



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1433

H.P. 1022

House of Representatives, April 23, 2013

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

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Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered  
printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative SANDERSON of Chelsea.  
Cosponsored by Senator HAMPER of Oxford.

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

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

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

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

26 B. Upon a determination by the State Forensic Service under paragraph A, a court  
27 having jurisdiction in a criminal case may commit the defendant to the custody of the  
28 Commissioner of Health and Human Services for placement in an appropriate  
29 institution for the care and treatment of people with mental illness or in an  
30 appropriate residential program that provides care and treatment for persons who  
31 have intellectual disabilities or autism for observation for a period not to exceed 60  
32 days. If the State Forensic Service requires additional time for observation, it shall  
33 communicate its request and the reasons for that request to the court and to counsel  
34 for the parties. The court shall accommodate a party's request to be heard on the  
35 issue of whether an extension should be granted and may extend the commitment for  
36 up to an additional 90 days. Unless the defendant objects, an order under this  
37 paragraph must authorize the institution or residential program where the defendant is  
38 placed by the Commissioner of Health and Human Services to provide treatment to  
39 the defendant. When further observation of the defendant is determined no longer  
40 necessary by the State Forensic Service, the commissioner shall report that  
41 determination to the court and the court shall terminate the commitment. If the  
42 defendant had been incarcerated prior to the commitment for observation and if,  
43 during the period of observation, the defendant assaults another person and the risk of  
44 further assault cannot be managed in an appropriate institution for the care and

1 treatment of people with mental illness or in an appropriate residential program that  
2 provides care and treatment for persons who have intellectual disabilities or autism,  
3 the commissioner may return the defendant to the correctional facility. The  
4 commissioner shall report that action to the court, the court shall terminate the  
5 commitment and any further evaluation under this subsection must take place at the  
6 correctional facility where the defendant is incarcerated.

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

11 **Sec. 2. 15 MRSA §101-D, sub-§5**, as amended by PL 2011, c. 542, Pt. A, §9, is  
12 further amended to read:

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

17 A. Commit the defendant to the custody of the Commissioner of Health and Human  
18 Services ~~to be placed in an~~ for appropriate placement for observation, care and  
19 treatment in an institution for the care and treatment of people with mental illness ~~or~~  
20 ~~in,~~ an appropriate residential program that provides care and treatment for persons  
21 who have intellectual disabilities or autism ~~for observation, care and treatment, an~~  
22 intermediate care facility for persons who have intellectual disabilities or autism, a  
23 crisis stabilization unit, a nursing home, a residential care facility, an assisted living  
24 facility, a hospice or a hospital. At the end of 30 days or sooner, and again in the  
25 event of recommitment, at the end of 60 days and ~~one year~~ 180 days, the State  
26 Forensic Service shall forward a report to the Commissioner of Health and Human  
27 Services relative to the defendant's competence to stand trial and its reasons. The  
28 Commissioner of Health and Human Services shall without delay file the report with  
29 the court having jurisdiction of the case. The court shall ~~without delay set a date for~~  
30 ~~and~~ within 30 days hold a hearing on the question of the defendant's competence to  
31 stand trial and receive all relevant testimony bearing on the question. If the court  
32 determines that the defendant is not competent to stand trial, but there does exist a  
33 substantial probability that the defendant will be competent to stand trial in the  
34 foreseeable future, the court shall recommit the defendant to the custody of the  
35 Commissioner of Health and Human Services ~~to be placed in an~~ for appropriate  
36 placement for observation, care and treatment in an institution for the care and  
37 treatment of people with mental illness ~~or in,~~ an appropriate residential program that  
38 provides care and treatment for persons who have intellectual disabilities or autism  
39 ~~for observation, care and treatment, an intermediate care facility for persons who~~  
40 have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a  
41 residential care facility, an assisted living facility, a hospice or a hospital. When a  
42 person who has been evaluated on behalf of the court by the State Forensic Service is  
43 committed into the custody of the Commissioner of Health and Human Services  
44 under this paragraph, the court shall order that the State Forensic Service share any  
45 information that it has collected or generated with respect to the person with the

1 institution or residential program in which the person is placed. If the defendant is  
2 charged with an offense under Title 17-A, chapter 9, 11 or 13 or Title 17-A, section  
3 506-A, 802 or 803-A and the court determines that the defendant is not competent to  
4 stand trial and there does not exist a substantial probability that the defendant can be  
5 competent in the foreseeable future, the court shall dismiss all charges against the  
6 defendant and, unless the defendant is subject to an undischarged term of  
7 imprisonment, order the Commissioner of Health and Human Services to commence  
8 involuntary commitment proceedings pursuant to Title 34-B, chapter 3, subchapter 4  
9 or chapter 5, subchapter 3. If the defendant is charged with offenses not listed in the  
10 previous sentence and the court determines that the defendant is not competent to  
11 stand trial and there does not exist a substantial probability that the defendant can be  
12 competent in the foreseeable future, the court shall dismiss all charges against the  
13 defendant and, unless the defendant is subject to an undischarged term of  
14 imprisonment, notify the appropriate authorities who may institute civil commitment  
15 proceedings for the individual. If the defendant is subject to an undischarged term of  
16 imprisonment, the court shall order the defendant into execution of that sentence and  
17 the correctional facility to which the defendant must be transported shall execute the  
18 court's order; or

19 B. Issue a bail order in accordance with chapter 105-A, with or without the further  
20 order that the defendant undergo observation at ~~a state mental hospital or mental~~  
21 ~~health facility~~ an institution for the care and treatment of people with mental illness,  
22 an appropriate residential program that provides care and treatment for persons who  
23 have intellectual disabilities or autism, an intermediate care facility for persons who  
24 have intellectual disabilities or autism, a crisis stabilization unit, a nursing home, a  
25 residential care facility, an assisted living facility, a hospice or a hospital approved by  
26 the Department of Health and Human Services or by arrangement with a private  
27 psychiatrist or licensed clinical psychologist and treatment when it is determined  
28 appropriate by the State Forensic Service. When outpatient observation and  
29 treatment is ordered an examination must take place within 45 days of the court's  
30 order and the State Forensic Service shall file its report of that examination within 60  
31 days of the court's order. The State Forensic Service's report to the court must  
32 contain the opinion of the State Forensic Service concerning the defendant's  
33 competency to stand trial and its reasons. The court shall ~~without delay set a date for~~  
34 ~~and~~ within 30 days hold a hearing on the question of the defendant's competence to  
35 stand trial, which must be held pursuant to and consistent with the standards set out in  
36 paragraph A.

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

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

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

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

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

11           **2. Modified release treatment.** Any individual committed pursuant to section 103  
12 may petition the Superior Court for the county in which that person is committed for a  
13 release treatment program allowing the individual to be off institutional grounds ~~for a~~  
14 ~~period of time, not to exceed 14 days at any one time~~ if the individual is monitored by a  
15 team providing assertive community treatment as defined in Title 34-B, section 3801,  
16 subsection 11 and meets face to face with a psychiatrist, psychologist, nurse practitioner  
17 or physician assistant at least monthly. The petition must contain a report from the  
18 institutional staff, including at least one psychiatrist, and the report must define the  
19 patient's present condition; the planned treatment program involving absence from the  
20 institution; the duration of the absence from the institution; the amount of supervision  
21 during the absence; the expectation of results from the program change; and the estimated  
22 duration of the treatment program before further change. This petition must be forwarded  
23 to the court no later than 60 days prior to the beginning of the modified treatment  
24 program. If the court considers that the individual being off the grounds, as described in  
25 the treatment plan, is inappropriate, it shall notify the hospital that the plan is not  
26 approved and shall schedule a hearing on the matter. The clerk of courts upon receipt of  
27 the proposed treatment program shall give notice of the receipt of this program by  
28 mailing a copy to the office of the district attorney that prosecuted the criminal charges  
29 for which the person was committed under section 103, the offices of the district  
30 attorneys in whose district the release petition was filed or in whose district release may  
31 occur and the Attorney General who may file objections and request a hearing on the  
32 matter. Representatives of the Attorney General and the office that prosecuted the person  
33 may appear at any hearing on the matter. At the hearing, the court shall receive the  
34 testimony of a member of the State Forensic Service who has examined the person, any  
35 independent psychiatrist or licensed clinical psychologist who is employed by the  
36 prosecutor and has examined the person and any other relevant testimony. If the court  
37 does not respond within 60 days to the proposed treatment plan and no objections and  
38 request for hearing are filed by the district attorney or Attorney General, it may then be  
39 put into effect by the administrator of the hospital on the assumption that the court  
40 approved the treatment plan. The Commissioner of Health and Human Services shall  
41 inform the public safety officer of the municipality or the sheriff's office of the county in  
42 which the person will spend any unsupervised time under the release treatment program  
43 of that program.

1 **SUMMARY**

2 This bill amends the laws governing mental responsibility for criminal conduct in the  
3 following ways.

4 1. It provides that the State Forensic Service may observe a defendant who is  
5 incarcerated at the correctional facility where the defendant is incarcerated as part of an  
6 evaluation of the defendant by the State Forensic Service if the State Forensic Service  
7 determines that the correctional facility can provide an appropriate setting for the  
8 observation.

9 2. It sets deadlines for a court to hold a hearing on the question of a defendant's  
10 competence to stand trial and increases the number of different types of facilities to which  
11 a court may commit a defendant who is found incompetent to stand trial.

12 3. It provides that a person who is in prison for an offense and is found not  
13 criminally responsible by reason of insanity for another offense must finish that person's  
14 prison term before beginning the commitment ordered by the court for the 2nd offense.

15 4. It provides that an individual who is in state custody on the basis of being not  
16 criminally responsible by reason of insanity with respect to an offense may petition the  
17 court to be off institutional grounds if the individual is monitored by a team providing  
18 assertive community treatment and meets with a psychiatrist, psychologist, nurse  
19 practitioner or physician assistant at least monthly. It removes language that limits to 14  
20 days the amount of time such an individual may be off institutional grounds.