

## CHAPTER 5

### MENTAL RESPONSIBILITY FOR CRIMINAL CONDUCT

#### **§101. Mental examination and observation of persons accused of crime**

**(REPEALED)**

##### SECTION HISTORY

PL 1965, c. 334 (RPR). PL 1967, c. 402, §1 (AMD). PL 1969, c. 279 (AMD). PL 1969, c. 504, §§24-C (AMD). PL 1971, c. 269 (AMD). P&SL 1973, c. 53 (AMD). PL 1973, c. 547, §§1,2,3 (AMD). PL 1975, c. 230, §1 (AMD). PL 1975, c. 506, §§1,2 (AMD). PL 1975, c. 718, §1 (AMD). PL 1977, c. 201, §§1-3 (AMD). PL 1977, c. 311, §1 (AMD). PL 1977, c. 564, §§71-A (AMD). PL 1979, c. 663, §84 (AMD). PL 1981, c. 493, §2 (AMD). PL 1983, c. 580, §§2,3 (AMD). PL 1985, c. 630, §§1,2 (AMD). PL 1985, c. 796, §§2,3 (AMD). PL 1987, c. 402, §A107 (RP).

#### **§101-A. Access to records by persons or entities performing examinations or evaluations**

**(REPEALED)**

##### SECTION HISTORY

PL 1985, c. 356 (NEW). PL 1987, c. 402, §A108 (RP).

#### **§101-B. Mental examination and observation of persons accused of crime**

**(REPEALED)**

##### SECTION HISTORY

PL 1987, c. 402, §A109 (NEW). PL 1987, c. 758, §11 (AMD). PL 1989, c. 621, §§1-5 (AMD). PL 1993, c. 704, §1 (AMD). RR 1995, c. 2, §§25,26 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 1999, c. 373, §1 (AMD). PL 1999, c. 503, §1 (AMD). PL 1999, c. 510, §3 (AMD). PL 2001, c. 354, §3 (AMD). PL 2001, c. 471, §D15 (AMD). PL 2001, c. 634, §1 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2009, c. 268, §1 (RP).

#### **§101-C. Access to records by persons or entities performing examinations or evaluations**

**1. Written demand for records.** When a person or entity has been ordered to perform an examination or evaluation pursuant to section 101-D, a diagnostic evaluation pursuant to section 3309-A, a competency examination pursuant to section 3318-A, an evaluation and treatment pursuant to section 3318-B, or an examination of a juvenile with reference to insanity or abnormal condition of mind, and the person to be examined has sought the examination, joined in a request or order for the examination or has entered a plea or answer of not criminally responsible by reason of insanity, that person or entity may make written demand upon any individual, partnership, association, corporation, institution or governmental entity to produce the records or copies of the records, in whatever medium preserved, of the subject of the examination or evaluation.

[RR 2021, c. 2, Pt. A, §31 (COR).]

**2. Production of records.** Any such entity from whom records are demanded pursuant to subsection 1 shall produce the records or copies of the records forthwith. The production shall be made notwithstanding any other law. No entity, or employee or agent of the entity, may be criminally or civilly responsible for furnishing any records in compliance with this section.

[PL 1987, c. 402, Pt. A, §109 (NEW).]

**3. Confidentiality of records.** Records provided under this section shall be confidential and shall not be disseminated by any person other than upon order of the court pursuant to a petition for release

under section 104-A or pursuant to an involuntary commitment proceeding under Title 34-B, section 3864.

[PL 1989, c. 878, Pt. H, §3 (AMD).]

**4. Definition.** "Records" means information about a person, in whatever medium preserved. It includes, but is not limited to, medical histories, social histories, military histories, government histories, educational histories, drug and alcohol treatment histories, criminal record histories, penal institution histories and documentation pertaining to diagnosis or treatment.

[PL 1989, c. 621, §6 (AMD).]

**5. Failure to produce records.** A person who is required to produce records by this section and intentionally or knowingly fails to do so within 20 days of the service of the written request upon the person may be subject to civil contempt for the person's failure to comply with the request.

[RR 2023, c. 2, Pt. D, §4 (COR).]

#### SECTION HISTORY

PL 1987, c. 402, §A109 (NEW). PL 1989, c. 621, §6 (AMD). PL 1989, c. 878, §H3 (AMD). PL 2009, c. 268, §2 (AMD). PL 2013, c. 234, §1 (AMD). RR 2021, c. 2, Pt. A, §31 (COR). RR 2023, c. 2, Pt. D, §4 (COR).

#### §101-D. Mental examination of persons accused of crime

**1. Competency to proceed.** The court may for cause shown order that the defendant be examined to evaluate the defendant's competency to proceed as provided in this subsection.

A. Upon motion by the defendant or by the State, or upon its own motion, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's competency to proceed. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and report its initial determination regarding the defendant's competency to proceed to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's competency to proceed, the report must so state and must set forth recommendations as to the nature and scope of any further examination. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 21 days of the court's order, and the report of that examination must be filed within 30 days of the court's order. If further examination is ordered pursuant to paragraph C, the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, it shall communicate its request and the reasons for that request to the court and to counsel for the parties. The court shall accommodate any party's request to be heard on the issue of whether an extension should be granted and may grant any extension of time that is reasonable under the circumstances. The examination 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 examination. If the State Forensic Service determines otherwise, the examination will be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

C. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. Any order for further evaluation may designate the specialty of the person to perform the evaluation. In addition, if at any time during a

criminal proceeding an issue of competency to proceed arises with respect to a defendant initially determined to be competent, the court may order such further examination by the State Forensic Service as the court finds necessary and appropriate. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

**2. Insanity; abnormal condition of the mind.** The court may for cause shown order that the defendant be evaluated with reference to insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State, a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation of the defendant's mental state at the time of the crime with reference to criminal responsibility under Title 17-A, section 39 and abnormal condition of the mind under Title 17-A, section 38.

(1) When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances of the crime and provide a report of its evaluation to the court. If, based upon its examination, the State Forensic Service concludes that further examination is necessary to fully evaluate the defendant's mental state at the time of the crime, the report must so state and must set forth recommendations as to the nature and scope of any further examination.

(2) The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination or unless the attorney for the State has agreed that the report need not be forwarded to the State except as set forth in subparagraph (3), to the attorney for the State.

(3) If the court orders an examination under this paragraph over the objection of the defendant, any report filed by the State Forensic Service may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

B. If the defendant enters a plea of not criminally responsible by reason of insanity, the court shall order evaluation under paragraph A. [PL 2009, c. 268, §3 (NEW).]

C. If the defendant is incarcerated, the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If further examination is ordered pursuant to paragraph D, the report of that examination must be filed within 90 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above, 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 grant any extension of time that is reasonable under the circumstances. The examination 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 examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

D. If the report submitted pursuant to paragraph A recommends further evaluation of the defendant or upon motion by the defendant or by the State for good cause shown, the court may order further evaluation of the defendant by the State Forensic Service. An order for further evaluation may designate the specialty of the person to perform the evaluation. The court shall forward any further report filed by the State Forensic Service to the defendant or the defendant's attorney and, unless the defendant had objected to the order for examination, to the attorney for the State.

The court may order an examination under this paragraph over the objection of the defendant, but any report filed by the State Forensic Service must be impounded and may not be shared with the attorney for the State, unless with reference to criminal responsibility the defendant enters a plea of not criminally responsible by reason of insanity or with reference to an abnormal condition of mind the defendant provides notice to the attorney for the State of the intention to introduce testimony as to the defendant's abnormal condition of mind pursuant to the Maine Rules of Unified Criminal Procedure, Rule 16A(a). [PL 2015, c. 431, §4 (AMD).]

[PL 2015, c. 431, §4 (AMD).]

**3. Mental condition relevant to other issues.** The court may for good cause shown order that the defendant be examined to evaluate the defendant's mental condition with reference to issues other than competency, insanity or abnormal condition of the mind as provided in this subsection.

A. Upon motion by the defendant or by the State or upon its own motion a court having jurisdiction in any criminal case may for cause shown order that the defendant be examined by the State Forensic Service for evaluation with respect to any issue necessary for determination in the case, including the appropriate sentence. The court's order shall set forth the issue or issues to be addressed by the State Forensic Service. When ordered to evaluate a defendant under this paragraph, the State Forensic Service shall promptly examine the defendant and the circumstances relevant to the issues identified in the court's order and report to the court regarding the defendant's mental condition as it pertains to those issues. Prior to a verdict or finding of guilty or prior to acceptance of a plea of guilty or nolo contendere, the court may not order examination under this subsection over the objection of the defendant unless the defendant has asserted, or intends to assert, the defendant's mental condition as a basis for an objection, a defense or for mitigation at sentencing. The court shall forward any report filed by the State Forensic Service to the defendant or the defendant's attorney and to the attorney for the State. [PL 2009, c. 268, §3 (NEW).]

B. If the defendant is incarcerated the examination ordered pursuant to paragraph A must take place within 45 days of the court's order and the report of that examination must be filed within 60 days of the court's order. If the State Forensic Service requires an extension of the deadlines set forth above 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 grant an extension of time that is reasonable under the circumstances. The examination 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 examination. If the State Forensic Service determines otherwise, the examination must be conducted at a time and place designated by the State Forensic Service. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2009, c. 268, §3 (NEW).]

[PL 2009, c. 268, §3 (NEW).]

**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 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. [PL 2013, c. 265, §1 (AMD).]

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 of Health and Human Services shall report that determination to the court and the court shall terminate the commitment. If the defendant is committed by the court to the custody of the Commissioner of Health and Human Services for observation under this paragraph, the State Forensic Service may release prior court-ordered evaluation reports pertaining to the pending charges, unless otherwise impounded, to each institution or residential program into which the Commissioner of Health and Human Services is considering placing the defendant and, following placement, to the institution or residential program into which the defendant is placed. 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 of Health and Human Services may return the defendant to the correctional facility. The Commissioner of Health and Human Services 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. [PL 2023, c. 38, §1 (AMD).]

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. [PL 2009, c. 268, §3 (NEW).]

[PL 2023, c. 38, §1 (AMD).]

**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 for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, 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, an intensive outpatient treatment program or any program 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 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 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 for placement in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism. An appropriate program may be in an institution for the care and treatment of people with mental illness, 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, an intensive outpatient treatment program or any program 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; or [PL 2021, c. 306, §1 (AMD).]

B. Issue a bail order in accordance with chapter 105-A, with or without the further order that the defendant undergo observation at 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 an intensive outpatient treatment program or any program 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. [PL 2013, c. 434, §1 (AMD); PL 2013, c. 434, §15 (AFF).]

[PL 2021, c. 306, §1 (AMD).]

**5-A. Finding of nonrestorability.** If 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, the court may 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 is transported shall execute the court's order. [PL 2021, c. 306, §2 (NEW).]

**6. Examiners.** Evaluation of a defendant by the State Forensic Service pursuant to this section must be performed by a licensed psychologist or a psychiatrist. The State Forensic Service may determine whether an examination will be performed by a licensed psychologist or a psychiatrist unless the court has designated the specialty of the examiner in its order. [PL 2009, c. 268, §3 (NEW).]

**7. Competence; proceedings.** Upon a determination that the defendant is competent to stand trial, proceedings with respect to the defendant must be in accordance with the rules of criminal procedure. [PL 2009, c. 268, §3 (NEW).]

**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 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 placement commits a civil violation for which a fine of not more than \$1,000 may be adjudged. [PL 2013, c. 265, §3 (AMD).]

**9. Examination after sentencing.** If the issue of insanity, competency, abnormal condition of mind or any other issue involving the mental condition of the defendant is raised after sentencing, the court may for cause shown order the convicted person to be examined by the State Forensic Service. If at the time an examination order is entered by the court the sentenced person is in execution of a sentence of imprisonment imposed for any criminal conduct, the time limits and bail provisions of this section do not apply. For examinations that take place outside the correctional facility, the correctional facility shall provide transportation and security for the examination. [PL 2011, c. 464, §2 (AMD).]

**10. Appropriate placement.** When a court commits 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 persons 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 subsection 4, the transfer of the defendant must take place within 30 days from the time the order is transmitted to the State Forensic Service, unless an extraordinary circumstance causes a necessary delay. The Commissioner of Health and Human Services shall notify the court of the extraordinary circumstance causing a delay. [PL 2021, c. 757, §1 (NEW).]

#### SECTION HISTORY

PL 2009, c. 268, §3 (NEW). PL 2011, c. 464, §§1, 2 (AMD). PL 2011, c. 542, Pt. A, §§8, 9 (AMD). PL 2013, c. 21, §2 (AMD). PL 2013, c. 265, §§1-3 (AMD). PL 2013, c. 434, §1 (AMD). PL 2013, c. 434, §15 (AFF). PL 2015, c. 431, §4 (AMD). PL 2021, c. 306, §§1, 2 (AMD). PL 2021, c. 757, §1 (AMD). PL 2023, c. 38, §1 (AMD).

**§102. No responsibility for criminal act produced by mental disease or defect (REPEALED)**

## SECTION HISTORY

PL 1975, c. 499, §2 (RP).

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

When a 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 insanity by jury verdict or court finding, the judgment must so state. In 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 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. Upon placement in the appropriate institution or residential program and in the event of transfer from one institution or residential program to another of persons committed under this section, notice of the placement or transfer must be given by the commissioner to the committing court. [PL 2011, c. 542, Pt. A, §10 (AMD).]

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. [PL 2013, c. 424, Pt. B, §3 (AMD).]

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. [PL 2005, c. 263, §1 (NEW).]

## SECTION HISTORY

PL 1981, c. 493, §2 (AMD). RR 1995, c. 2, §27 (COR). PL 1995, c. 286, §1 (AMD). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §B7 (REV). PL 2005, c. 263, §1 (AMD). PL 2009, c. 268, §4 (AMD). PL 2011, c. 542, Pt. A, §10 (AMD). PL 2013, c. 424, Pt. B, §3 (AMD).

**§103-A. Commitment affected by certain sentences**

**1. Interruption of commitment.** When a person while in the custody of the Commissioner of Health and Human Services pursuant to a commitment order under section 103 is found by a court to be in violation of the person's conditional release for a Maine conviction and new institutional confinement is ordered, or a person commits a Maine crime for which the person is subsequently convicted and the sentence imposed includes a straight term of imprisonment or a split sentence, the person must be placed in execution of that punishment, and custody pursuant to the commitment order under section 103 must automatically be interrupted thereby. In the event execution of that punishment is stayed pending appeal, the commitment under section 103 continues for the stay's duration. The person must be returned to the custody of the Commissioner of Health and Human Services pursuant to the commitment order under section 103 when the new institutional confinement ordered or the straight term of imprisonment or the unsuspended portion of the split sentence imposed has been fully served.

[PL 2007, c. 475, §3 (NEW).]

**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.

[PL 2013, c. 265, §4 (NEW).]

#### SECTION HISTORY

PL 2007, c. 475, §3 (NEW). PL 2013, c. 265, §4 (AMD).

#### **§104. Release and discharge, hearing, payment of fees**

#### **(REPEALED)**

#### SECTION HISTORY

PL 1967, c. 402, §2 (RPR). PL 1969, c. 376 (RPR). PL 1969, c. 504, §§24-E (AMD). PL 1969, c. 555 (RPR). PL 1973, c. 243 (RPR). PL 1973, c. 567, §20 (AMD). PL 1975, c. 230, §§2,3 (AMD). PL 1975, c. 506, §3 (AMD). PL 1975, c. 623, §§17-C (AMD). PL 1977, c. 114, §§24,25 (AMD). PL 1979, c. 663, §85 (RP).

#### **§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 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. The report must also contain a brief statement of the reasons for the opinion. If a person has been placed in an institution outside the State pursuant to section 103, the institution of this State required to monitor the person's placement shall forward the report to the commissioner every 6 months. 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 recommend the supervision for the Department of Health and Human Services to provide the person and must specifically include measures for the department 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. If a person has been placed in an institution outside the State, the commissioner shall immediately file the report in the Superior Court for the county in which the institution in this State required to monitor the person's placement is located. 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 [PL 2005, c. 464, §1 (AMD).]

B. Discharge from the custody of the Commissioner of Health and Human Services. [RR 1995, c. 2, §28 (COR); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §7 (REV).]

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 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. [PL 2019, c. 405, §1 (AMD).]

**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 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. [PL 2013, c. 265, §5 (AMD).]

**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 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 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 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 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.

[PL 2005, c. 263, §4 (AMD).]

**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 the person was released. A hearing must 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.

[RR 2023, c. 2, Pt. D, §5 (COR).]

**5. Reinstitutionalization due to likelihood of causing injury.** A person released under subsection 1, paragraph A whose reinstitutionalization, due to the likelihood that the person will cause injury to the person 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 the justice's order. A hearing must 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 the person was released pending the hearing, and that detention may not exceed 14 days. The psychiatrist responsible for the observation 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 the person will cause injury to the person 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 and of 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.

[RR 2023, c. 2, Pt. D, §6 (COR).]

**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.

[PL 1985, c. 796, §4 (AMD).]

#### SECTION HISTORY

PL 1979, c. 663, §86 (NEW). PL 1981, c. 493, §2 (AMD). PL 1985, c. 131, §1 (RPR). PL 1985, c. 796, §4 (AMD). PL 1993, c. 410, §CCC3 (AMD). RR 1995, c. 2, §28 (COR). RR 1995, c. 2, §§29,30 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §§B6,7 (REV). PL 2005, c. 263, §§2-4 (AMD). PL 2005, c. 464, §1 (AMD). PL 2013, c. 265, §5 (AMD). PL 2019, c. 405, §1 (AMD). RR 2023, c. 2, Pt. D, §§5, 6 (COR).

#### **§104-B. Failure of patient to return**

If any patient committed to the Department of Health and Human Services for care and treatment, under section 103 or 105, is ordered to return to the hospital by the Commissioner of Health and Human Services, law enforcement personnel of the State or of any of its subdivisions shall, upon request of the commissioner, assist in the return of the patient to the hospital. [RR 1995, c. 2, §31 (COR); PL 2001, c. 354, §3 (AMD); PL 2003, c. 689, Pt. B, §§6, 7 (REV).]

#### SECTION HISTORY

PL 1979, c. 623, §1 (NEW). PL 1981, c. 493, §2 (AMD). PL 1985, c. 131, §2 (RPR). RR 1995, c. 2, §31 (COR). PL 1995, c. 560, §K82 (AMD). PL 1995, c. 560, §K83 (AFF). PL 2001, c. 354, §3 (AMD). PL 2003, c. 689, §§B6,7 (REV).

#### **§105. Authority to receive persons for observation committed by the United States District Court. (REPEALED)**

#### SECTION HISTORY

PL 1967, c. 402, §3 (NEW). P&SL 1973, c. 53 (AMD). PL 1981, c. 493, §2 (AMD). PL 1989, c. 621, §7 (RP).

#### **§106. Involuntary medication of incompetent defendant**

**1. Definition.** As used in this section, "commissioner" means the Commissioner of Health and Human Services or the commissioner's designee.  
[PL 2015, c. 325, §1 (NEW).]

**2. Notice required; contents.** At any time after a defendant has been found incompetent to proceed and has been committed to the custody of the commissioner under section 101-D, subsection 5, the commissioner shall notify the court, prosecuting attorney and attorney for the defendant if the commissioner has determined that the defendant is not consenting to or responding to treatment and is unlikely to be restored to competency without the administration of psychiatric medication over the defendant's objection. The commissioner shall provide this notice only if there is no basis for involuntarily medicating the defendant other than to restore the defendant's competency. The commissioner shall state in the notice whether the commissioner believes that:

- A. Medication is necessary to render the defendant competent; [PL 2015, c. 325, §1 (NEW).]
- B. Medication is substantially likely to render the defendant competent; [PL 2015, c. 325, §1 (NEW).]

- C. Medication is substantially unlikely to produce side effects that would significantly interfere with the defendant's ability to assist in the defendant's defense; [PL 2015, c. 325, §1 (NEW).]
- D. No less intrusive means of treatment are available; and [PL 2015, c. 325, §1 (NEW).]
- E. Medication is medically appropriate and is in the defendant's best medical interest in light of the defendant's medical condition. [PL 2015, c. 325, §1 (NEW).]

The commissioner shall also state in the notice whether less intrusive means of treatment have been attempted to render the defendant competent.

[PL 2015, c. 325, §1 (NEW).]

**3. Court authorization.** The following provisions govern court authorization for the involuntary medication of a defendant under this section.

A. Upon receipt of the notice under subsection 2, the prosecuting attorney shall assess whether important state interests are at stake in restoring the defendant's competency and shall promptly notify the commissioner of the result of that assessment. If the prosecuting attorney determines that important state interests are at stake, the prosecuting attorney shall file a motion seeking court authorization for involuntary medication of the defendant, and the court shall conduct a hearing within 30 days of the filing of the motion, unless the court extends the time for good cause. [PL 2015, c. 325, §1 (NEW).]

B. The court, in determining whether a defendant should be medicated over the defendant's objection, shall consider whether:

- (1) Important state interests are at stake in restoring the defendant's competency;
- (2) Involuntary medication will significantly further important state interests, in that the medication proposed:
  - (a) Is substantially likely to render the defendant competent to proceed; and
  - (b) Is substantially unlikely to produce side effects that would significantly interfere with the defendant's ability to assist the defense counsel in conducting the defendant's defense;
- (3) Involuntary medication is necessary to further important state interests;
- (4) Any alternate less intrusive treatments are unlikely to achieve substantially the same results; and
- (5) The administration of the proposed medication is medically appropriate, as it is in the defendant's best medical interest in light of the defendant's medical condition. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**4. Findings; order.** If the court finds by clear and convincing evidence that the involuntary administration of psychiatric medication to a defendant under this section is necessary and appropriate, it shall make findings addressing each of the factors in subsection 3, paragraph B and shall issue an order authorizing the administration of psychiatric medication to the defendant over the defendant's objection in order to restore the defendant to competency. When issuing the order, the court may order that medication may be administered by more intrusive methods only if the defendant has refused administration by less intrusive methods. The court may order that the commissioner report to the court within a reasonable period following entry of the order as to whether the authorized treatment remains appropriate.

[PL 2015, c. 325, §1 (NEW).]

**5. Application.** This section applies only if the prosecuting attorney seeks an order of involuntary medication for the purpose of rendering a defendant competent to proceed.

[PL 2015, c. 325, §1 (NEW).]

## SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

**§107. Involuntary medication of patient**

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

A. "Commissioner" means the Commissioner of Health and Human Services or the commissioner's designee. [PL 2015, c. 325, §1 (NEW).]

B. "Department" means the Department of Health and Human Services. [PL 2015, c. 325, §1 (NEW).]

C. "Patient" means a person held in a hospital under section 101-D or 103. [PL 2015, c. 325, §1 (NEW).]

D. "Psychiatrist" includes a physician assistant working under the supervision of a psychiatrist and a psychiatric nurse practitioner. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**2. Administration of psychiatric medication over objection prohibited; exceptions.** A patient may not be administered psychiatric medication over the objection of the patient except:

A. As ordered by the court under section 106; [PL 2015, c. 325, §1 (NEW).]

B. In accordance with an advance health care directive; [PL 2015, c. 325, §1 (NEW).]

C. For a patient under guardianship, as authorized by the guardian; or [PL 2015, c. 325, §1 (NEW).]

D. For a patient who is not under guardianship, for whom no advance health care directive is known to be in effect and for whom no administration of medication under section 106 has been ordered, as provided in subsection 3. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**3. Involuntary medication on nonemergency basis.** A hospital may seek to initiate involuntary medication of a patient under this section on a nonemergency basis only if all of the following conditions have been met:

A. A psychiatrist has determined that the patient has a mental illness or disorder; [PL 2015, c. 325, §1 (NEW).]

B. A psychiatrist has determined that, as a result of the patient's mental illness or disorder, the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury; [PL 2015, c. 325, §1 (NEW).]

C. A psychiatrist has determined that the patient should be treated with psychiatric medication and has prescribed one or more psychiatric medications for the treatment of the patient's mental illness or disorder, has considered the risks and benefits of and treatment alternatives to involuntary medication and has determined that the need for treatment outweighs the risks and side effects; [PL 2015, c. 325, §1 (NEW).]

D. The patient has been advised of the risks and benefits of and treatment alternatives to the psychiatric medication and refuses or is unable to consent to the administration of the medication; [PL 2015, c. 325, §1 (NEW).]

E. The patient is provided a hearing before a hearing officer. The hearing must be held not more than 14 days after the filing of the notice by the hospital pursuant to paragraph G with the

department's office of administrative hearings, unless counsel for the patient agrees to extend the date of the hearing; [PL 2015, c. 325, §1 (NEW).]

F. The patient is provided counsel at the department's expense at least 7 days prior to the hearing under paragraph E; [PL 2015, c. 325, §1 (NEW).]

G. The patient and counsel are provided with written notice of the hearing under paragraph E by the hospital at least 7 days prior to the hearing. The written notice must:

- (1) Set forth the patient's diagnosis, the factual basis for the diagnosis, the basis upon which psychiatric medication is recommended, the expected benefits, potential side effects and risks of the medication to the patient and treatment alternatives to medication, if any;
- (2) Advise the patient of the right to be present at the hearing, the right to be represented by counsel, the right to present evidence and the right to cross-examine witnesses. Counsel for the patient must have access to all medical records and files of the patient; and
- (3) Inform the patient of the patient's right to file an appeal in Superior Court of a decision of the commissioner authorizing involuntary treatment.

Failure of the hospital to provide timely or adequate notice pursuant to this paragraph may be excused only upon a showing of good cause and the absence of prejudice to the patient. In making this determination, the hearing officer may consider factors including, but not limited to, the ability of the patient's counsel to prepare the case adequately and to confer with the patient, the continuity of care and, if applicable, the need for protection of the patient or institutional staff that would be compromised by a procedural default; [PL 2015, c. 325, §1 (NEW).]

H. The hearing officer at the hearing under paragraph E determines by clear and convincing evidence that:

- (1) The patient has a mental illness or disorder;
- (2) As a result of that illness or disorder the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury if not medicated;
- (3) There is no less intrusive alternative to involuntary medication; and
- (4) The need for treatment outweighs the risks and side effects; [PL 2015, c. 325, §1 (NEW).]

I. The hearing officer at the hearing under paragraph E recommends to the commissioner that an order authorizing administration of involuntary medication be issued; [PL 2015, c. 325, §1 (NEW).]

J. The commissioner issues an order authorizing administration of involuntary medication. The decision whether to issue an order authorizing administration of involuntary medication rests with the commissioner. An order authorizing administration of involuntary medication provides authority to undertake procedures and administer medication to monitor and manage side effects, all consistent with medical standards of care; and [PL 2015, c. 325, §1 (NEW).]

K. The historical course of the patient's mental illness or disorder, as determined by available relevant information about the course of the patient's mental illness or disorder, is considered when it has direct bearing on the determination of whether the patient, as the result of a mental illness or disorder, poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**4. Emergency action.** Nothing in this section prohibits a physician from taking appropriate action in an emergency, as defined by the department in rules adopted pursuant to Title 34-B, section 3003 and in accordance with procedures contained in those rules.

[PL 2015, c. 325, §1 (NEW).]

**5. Effective date and expiration of order.** An order authorizing involuntary medication pursuant to subsection 3 is effective 24 hours after it is issued and expires one year after the date of the order, unless a new authorization is given pursuant to the procedures set forth in subsection 7 or authorization is terminated early based on a significant change to the patient's medical condition such that the need for treatment no longer outweighs the risks and side effects pursuant to the procedures set forth in subsection 8.

[PL 2015, c. 325, §1 (NEW).]

**6. Effect of subsequent consent.** A patient's subsequent informed consent does not abrogate an order authorizing involuntary medication under this section.

[PL 2015, c. 325, §1 (NEW).]

**7. Extension.** To extend an authorization that is in effect allowing involuntary medication under this section, the hospital shall, no later than 21 days prior to the expiration of the authorization, file with the department's office of administrative hearings and provide the patient and the patient's counsel with a written notice indicating the hospital's intent to extend the authorization under the existing decision.

A. A patient who is the subject of a filing under this subsection must be given the same due process protections as specified in subsection 3. The hearing on any request to extend an order for involuntary medication must be conducted prior to the expiration of the authorization that is in effect. If the hospital wishes to add a basis to an existing decision authorizing involuntary medication, the notice required by subsection 3, paragraph G must also specify the additional basis and the conduct within the past year that supports that additional basis. The hospital must prove the additional basis and conduct at the hearing as specified in subsection 3, paragraph H. If the hearing officer determines that the requirements for the extension of an authorization described in paragraph B have been met, the hearing officer must recommend an extension of the authorization to the commissioner. While the hearing officer may consider evidence of behavior during the period of involuntary medication, no new acts necessarily need to be alleged or proven in order to support an extension of the authorization that is in effect. [PL 2015, c. 325, §1 (NEW).]

B. The commissioner may order an extension of an authorization under this subsection. An order extending an authorization that is in effect must be granted based on clear and convincing evidence that:

- (1) The patient has a mental illness or disorder;
- (2) As a result of that illness or disorder the patient poses a substantial risk of harm to self or others or there is a reasonable certainty that the patient will suffer severe physical or mental harm as manifested by recent behavior demonstrating an inability to avoid risk or to protect the patient adequately from impairment or injury if not medicated;
- (3) There is no less intrusive alternative to involuntary medication; and
- (4) The need for treatment outweighs the risks and side effects. [PL 2015, c. 325, §1 (NEW).]

C. An extension under this subsection is valid for one year after the date of the hearing under paragraph A. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**8. Early termination.** To request early termination of an authorization allowing involuntary medication, the patient or the patient's designated representative shall file a request with the



department's office of administrative hearings, along with copies of documents from the patient's hospital record, or from another medical source, demonstrating that there has been a significant change to the conditions leading to the original order or the patient's medical condition. The hearing officer shall determine within 14 days whether the documents are sufficient to show such a change, and, if so, shall schedule a hearing to determine whether the change in the conditions leading to the original order or the patient's medical condition is such that the benefits of the authorized treatment no longer outweigh the risks and side effects.

A. A hearing under this subsection must be held no more than 14 days after the hearing officer's determination, unless the patient or the patient's designated representative agrees to extend the date of the hearing. The authorization remains in effect unless it is terminated following the hearing. [PL 2015, c. 325, §1 (NEW).]

B. The patient, the patient's designated representative, if any, and the hospital must be provided with written notice of the hearing under this subsection at least 7 days prior to the hearing. The written notice must:

- (1) Advise the patient of the right to be present at the hearing, the right to present evidence and the right to present and examine witnesses; and
- (2) Inform the patient of the patient's right to file an appeal in Superior Court of a decision of the commissioner determining that the benefits of the authorized treatment continue to outweigh the risks and side effects. [PL 2015, c. 325, §1 (NEW).]

C. For purposes of a request for early termination of an authorization under this subsection, the patient may name as the patient's designated representative a lay advisor provided by the hospital, a lawyer provided by the patient at the patient's own expense or another representative who is selected by the patient and who is willing and able to assist in the proceeding. If the hearing officer determines that a hearing is warranted, the patient must be provided counsel at the department's expense at least 7 days prior to the hearing. [PL 2015, c. 325, §1 (NEW).]

D. If, following a hearing under this subsection, the hearing officer determines by clear and convincing evidence that the benefits of authorized treatment no longer outweigh the risks and side effects, the hearing officer must recommend termination of the authorization to the commissioner. The decision whether to terminate the authorization of involuntary treatment rests with the commissioner, who shall act within 48 hours upon the hearing officer's recommendation. [PL 2015, c. 325, §1 (NEW).]

[PL 2015, c. 325, §1 (NEW).]

**9. Final agency action.** An order issued by the commissioner under subsection 3, paragraph J, subsection 7, paragraph B or subsection 8, paragraph D is a final agency action. [PL 2015, c. 325, §1 (NEW).]

**10. Rules.** The department may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as described in Title 5, chapter 375, subchapter 2-A. [PL 2015, c. 325, §1 (NEW).]

## SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

### §108. Court-ordered independent examinations

Before making a determination under section 106 or 107, a court may order an independent psychiatric or medical examination of the patient. The Department of Health and Human Services, within 30 days after receiving a request from the Administrative Office of the Courts, shall reimburse the Judicial Department for the full amount of fees paid by the Judicial Department to providers of

psychiatric and medical examinations of forensic patients ordered by the court. [PL 2015, c. 325, §1 (NEW).]

## SECTION HISTORY

PL 2015, c. 325, §1 (NEW).

### §109. Committee for the oversight of patient human rights

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

A. "Commissioner" means the Commissioner of Health and Human Services. [PL 2019, c. 405, §2 (NEW).]

B. "Committee" means a committee at a state institution that has responsibility for overseeing patients in a state institution or forensic patients placed in institutions outside the State. [PL 2019, c. 405, §2 (NEW).]

C. "Department" means the Department of Health and Human Services. [PL 2019, c. 405, §2 (NEW).]

D. "State institution" has the same meaning as in Title 34-B, section 1001, subsection 8. [PL 2019, c. 405, §2 (NEW).]

E. "Superintendent" means the chief administrative officer of a state institution. [PL 2019, c. 405, §2 (NEW).]

[PL 2019, c. 405, §2 (NEW).]

**2. Committee convened.** The commissioner shall convene a committee in each state institution. [PL 2019, c. 405, §2 (NEW).]

**3. Duties.** The duties of the committee include, but are not limited to:

A. Reviewing practices that affect, or potentially affect, the civil liberties or other rights of patients; [PL 2019, c. 405, §2 (NEW).]

B. Reviewing, investigating and seeking resolution of patient grievances; [PL 2019, c. 405, §2 (NEW).]

C. For forensic patients placed outside the State pursuant to section 103:

(1) Reviewing reports submitted to the commissioner by the state institution pursuant to section 104-A, subsection 1 and provided to the committee by the superintendent pursuant to subsection 4;

(2) Reviewing medical records or other records at the request of the patient or the patient's guardian if the patient who is the subject of the review or the patient's guardian has provided informed, written consent; and

(3) Receiving verbal reports at least twice per year from the superintendent of the state institution monitoring the person's placement outside the State; [RR 2021, c. 2, Pt. A, §32 (COR).]

D. Performing other duties as assigned by the superintendent; and [PL 2019, c. 405, §2 (NEW).]

E. Making recommendations or reporting concerns to the superintendent based on any review under this subsection. [PL 2019, c. 405, §2 (NEW).]

[RR 2021, c. 2, Pt. A, §32 (COR).]

**4. Report; confidentiality.** The superintendent shall provide patient reports under section 104-A, subsection 1 to the committee. The superintendent shall remove any identifying information of the patient in the report reviewed by the committee pursuant to subsection 3, paragraph C, subparagraph

(1), unless the patient who is the subject of the report or the patient's guardian has provided informed, written consent to the full disclosure of the report to the committee.

[PL 2019, c. 405, §2 (NEW).]

#### SECTION HISTORY

PL 2019, c. 405, §2 (NEW). RR 2021, c. 2, Pt. A, §32 (COR).

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