

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
H.P. 1022 - L.D. 1433

**An Act To Amend the Laws Governing Mental Responsibility for Criminal
Conduct**

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

Sec. 1. 15 MRSA §101-D, sub-§4, as amended by PL 2011, c. 542, Pt. A, §8, is further amended to read:

4. Commitment for observation. The court may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, as set forth in this subsection. If the State Forensic Service determines that observation of the defendant will materially enhance its ability to perform an examination ordered pursuant to subsection 1, 2, 3 or 9 and the defendant is incarcerated, the observation may take place at the correctional facility where the defendant is incarcerated if the State Forensic Service determines that the correctional facility can provide an appropriate setting for the observation. If the observation is to take place in a correctional facility, the court may not commit the defendant to the custody of the Commissioner of Health and Human Services.

A. If the State Forensic Service determines that observation of the defendant in an appropriate institution for the care of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism will materially enhance its ability to perform an ~~evaluation~~ examination ordered pursuant to subsection 1, 2, 3 or 9, the State Forensic Service shall so advise the court. The State Forensic Service may make this determination based upon consultation with the defendant's attorney and the attorney for the State and the court and upon such other information as it determines appropriate. In addition, the State Forensic Service may include such a determination in a report to the court that recommends further evaluation of the defendant.

B. Upon a determination by the State Forensic Service under paragraph A, a court having jurisdiction in a criminal case may commit the defendant to the custody of the Commissioner of Health and Human Services for placement in an appropriate

institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for observation for a period not to exceed 60 days. If the State Forensic Service requires additional time for observation, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate a party's request to be heard on the issue of whether an extension should be granted and may extend the commitment for up to an additional 90 days. Unless the defendant objects, an order under this paragraph must authorize the institution or residential program where the defendant is placed by the Commissioner of Health and Human Services to provide treatment to the defendant. When further observation of the defendant is determined no longer necessary by the State Forensic Service, the commissioner shall report that determination to the court and the court shall terminate the commitment. If the defendant had been incarcerated prior to the commitment for observation and if, during the period of observation, the defendant presents a substantial risk of causing bodily injury to staff or others that cannot be managed in an appropriate institution for the care and treatment of people with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, the commissioner may return the defendant to the correctional facility. The commissioner shall report the risk management issues to the court. Upon receiving the report, the court shall review the report and may enter any order authorized by this section, including termination of the commitment.

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

Sec. 2. 15 MRSA §101-D, sub-§5, as amended by PL 2013, c. 21, §2, is further amended to read:

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

A. Commit the defendant to the custody of the Commissioner of Health and Human Services ~~to be placed in an~~ for appropriate placement for observation, care and treatment in an institution for the care and treatment of people with mental illness ~~or in~~, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism ~~for observation, care and treatment, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital or any living situation specifically approved by the court.~~ an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital or any living situation specifically approved by the court. At the end of 30 days or sooner, and again in the event of recommitment, at the end of 60 days and ~~one year~~ 180 days, the State Forensic Service or other appropriate office of the Department of Health and Human Services shall forward a report to the Commissioner of Health and Human Services relative to the defendant's competence to stand trial and its reasons. The Commissioner of Health and Human

Services shall without delay file the report with the court having jurisdiction of the case. The court shall ~~without delay set a date for and~~ hold a hearing on the question of the defendant's competence to stand trial and receive all relevant testimony bearing on the question. If the State Forensic Service's report or the report of another appropriate office of the Department of Health and Human Services to the court states that the defendant is either now competent or not restorable, the court shall within 30 days hold a hearing. If the court determines that the defendant is not competent to stand trial, but there does exist a substantial probability that the defendant will be competent to stand trial in the foreseeable future, the court shall recommit the defendant to the custody of the Commissioner of Health and Human Services ~~to be placed in an~~ for appropriate placement for observation, care and treatment in an institution for the care and treatment of people with mental illness ~~or in~~, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism ~~for observation, care and treatment, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a residential care facility, an assisted living facility, a hospice, a hospital or any living situation specifically approved by the court.~~ When a person who has been evaluated on behalf of the court by the State Forensic Service or other appropriate office of the Department of Health and Human Services is committed into the custody of the Commissioner of Health and Human Services under this paragraph, the court shall order that the State Forensic Service or other appropriate office of the Department of Health and Human Services share any information that it has collected or generated with respect to the person with the institution or residential program in which the person is placed. If the defendant is charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, order the Commissioner of Health and Human Services to commence proceedings pursuant to Title 34-B, chapter 3, subchapter 4. If the defendant is charged with an offense other than an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section 506-A, 802 or 803-A and the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, notify the appropriate authorities who may institute civil commitment proceedings for the individual. If the defendant is subject to an undischarged term of imprisonment, the court shall order the defendant into execution of that sentence and the correctional facility to which the defendant must be transported shall execute the court's order; or

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at ~~a state mental hospital or mental health facility~~ an institution for the care and treatment of people with mental illness, an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism, an intermediate care facility for persons who have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a

residential care facility, an assisted living facility, a hospice, a hospital approved by the Department of Health and Human Services or a living situation specifically approved by the court or by arrangement with a private psychiatrist or licensed clinical psychologist and treatment when it is determined appropriate by the State Forensic Service. When outpatient observation and treatment is ordered an examination must take place within 45 days of the court's order and the State Forensic Service shall file its report of that examination within 60 days of the court's order. The State Forensic Service's report to the court must contain the opinion of the State Forensic Service concerning the defendant's competency to stand trial and its reasons. The court shall without delay set a date for and hold a hearing on the question of the defendant's competence to stand trial, which must be held pursuant to and consistent with the standards set out in paragraph A.

Sec. 3. 15 MRSA §101-D, sub-§8, as enacted by PL 2009, c. 268, §3, is further amended to read:

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

Sec. 4. 15 MRSA §103-A, sub-§2 is enacted to read:

2. Commencement of commitment. When a person subject to an undischarged straight term of imprisonment or to an unsuspended portion of a split sentence for a Maine conviction is, for a different Maine offense, found not criminally responsible by reason of insanity or is the recipient of a negotiated insanity plea, the person must first serve the undischarged term of imprisonment or the unsuspended portion of the split sentence before commencing the commitment to the custody of the Commissioner of Health and Human Services ordered by the court pursuant to section 103 unless the court orders otherwise.

Sec. 5. 15 MRSA §104-A, sub-§2, as amended by PL 2005, c. 263, §3, is further amended to read:

2. Modified release treatment. Any individual committed pursuant to section 103 may petition the Superior Court for the county in which that person is 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~~ if the individual is monitored by a multidisciplinary treatment team affiliated with the institution and meets face to face with a team member at least every 14 days and with a team member qualified to prescribe medication at least monthly. 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 for which the person was 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 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 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.