

**§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 he was released. A hearing shall 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.

[PL 1985, c. 796, §4 (AMD).]

**5. Reinstitutionalization due to likelihood of causing injury.** Any person released under subsection 1, paragraph A, whose reinstitutionalization, due to the likelihood that he will cause injury to himself 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 his order. A hearing shall 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 he was released pending the hearing, which detention shall 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 he will cause injury to himself 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, 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.

[PL 1985, c. 796, §4 (AMD).]

**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).

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