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

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

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

47-J.

Human Services

Committee for
Oversight of Out-of-
state Forensic Patients

Not Authorized

15 MRSA §109

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

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

~~When~~A judgment must state if a court accepts a negotiated plea of not criminally responsible by reason of insanity or ~~when~~if a defendant is found not criminally responsible by reason of insanity by jury verdict or court finding, ~~the judgment must so state. In those cases. Upon a judgment of not criminally responsible by reason of insanity,~~ 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 care and treatment of persons with mental illness or in an appropriate residential program that provides care and treatment for persons who have intellectual disabilities or autism for care and treatment. If the court determines that a person committed under this section is to be placed in an institution outside the State, prior to the placement the court shall conduct a hearing to determine if the placement outside the State is the least restrictive appropriate placement, if an equivalent placement is not available in the State and if the institution outside the State will comply with the reporting provisions of section 104-A, subsection 1. Subsequent to being placed in an institution outside the State under this section, a person may petition the Superior Court of the county in which the person was committed to determine if the placement outside the State is the least restrictive appropriate placement and if an equivalent placement is not available in the State. The court shall give reasonable notice of a hearing under this section to the Attorney General and the office of the district attorney that prosecuted the criminal charges for which the person was committed under this section. A hearing under this section must include 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 an independent psychiatrist or licensed clinical psychologist who is employed by the prosecutor and has examined the person, any other relevant testimony and documentation that the institution outside the State agrees to comply with the reporting provisions of section 104-A, subsection 1. If, after hearing, the court finds that the placement outside the State is not the least restrictive, that there is an equivalent appropriate placement in the State or there is insufficient evidence that the institution outside the State agrees to comply with the reporting provision of section 104-A, subsection 1, the court

shall order that the person remain in or be placed in an appropriate placement in the State, which may include an order that the person be returned from outside the State. If the court determines that a person is to be placed in an institution outside the State, the placement may not proceed until the institution outside the State agrees in writing to comply with the reporting provisions of section 104-A, subsection 1. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of personsa person committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court.

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

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

1. Release and discharge. The term "release," as used in this section, means termination of institutional inpatient 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. If a person has been placed in an institution outside the State pursuant to section 103, the institution quarterly shall forward the report to the commissioner. The report must also contain a brief statement of the reasons for the opinion. If a person who has been found not criminally responsible by reason of insanity for the crime of murder or a Class A crime and was committed under section 103 is the subject of a report finding that the person may be released, the report must specifically ~~describerecommend~~ recommend the supervision for the Department of Health and Human Services ~~will~~to provide the person and must specifically include measures for the department ~~will~~to take to provide psychoactive medication monitoring of the person. The commissioner shall immediately file the report in the Superior Court for the county in which the person is 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 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 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 includes conditions determined appropriate by the court, including, but not limited to, outpatient treatment and supervision by the Department of Health and Human Services, Division of Mental Health. If the order for release covers a person found not criminally responsible by reason of insanity for the crime of murder or a Class A crime and was committed under section 103, the order must direct the Department of Health and Human Services to provide the level of supervision necessary, including specific measures to provide psychoactive medication monitoring; 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~~remains 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. 4. 15 MRSA §109 is enacted to read:

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

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

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

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

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

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

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

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

- A. A representative of a statewide organization representing consumers in public policy and mental health services recognized by the department;
- B. A representative of a national organization representing people with mental illness recognized by the department;
- C. A psychiatrist licensed in the State;
- D. A clinical social worker licensed in the State;
- E. A person certified as an intentional peer support specialist by the Office of Substance Abuse and Mental Health Services; and
- F. A family member of a patient who is involved in the patient's care.

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

4. Duties. The duties of the committee include:

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

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

(2) The patient is receiving adequate treatment; and

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

B. Issuing recommendations under subsection 5.

5. Recommendations. Based on its review under subsection 4, the committee may issue recommendations to be forwarded to the commissioner, the head of the institution where the patient is placed, the court of record, a family member designated by the patient and the patient's attorney or, if the patient does not have an attorney, the patient's attorney of record. The committee shall state in the

recommendations if the committee finds that the standards under subsection 4 are not being met. The recommendations may be used by the patient's attorney or attorney of record to request a hearing under section 103.

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

SUMMARY

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

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

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

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