when it is determined appropriate by the State Forensic Service. When
46 outpatient observation and treatment is ordered an examination must take place

1 within 45 days of the court's order and the State Forensic Service shall file its report
2 of that examination within 60 days of the court's order. The State Forensic Service's
3 report to the court must contain the opinion of the State Forensic Service concerning
4 the defendant's competency to stand trial and its reasons. The court shall without
5 delay set a date for and hold a hearing on the question of the defendant's competence
6 to stand trial, which must be held pursuant to and consistent with the standards set out
7 in paragraph A.

8 **6. Examiners.** Evaluation of a defendant by the State Forensic Service pursuant to
9 this section must be performed by a licensed psychologist or a psychiatrist. The State
10 Forensic Service may determine whether an examination will be performed by a licensed
11 psychologist or a psychiatrist unless the court has designated the specialty of the
12 examiner in its order.

13 **7. Competence; proceedings.** Upon a determination that the defendant is
14 competent to stand trial, proceedings with respect to the defendant must be in accordance
15 with the rules of criminal procedure.

16 **8. No release during commitment period; violation.** A person ordered or
17 committed for examination, observation, care or treatment pursuant to this section may
18 not be released from the designated institution during the period of examination. An
19 individual responsible for or permitting the release of a person ordered committed
20 pursuant to this section for examination, observation, care or treatment from the
21 designated institution commits a civil violation for which a fine of not more than \$1,000
22 may be adjudged.

23 **9. Examination after sentencing.** If the issue of insanity, competency, abnormal
24 condition of mind or any other issue involving the mental condition of the defendant is
25 raised after sentencing, the court may for cause shown order the convicted person to be
26 examined by the State Forensic Service. If at the time an examination order is entered by
27 the court the sentenced person is in execution of a sentence of imprisonment imposed for
28 any criminal conduct, the time limits and bail provisions of this section do not apply.

29 **Sec. 4. 15 MRSA §103**, as amended by PL 2005, c. 263, §1, is further amended to
30 read:

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

33 When a court accepts a negotiated plea of not criminally responsible by reason of
34 insanity or when a defendant is found not criminally responsible by reason of insanity by
35 jury verdict or court finding, the judgment must so state. In those cases the court shall
36 order the person committed to the custody of the Commissioner of Health and Human
37 Services to be placed in an appropriate institution for the ~~mentally ill or the mentally~~
38 ~~retarded~~ care and treatment of persons with mental illness or mental retardation for care
39 and treatment. Upon placement in the appropriate institution and in the event of transfer
40 from one institution to another of persons committed under this section, notice of the
41 placement or transfer must be given by the commissioner to the committing court.

1 When a person who has been evaluated on behalf of a court by the State Forensic
2 Service is committed into the custody of the Commissioner of Health and Human
3 Services pursuant to this section, the court shall order that the State Forensic Service
4 share any information it has collected or generated with respect to the person with the
5 institution in which the person is placed.

6 As used in this section, "not criminally responsible by reason of insanity" has the
7 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or
8 verdict in this State under former section 102; under a former version of Title 17-A,
9 section 39; under former Title 17-A, section 58; or under former section 17-B, chapter
10 149 of the Revised Statutes of 1954.

11 **Sec. 5. 15 MRSA §2211-A, sub-§8**, as enacted by PL 1995, c. 431, §1, is
12 amended to read:

13 **8. Competency hearing.** Admission to a hospital under this section may not be used
14 to examine or observe a person for the purpose of a criminal proceeding pending in court.
15 Before the trial of a defendant admitted for hospitalization under this section, the court
16 may, at any time upon motion of the defendant's attorney or the attorney for the State or
17 upon the court's own motion, hold a hearing with respect to the competence of that person
18 to stand trial as provided in section ~~101-B~~ 101-D and appropriate disposition may be
19 made. The court's order following a hearing may terminate an admission effected under
20 this section.

21 **Sec. 6. 15 MRSA §3318, sub-§1, ¶B**, as amended by PL 2001, c. 471, Pt. F, §3,
22 is further amended to read:

23 B. Order that the juvenile be examined by a physician or psychologist and refer the
24 juvenile to a suitable facility or program for the purpose of examination, the costs of
25 that examination to be paid by the court. If the report of that examination is that the
26 juvenile is mentally ill or incapacitated to the extent that short-term or long-term
27 hospitalization or institutional confinement is required, the Juvenile Court shall
28 initiate proceedings for voluntary or involuntary commitment as provided in section
29 ~~101-B~~ 101-D and in Title 34-B, chapter 3, subchapter ~~IV~~ 4. The court shall continue
30 the proceedings when a juvenile is voluntarily or involuntarily committed.

31 **Sec. 7. 15 MRSA §3318, sub-§2, ¶B**, as amended by PL 2001, c. 471, Pt. F, §3,
32 is further amended to read:

33 B. The child is not found by the appropriate court to be a mentally ill person or an
34 incapacitated person as defined in section ~~101-B~~ 101-D and in Title 34-B, section
35 5001.

36 **Sec. 8. 17-A MRSA §1175, first ¶**, as amended by PL 2005, c. 527, §14, is
37 further amended to read:

38 Upon complying with subsection 1, a victim of a crime of murder or stalking or of a
39 Class A, Class B or Class C crime for which the defendant is committed to the
40 Department of Corrections or to a county jail or is committed to the custody of the
41 Commissioner of Health and Human Services either under Title 15, section 103 after

1 having been found not criminally responsible by reason of insanity or under Title 15,
2 section ~~101-B~~ 101-D after having been found incompetent to stand trial must receive
3 notice of the defendant's unconditional release and discharge from institutional
4 confinement upon the expiration of the sentence or upon release from commitment under
5 Title 15, section ~~101-B~~ 101-D or upon discharge under Title 15, section 104-A and must
6 receive notice of any conditional release of the defendant from institutional confinement,
7 including probation, supervised release for sex offenders, parole, furlough, work release,
8 intensive supervision, supervised community confinement, home release monitoring or
9 similar program, administrative release or release under Title 15, section 104-A.

10 **Sec. 9. 17-A MRSA §1175, sub-§3, ¶B**, as amended by PL 2005, c. 527, §15, is
11 further amended to read:

12 B. The nature of the release authorized, whether it is a conditional release, including
13 probation, supervised release for sex offenders, parole, furlough, work release,
14 intensive supervision, supervised community confinement, home release monitoring
15 or a similar program, administrative release or release under Title 15, section 104-A,
16 or an unconditional release and discharge upon release from commitment under Title
17 15, section ~~101-B~~ 101-D or upon the expiration of a sentence or upon discharge under
18 Title 15, section 104-A;

19 **Sec. 10. 17-A MRSA §1175, sub-§4, ¶A**, as amended by PL 2005, c. 527, §16,
20 is further amended to read:

21 A. Notice has been provided of an unconditional release or discharge upon the
22 expiration of the sentence or upon release under Title 15, section ~~101-B~~ 101-D or
23 upon discharge under Title 15, section 104-A; or

24 **Sec. 11. 34-B MRSA §1212, sub-§2, ¶A**, as amended by PL 1989, c. 621, §9, is
25 further amended to read:

26 A. To perform examinations of the mental condition of a defendant pursuant to Title
27 15, section ~~101-B~~ 101-D and to do the evaluations or examinations on behalf of any
28 court of record, pursuant to agreement between the commissioner and the jurisdiction
29 requesting that the evaluation be performed;

30 SUMMARY

31 This bill is proposed by the Criminal Law Advisory Commission. The bill
32 reorganizes the Maine Revised Statutes, Title 15 provisions that govern court-ordered
33 mental health examinations of criminal defendants by linking the court's authority to
34 order an examination to the specific issues to be addressed by the examination. The bill
35 creates different provisions governing examinations to review competency to proceed,
36 criminal responsibility and abnormal condition of the mind and mental condition relevant
37 to other issues. By doing so, the bill will conserve resources by eliminating existing
38 language that often resulted in the State Forensic Service's being ordered to address all of
39 these issues when a narrower review would have satisfied the needs of the court and the
40 parties.

1 The bill also eliminates existing language that requires examination by both a
2 psychologist and a psychiatrist in insanity cases, often resulting in the expensive and
3 unnecessary duplication of effort. Instead, the bill gives the court discretion to determine,
4 in conjunction with the State Forensic Service, the number and type of examinations
5 required under the circumstances of a particular case.

6 The bill provides a more flexible mechanism for the court to order a defendant
7 committed for observation in an appropriate institution for the care and treatment of
8 people with mental illness or mental retardation for the purpose of conducting the
9 examination. Under existing law, such commitment may only occur after the State
10 Forensic Service has conducted an initial examination and recommended commitment in
11 its report to the court. The existing procedure often results in unnecessary expense and
12 delay. Instead, the bill authorizes the court to order commitment when advised by the
13 State Forensic Service that such commitment would materially enhance its ability to
14 conduct the examination. The State Forensic Service may make this determination based
15 upon consultation with the parties and the court and upon such other information it
16 determines appropriate.

17 Finally, the bill ensures that when a person who has been evaluated by the State
18 Forensic Service on behalf of a court is committed into the custody of the Commissioner
19 of Health and Human Services, the court shall order the State Forensic Service to share
20 any information it has gathered with respect to that person with the institution in which
21 the person is placed.