

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1512

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H.P. 1105

House of Representatives, April 9, 2019

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**An Act Regarding Persons Who Are Found Not Criminally  
Responsible and Are Sent out of State for Treatment**

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Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative GATTINE of Westbrook.  
Cosponsored by Senator BREEN of Cumberland and  
Representatives: McCREIGHT of Harpswell, O'CONNOR of Berwick, TALBOT ROSS of  
Portland, WARREN of Hallowell, Senator: SANBORN, L. of Cumberland.

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

2 **Sec. 1. 5 MRSA §12004-I, sub-§47-J** is enacted to read:

3 **47-J.**

4 <u>Human Services</u>	<u>Committee for</u>	<u>Not Authorized</u>	<u>15 MRSA §109</u>
5	<u>Oversight of Out-of-</u>		
6	<u>state Forensic</u>		
7	<u>Patients</u>		

8 **Sec. 2. 15 MRSA §103**, as amended by PL 2013, c. 424, Pt. B, §3, is further  
9 amended to read:

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

12 ~~When~~ A judgment must state if a court accepts a negotiated plea of not criminally  
13 responsible by reason of insanity or ~~when if~~ a defendant is found not criminally  
14 responsible by reason of insanity by jury verdict or court finding, ~~the judgment must so~~  
15 ~~state. In those cases.~~ Upon a judgment of not criminally responsible by reason of  
16 insanity, the court shall order the person committed to the custody of the Commissioner  
17 of Health and Human Services to be placed in an appropriate institution for the care and  
18 treatment of persons with mental illness or in an appropriate residential program that  
19 provides care and treatment for persons who have intellectual disabilities or autism for  
20 care and treatment. If the court determines that a person committed under this section is  
21 to be placed in an institution outside the State, prior to the placement the court shall  
22 conduct a hearing to determine if the placement outside the State is the least restrictive  
23 appropriate placement, if an equivalent placement is not available in the State and if the  
24 institution outside the State will comply with the reporting provisions of section 104-A,  
25 subsection 1. Subsequent to being placed in an institution outside the State under this  
26 section, a person may petition the Superior Court of the county in which the person was  
27 committed to determine if the placement outside the State is the least restrictive  
28 appropriate placement and if an equivalent placement is not available in the State. The  
29 court shall give reasonable notice of a hearing under this section to the Attorney General  
30 and the office of the district attorney that prosecuted the criminal charges for which the  
31 person was committed under this section. A hearing under this section must include the  
32 testimony of at least one psychiatrist who has treated the person and a member of the  
33 State Forensic Service who has examined the person, the testimony of an independent  
34 psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has  
35 examined the person, any other relevant testimony and documentation that the institution  
36 outside the State agrees to comply with the reporting provisions of section 104-A,  
37 subsection 1. If, after hearing, the court finds that the placement outside the State is not  
38 the least restrictive, that there is an equivalent appropriate placement in the State or there  
39 is insufficient evidence that the institution outside the State agrees to comply with the  
40 reporting provision of section 104-A, subsection 1, the court shall order that the person  
41 remain in or be placed in an appropriate placement in the State, which may include an  
42 order that the person be returned from outside the State. If the court determines that a

1 person is to be placed in an institution outside the State, the placement may not proceed  
2 until the institution outside the State agrees in writing to comply with the reporting  
3 provisions of section 104-A, subsection 1. Upon placement in the appropriate institution  
4 or residential program and in the event of transfer from one institution or residential  
5 program to another of ~~persons~~ a person committed under this section, notice of the  
6 placement or transfer must be given by the commissioner to the committing court.

7 When a person who has been evaluated on behalf of a court by the State Forensic  
8 Service is committed into the custody of the Commissioner of Health and Human  
9 Services pursuant to this section, the court shall order that the State Forensic Service  
10 share any information it has collected or generated with respect to the person with the  
11 institution or residential program in which the person is placed and to the committee for  
12 oversight of out-of-state forensic patients under section 109 upon request of the  
13 committee and production of the person's written authorization under section 109,  
14 subsection 6.

15 As used in this section, "not criminally responsible by reason of insanity" has the  
16 same meaning as in Title 17-A, section 39 and includes any comparable plea, finding or  
17 verdict in this State under former section 102; under a former version of Title 17-A,  
18 section 39; under former Title 17-A, section 58; or under former section 17-B, chapter  
19 149 of the Revised Statutes of 1954.

20 **Sec. 3. 15 MRSA §104-A, sub-§1**, as amended by PL 2005, c. 464, §1, is further  
21 amended to read:

22 **1. Release and discharge.** The term "release," as used in this section, means  
23 termination of institutional inpatient residency and return to permanent residency in the  
24 community. The head of the institution in which a person is placed, under section 103,  
25 shall, annually, forward to the Commissioner of Health and Human Services a report  
26 containing the opinion of a staff psychiatrist as to the mental conditions of that person,  
27 stating specifically whether the person may be released or discharged without likelihood  
28 that the person will cause injury to that person or to others due to mental disease or  
29 mental defect. If a person has been placed in an institution outside the State pursuant to  
30 section 103, the institution quarterly shall forward the report to the commissioner. The  
31 report must also contain a brief statement of the reasons for the opinion. If a person who  
32 has been found not criminally responsible by reason of insanity for the crime of murder  
33 or a Class A crime and was committed under section 103 is the subject of a report finding  
34 that the person may be released, the report must specifically ~~describe~~ recommend the  
35 supervision for the Department of Health and Human Services ~~will to~~ provide the person  
36 and must specifically include measures for the department ~~will to~~ take to provide  
37 psychoactive medication monitoring of the person. The commissioner shall immediately  
38 file the report in the Superior Court for the county in which the person is committed. The  
39 court shall review each report and, if it is made to appear by the report that any person  
40 may be ready for release or discharge, the court shall set a date for and hold a hearing on  
41 the issue of the person's readiness for release or discharge. The court shall give notice of  
42 the hearing and mail a copy of the report to the Attorney General, offices of the district  
43 attorney that prosecuted the criminal charges for which the person was committed under  
44 section 103 and the offices of the district attorneys in whose district the release petition

1 was filed or in whose district release may occur. At the hearing, the court shall receive  
2 the testimony of at least one psychiatrist who has treated the person and a member of the  
3 State Forensic Service who has examined the person, the testimony of any independent  
4 psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has  
5 examined the person and any other relevant testimony. If, after hearing, the court finds  
6 that the person may be released or discharged without likelihood that the person will  
7 cause injury to that person or to others due to mental disease or mental defect, the court  
8 shall order, as applicable:

9 A. Release from the institution, provided that:

10 (1) The order for release includes conditions determined appropriate by the  
11 court, including, but not limited to, outpatient treatment and supervision by the  
12 Department of Health and Human Services, Division of Mental Health. If the  
13 order for release covers a person found not criminally responsible by reason of  
14 insanity for the crime of murder or a Class A crime and was committed under  
15 section 103, the order must direct the Department of Health and Human Services  
16 to provide the level of supervision necessary, including specific measures to  
17 provide psychoactive medication monitoring; and

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

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

22 Release from the institution is subject to annual review by the court and, except for return  
23 as ordered by the commissioner under paragraph A, subparagraph (1), must continue until  
24 terminated by the court. Each person released under this section ~~shall remain~~ remains in  
25 the custody of the commissioner. The Commissioner of Health and Human Services shall  
26 inform the public safety officer of the municipality or the sheriff's office of the county  
27 into which the person is released of the release.

28 **Sec. 4. 15 MRSA §109** is enacted to read:

29 **§109. Committee for the oversight of out-of-state forensic patients**

30 **1. Definitions.** As used in this section, unless the context otherwise indicates, the  
31 following words have the following meanings.

32 A. "Commissioner" means the Commissioner of Health and Human Services.

33 B. "Committee" means an oversight committee to review the status of forensic  
34 patients placed in institutions outside the State.

35 C. "Department" means the Department of Health and Human Services.

36 D. "Patient" means a forensic patient placed in an institution outside the State under  
37 section 103.

38 **2. Committee convened.** The commissioner shall convene an oversight committee  
39 to review the status of forensic patients placed in institutions outside the State.

1           **3. Membership.** The committee consists of 6 members appointed by the  
2 commissioner as follows:

3           A. A representative of a statewide organization representing consumers in public  
4 policy and mental health services recognized by the department;

5           B. A representative of a national organization representing people with mental illness  
6 recognized by the department;

7           C. A psychiatrist licensed in the State;

8           D. A clinical social worker licensed in the State;

9           E. A person certified as an intentional peer support specialist by the Office of  
10 Substance Abuse and Mental Health Services; and

11           F. A family member of a patient who is involved in the patient's care.

12 The term of a member is one year and a member may be appointed to one or more  
13 successive terms. The members shall select a chair from among the membership. The  
14 committee shall meet at least quarterly and at other times as determined by the chair.  
15 Four members of the committee constitute a quorum. Members serve without  
16 compensation. The department shall provide administrative support to the committee.

17           **4. Duties.** The duties of the committee include:

18           A. Reviewing, subject to subsection 6, every case of a patient, including the patient's  
19 medical and treatment records and any quarterly reports provided under section  
20 104-A, subsection 1, to determine if:

21                   (1) The patient is placed in the least restrictive environment;

22                   (2) The patient is receiving adequate treatment; and

23                   (3) The department is actively working on a plan to return the patient to the  
24 State; and

25           B. Issuing recommendations under subsection 5.

26           **5. Recommendations.** Based on its review under subsection 4, the committee may  
27 issue recommendations to be forwarded to the commissioner, the head of the institution  
28 where the patient is placed, the court of record, a family member designated by the  
29 patient and the patient's attorney or, if the patient does not have an attorney, the patient's  
30 attorney of record. The committee shall state in the recommendations if the committee  
31 finds that the standards under subsection 4 are not being met. The recommendations may  
32 be used by the patient's attorney or attorney of record to request a hearing under section  
33 103.

34           **6. Confidentiality.** Committee meetings and findings are confidential. A patient or  
35 the patient's authorized designee or guardian shall execute a written authorization form  
36 allowing disclosure of the patient's records to the committee.

1 **SUMMARY**

2 This bill concerns persons charged with crimes who are judged not criminally  
3 responsible by reason of insanity who are placed in an institution outside the State. The  
4 bill:

5 1. Requires the court, before placing a person in an institution outside the State or  
6 upon request of the person after being placed outside the State, to conduct a hearing to  
7 find that the institution is the least restrictive placement, that there is not an equivalent  
8 placement within the State and that the institution outside the State will comply with state  
9 reporting requirements;

10 2. Requires an institution outside the State in which a patient is placed to provide  
11 quarterly status reports on the patient to the Commissioner of Health and Human  
12 Services; and

13 3. Directs the Commissioner of Health and Human Services to convene an oversight  
14 committee to review the status of forensic patients placed in institutions outside the State  
15 to determine if a patient is in the least restrictive environment and receiving adequate care  
16 and if the Department of Health and Human Services is actively working on a plan to  
17 return the patient to the State and to make recommendations to the commissioner, the  
18 head of the institution where the patient is placed, the court of record, a family member  
19 designated by the patient and the patient's attorney or, if the patient does not have an  
20 attorney, the patient's attorney of record.