

# 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)

**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND TWELFTH LEGISLATURE

**SECOND REGULAR SESSION**  
January 8, 1986 to April 16, 1986

**SECOND SPECIAL SESSION**  
May 28, 1986 to May 30, 1986

AND AT THE

**THIRD SPECIAL SESSION**  
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN  
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

---

J.S. McCarthy Co., Inc.  
Augusta, Maine

---

---

**PUBLIC LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED AT THE  
SECOND REGULAR SESSION  
of the  
ONE HUNDRED AND TWELFTH LEGISLATURE  
1985

---

---

## CHAPTER 796

H.P. 1702 - L.D. 2397

### AN ACT to Amend the Insanity Defense and Certain Procedures Relating to Committed Insanity Acquittees.

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

Sec. 1. 5 MRSA §12004, sub-§10, ¶A, sub-¶(58-A) is enacted to read:

<u>(58-A)</u>	<u>Mental Health</u>	<u>Release Review</u>	<u>Expenses</u>	<u>34-B MRSA</u>
	<u>and Mental</u>	<u>Advisory</u>	<u>Only</u>	<u>§1213</u>
	<u>Retardation</u>	<u>Committee</u>		

Sec. 2. 15 MRSA §101, first ¶, as amended by PL 1983, c. 580, §2, is further amended to read:

The District Court or the Superior Court having jurisdiction in any criminal case for cause shown may order the defendant examined to determine his mental condition with reference to the issues of criminal responsibility and competence to stand trial. The examination may be conducted at the Augusta Mental Health Institute, Bangor Mental Health Institute, Pineland Center or at a mental health clinic of, or recommended by, the Department Commissioner of Mental Health and Mental Retardation, and when conducted at any such facility shall be the responsibility of a ~~psychiatrist or of a licensed clinical psychologist, who may join with him in such examination other psychiatrists or licensed clinical psychologists, as in his opinion are required~~ the State Forensic Service. The examination may be conducted by a psychiatrist or licensed clinical psychologist independent from any such facility, employed for such that purpose by the court. The court in selecting the examination site shall consider proximity to the court, availability of an examiner or examiners, and the necessity for security precautions. No person may be presented for examination under this paragraph without arrangements therefor with the head of the institution or clinic or with the individual examiner being first made by the court, clerk of courts or sheriff. The opinion of the examiner or examiners relative to the mental condition of the respondent shall be reported forthwith to the court following examination.

Sec. 3. 15 MRSA §101, 2nd ¶, as amended by PL 1983, c. 580, §3, is repealed and the following enacted to read:

The court shall order the defendant to be further examined by a psychiatrist and a clinical psychologist from the State Forensic Service if:

1. It appears to the court, based on the report of any such examiner that:

A. The defendant suffers or suffered from a mental disease or defect affecting his criminal responsibility or his competence to stand trial; or

B. Further observation is required; or

2. The defendant enters or persists in a plea of not guilty by reason of insanity for a period in excess of 21 days after the report in the first paragraph is filed.

The court may order that observations, interviews and investigative reports regarding the behavior of the defendant made by law enforcement officials be made available to the designated psychiatrist and licensed clinical psychologist of the State Forensic Service for the limited purpose of this examination. If the examination by the designees can be completed without admission, a report of the results of the completed examination shall be forwarded to the court forthwith. If the designated examiners of the Commissioner of Mental Health and Mental Retardation determine that admission to an appropriate institution for the mentally ill or mentally retarded is necessary for complete examination, the examiners shall so notify the court which may order the defendant committed to the custody of the Commissioner of Mental Health and Mental Retardation to be placed in an appropriate institution for the mentally ill or the mentally retarded, to be there detained and observed by the superintendent, or his delegate, and professional staff for a period of time not to exceed 60 days, for the purpose of ascertaining the mental condition of the defendant. When further detention for observation is deemed no longer necessary, the commissioner shall report this fact to the court. The court shall then order the person returned to the appropriate court for disposition; if the court ordering commitment for observation has provided for remand to the county jail following completion of the observation in the commitment order, the sheriff or any one or more of his deputies shall execute the remand order upon advice from the commissioner of completion of the observation. A report of the results of the observation shall be forwarded promptly to the court by the commissioner.

Sec. 4. 15 MRSA §104-A, as repealed and replaced by PL 1985, c. 131, §1, is amended to read:

§104-A. Release and discharge, hearing, payment of fees

1. Release and discharge. The term "release," as used in this section, means termination of institutional in-patient residency and return to permanent residency in the community. The head of the institution in which a person is placed, under section 103, shall, annually, forward to the Commissioner of Mental Health and Mental Retardation a report containing the opinion of a staff psychiatrist as to the mental conditions of that person, stating specifically whether he may be released or discharged without likelihood that he will cause injury to himself or to others due to mental disease or mental defect. The report shall also contain a brief statement of the reasons for the opinion. The commissioner shall forthwith file the report in the Superior Court for the county in which the person is hospitalized. The court shall review each report and, if it is made to appear by the report that any person may be ready for release or discharge, the court shall set a date for and hold a hearing on the issue of the person's readiness for release or discharge. The court shall give notice of the hearing and mail a copy of the report to the Attorney General, offices of the district attorney which prosecuted the criminal charges for which the person was acquitted by reason of insanity and the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur. At the hearing, the court shall receive the testimony of at least one psychiatrist who has ~~observed or treated that~~ the person and a member of the State Forensic Service who has examined the person, the testimony of any independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person and any other relevant testimony. If, after hearing, the court finds that the person may be released or discharged without likelihood that he will cause injury to himself or to others due to mental disease or mental defect, the court shall order, as applicable:

A. Release from the institution, provided that:

(1) The order for release may include conditions deemed appropriate by the court, including, but not limited to, out-patient treatment and supervision by the Department

of Corrections, Division of Probation and Parole Mental Health and Mental Retardation, Bureau of Mental Health; and

(2) The order for release shall include the condition that the person shall be returned to the institution forthwith upon the order of the commissioner whenever the person fails to comply with other conditions of release ordered by the court; or

B. Discharge from the custody of the Commissioner of Mental Health and Mental Retardation.

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

2. Modified release treatment. Any individual hospitalized pursuant to section 103, may petition the Superior Court for the county in which that person is hospitalized for a release treatment program allowing the individual to be off institutional grounds for a period of time, not to exceed 14 days at any one time. The petition shall contain a report from the institutional staff, including at least one psychiatrist, and the report shall define the patient's present condition; the planned treatment program involving absence from the institution; the duration of the absence from the institution; the amount of supervision during the absence; the expectation of results from the program change; and the estimated duration of the treatment program before further change. This petition shall be forwarded to the court no later than 60 days prior to the beginning of the modified treatment program. If the court considers that the individual being off the grounds, as described in the treatment plan, is inappropriate, it shall notify the hospital that the plan is not approved and shall schedule a hearing on the matter. The clerk of courts upon receipt of the proposed treatment program shall give notice of the receipt of this program by mailing a copy to the office of the district attorney which prosecuted the criminal charges of which the person was acquitted by reason of insanity, the offices of the district attorneys in

whose district the release petition was filed or in whose district release may occur and Attorney General, who may file objections and request a hearing on the matter. Representatives of the Attorney General and the office that prosecuted the person may appear at any hearing on the matter. At the hearing, the court shall receive the testimony of a member of the State Forensic Service who has examined the person, any independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person and any other relevant testimony. If the court does not respond within 60 days to the proposed treatment plan and no objections and request for hearing are filed by the district attorney or Attorney General, it may then be put into effect by the administrator of the hospital on the assumption that the court approved the treatment plan. The Commissioner of Mental Health and Mental Retardation shall inform the public safety officer of the municipality or the sheriff's office of the county in which the person will spend any unsupervised time under the release treatment program of that program.

3. Other provisions concerning initial release or discharge. A report shall be forwarded and filed and hearings shall be held in accordance with subsection 1, without unnecessary delay when, at any time, it is the opinion of a staff psychiatrist that a patient hospitalized under section 103, may be released or discharged without likelihood that he will cause injury to himself or to others due to mental disease or mental defect.

A person hospitalized under section 103, or his spouse or next of kin, may petition the Superior Court for the county in which that person is hospitalized for a hearing under subsection 1. Upon receiving the petition, the court shall request and be furnished by the Commissioner of Mental Health and Mental Retardation a report on the mental condition of that person, as described in subsection 1. A hearing shall be held on each petition, and release or discharge, if ordered, shall be in accordance with subsection 1. If release or discharge is not ordered, a petition shall not be filed again for the release or discharge of that person for 6 months. Any person released under subsection 1 or his spouse or next of kin may at any time after 6 months from the release petition the Superior Court for the county in which he was hospitalized for his discharge under subsection 1. If discharge is not ordered, a petition for discharge may not be filed again for 6 months.



4. Return to institution upon commissioner's order. The commissioner may order any person released under subsection 1, paragraph A, who fails to comply with the conditions of release ordered by the court, as evidenced by the affidavit of any interested person, to return to the institution from which he was released. A hearing shall be held for the purpose of reviewing the order for release within 7 days of the 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, 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.

5. Reinstitutionalization due to likelihood of causing injury. Any person released under subsection 1, paragraph A, whose reinstitutionalization, due to the likelihood that he will cause injury to himself or others due to mental disease or mental defect, is considered necessary, upon the verified petition of any interested person, may be brought before any Justice of the Superior Court upon his order. A hearing shall 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 was released pending the hearing, which detention shall not exceed 14 days. The psychiatrist responsible for the observation and 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 community without likelihood that he will cause injury to himself or others due to mental disease or mental defect. The court shall receive the testimony of the psychiatrist who observed or treated the person during the period of detention, any member of the State Forensic Service who has examined the person during the period of detention, and any other relevant testimony. Following the hearing, the court may reissue, modify or rescind the previous order of release.

6. Involuntary hospitalization; notice; appointed counsel. Any person released under subsection 1, paragraph A, may be admitted to a hospital under any provision of Title 34-B, chapter 3, subchapter IV, Article 3, while the order for release is in effect.

Notice of any hearing under subsection 1, 2, 3 or 5 shall be given to the offices of the district attorney which prosecuted the criminal charges against the person for which the person was acquitted by reason of insanity, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and Attorney General at least 7 days before the hearing date. Notice of any hearing under subsection 4 shall be given to the office of the district attorney and Attorney General as soon as possible before the hearing date.

Whenever a hearing is to be held under this section, the court shall determine whether the person whose release or discharge is in issue is indigent. If the court finds that the person is indigent, it shall appoint counsel to represent the person in connection with the hearing. Fees for court-appointed counsel for services rendered in connection with any hearing held under this section, or appeal from a decision in any hearing, and the fees of any expert witnesses called by the district attorney, Attorney General or on behalf of the person whose release or discharge is in issue, if indigent, shall be paid by the State. Any such fee to be in order for payment shall be first approved by the justice presiding at the hearing held under this section.

Sec. 5. 17-A MRSA §39, as enacted by PL 1981, c. 324, §14, is amended to read:

§39. Insanity

1. A defendant is not criminally responsible if, at the time of the criminal conduct, as a result of mental disease or defect, he ~~either lacked substantial capacity to conform his conduct to the requirements of the law, or~~ lacked substantial capacity to appreciate the wrongfulness of his conduct. The defendant shall have the burden of proving, by a preponderance of the evidence, that he lacks criminal responsibility as described in this subsection.

2. As used in this section, "mental disease or defect" means ~~any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs the processes and capacity of a person to control his actions~~ only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect.

Sec. 6. 17-A MRSA §40, sub-§§1 and 4, as enacted by PL 1981, c. 324, §14, are amended to read:

1. When the defendant enters a plea of not guilty together with a plea of not ~~guilty~~ criminally responsible by reason of insanity, he shall also elect whether the trial shall be 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 simultaneously to the jury. At the defendant's election, the jury shall be informed that the 2 pleas have been made and that the trial will be in 2 stages.

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

Sec. 7. 34-B MRSA §§1212 and 1213 are enacted to read:

§1212. State Forensic Service

1. Establishment and membership. The Commissioner of Mental Health and Mental Retardation shall establish a State Forensic Service and appoint its members. Members shall be psychiatrists and licensed clinical psychologists experienced in forensic service and not directly involved in the treatment of persons committed to the department under Title 15, chapter 5. These psychiatrists and psychologist may be employed by the department directly or as independent contractors.

2. Duties. The State Forensic Service shall have the following duties:

A. To perform examinations of the mental condition of a defendant with reference to competency to stand trial and criminal responsibility under Title 15, section 101; and

B. To perform examinations of the mental condition of persons committed to the custody of the

commissioner under Title 15, section 103, for the purposes specified in Title 15, section 104-A.

§1213. Release Review Advisory Committee

The commissioner shall establish a Release Review Advisory Committee consisting of 5 members, 3 of whom are not affiliated with the department. The committee shall examine the results of the modified release treatment, release and discharge of persons committed to the custody of the commissioner under Title 15, chapter 5. From the information gained in this review, and any other study the committee deems necessary to its task, the committee shall annually report to the commissioner its recommendations concerning criteria for predicting the future dangerousness of persons committed to the custody of the commissioner under Title 15, chapter 5. Members of the committee shall be compensated according to the provisions of Title 5, chapter 379.

Effective July 16, 1986.

---

---

**CHAPTER 797**

S.P. 957 - L.D. 2399

**AN ACT to Amend and Improve the Education  
Laws of Maine.**

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

Sec. 1. 5 MRSA §4602, sub-§1, ¶A, as enacted by PL 1983, c. 578, §3, is amended to read:

A. Exclude a person from participation in, deny a person the benefits of, or subject a person to, discrimination in any academic, extracurricular, research, occupational training or other program or activity;

Sec. 2. 5 MRSA §12004, sub-§8, ¶A, sub-¶(5-A) is enacted to read:

(5-A) Education Maine State Com- Expenses 27 MRSA §401  
mission on the Only  
Arts and the  
Humanities

Sec. 3. 5 MRSA §12004, sub-§10, ¶A, sub-¶(15) is repealed.