

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2004 to March 30, 2005**

**FIRST SPECIAL SESSION**  
**April 4, 2005 to June 18, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 29, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 17, 2005**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2005**

knowledge of the basic principles of land economics, real estate appraising, the Uniform Standards of Professional Appraisal Practice and the ethical rules to be observed by a real estate appraiser.

**Sec. D-8. 32 MRSA §14032, sub-§2, ¶C**, as enacted by PL 1999, c. 185, §5, is amended to read:

C. Pass an examination ~~administered~~ approved by the board designed to determine the fitness of the applicant to practice.

See title page for effective date.

## CHAPTER 263

### H.P. 1062 - L.D. 1517

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

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

**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 further amended to read:

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

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

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

**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. B, §§6 and 7, is further amended to read:

**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 Health and Human Services a report containing the opinion of a staff psychiatrist as to the mental conditions of that person, stating specifically whether the person may be released or discharged without likelihood that the person will cause injury to that person or to others due to mental disease or mental defect. The report must also contain a brief statement of the reasons for the opinion. The commissioner shall immediately file the report in the Superior Court for the county in which the person is ~~hospitalized~~ committed. 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 that prosecuted the criminal charges for which the person was ~~acquitted by reason of insanity committed under section 103~~ acquitted by reason of insanity committed under section 103 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 treated 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~~ 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 the person will cause injury to that person 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 determined appropriate by the court, including, but not limited to, out-patient treatment and supervision by the Department of Health and Human Services, Division of Mental Health; and
- (2) The order for release includes the condition that the person must be returned to the institution immediately 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 Health and Human Services.

Release from the institution is subject to annual review by the court and, except for return as ordered by the commissioner under paragraph A, subparagraph (1), must continue until terminated by the court. Each person released under this section shall remain in the custody of the commissioner. The Commissioner of Health and Human Services 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.

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

**2. Modified release treatment.** Any individual ~~hospitalized~~ committed pursuant to section 103 may petition the Superior Court for the county in which that person is ~~hospitalized~~ committed 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 must contain a report from the institutional staff, including at least one psychiatrist, and the report must 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 must 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 that prosecuted the criminal charges ~~of for~~ which the person was ~~acquitted by reason of insanity~~ committed under section 103, the offices of the district attorneys in whose district the release petition was filed or in whose district release may occur and the 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 ~~prose-~~

~~cuter~~ 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 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 Health and Human Services 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.

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

**3. Other provisions concerning initial release or discharge.** A report must be forwarded and filed and hearings must 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~~ committed under section 103, may be released or discharged without likelihood that the patient will cause injury to that patient or to others due to mental disease or mental defect.

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

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

**1.** A defendant is not criminally responsible by reason of insanity if, at the time of the criminal conduct, as a result of mental disease or defect, ~~he~~ the defendant lacked substantial capacity to appreciate the wrongfulness of ~~his~~ the criminal 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.~~

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

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

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

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

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

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 of insanity in the following manner.

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

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

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

4. If the jury in the first phase returns a guilty verdict, the trial ~~shall~~ must 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~~ must reflect that the defendant has the burden of establishing ~~his~~ the defendant's lack of criminal responsibility by reason of insanity. The jury shall return a verdict that the defendant is criminally responsible or not criminally

responsible by reason of ~~mental disease or defect~~ insanity. If the defendant is found criminally responsible, the court shall sentence ~~him~~ the defendant according to law.

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

See title page for effective date.

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**CHAPTER 264**

**H.P. 868 - L.D. 1271**

**An Act Regarding Criminal Use of an Electronic Weapon**

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

**Sec. 1. 17-A MRSA §1004** is enacted to read:

**§1004. Criminal use of electronic weapon**

1. Except as provided in subsection 4, a person is guilty of criminal use of an electronic weapon if the person intentionally, knowingly or recklessly uses an electronic weapon upon any other person.

2. As used in this section, "electronic weapon" means a portable device or weapon from which an electrical current, impulse, wave or beam may be directed, which current, impulse, wave or beam is designed to have a disabling effect upon human beings.

3. Criminal use of an electronic weapon is a Class D crime.

4. This section does not apply to the use of an electronic weapon by:

A. A law enforcement officer, corrections officer or corrections supervisor engaged in the performance of the law enforcement officer's, corrections officer's or corrections supervisor's public duty if the officer's or corrections supervisor's appointing authority has authorized such use of an electronic weapon; or

B. A person using deadly force when that use is for the purpose of:

(1) Defending that person or a 3rd person as authorized under section 108, subsection 2; or