

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

SECOND REGULAR SESSION-2004

Legislative Document

No. 1764

H.P. 1286

House of Representatives, December 22, 2003

An Act To Improve the Operations of the Department of Corrections and the Safety of State Correctional Facilities

Submitted by the Department of Corrections pursuant to Joint Rule 204.

Received by the Clerk of the House on December 17, 2003. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BLANCHETTE of Bangor.
Cosponsored by Senator HATCH of Somerset and
Representatives: CRAVEN of Lewiston, DUDLEY of Portland, HATCH of Skowhegan,
LESSARD of Topsham, McGOWAN of Pittsfield, PARADIS of Frenchville, SMITH of
Monmouth, WALCOTT of Lewiston.

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

4 **PART A**

6 **Sec. A-1. 15 MRSA §3101, sub-§4, ¶E-1**, as amended by PL 1997,
c. 645, §5, is further amended to read:

8 E-1. If the Juvenile Court binds the juvenile over to
10 Superior Court, the court may direct detention of any such
juvenile who is to be detained in a section of a jail that
12 is used primarily for the detention of adults when it finds
by clear and convincing evidence that:

14 (1) The juvenile's behavior presents an imminent
danger of harm to that juvenile or to others; and

16 (2) There is not a less restrictive alternative to
18 detention in an adult section that serves the purposes
of detention.

20 In determining whether the juvenile's behavior presents
22 a danger to that juvenile or others, the Juvenile Court
shall consider, among other factors:

24 (a) The nature of and the circumstances
26 surrounding the offense with which the juvenile is
charged, including whether the offense was
28 committed in an aggressive, violent, premeditated
or intentional manner;

30 (b) The record and previous history of the
32 juvenile, including the juvenile's emotional
attitude and pattern of living; and

34 (c) If applicable, the juvenile's behavior and
36 mental condition during any previous and current
period of detention or commitment.

38 The Juvenile Court shall direct detention of any such
40 juvenile who is to be detained in an adult section of a jail
42 when that person has attained 18 years of age.

44 **Sec. A-2. 15 MRSA §3203-A, sub-§5-A** is enacted to read:

46 5-A. New order. If the Juvenile Court orders detention
48 pursuant to subsection 5, the court shall review that order
within 10 days and may enter a new order in accordance with this
section.

2 **Sec. A-3. 15 MRSA §3306-A**, as amended by PL 2001, c. 696,
§2, is further amended to read:

4 **§3306-A. Release or detention at first appearance**

6 At the juvenile's first appearance or at any subsequent
8 appearance before the court, the court may order, pending further
appearances before the court, the juvenile's unconditional
10 release, conditioned release or detention in accordance with
section 3203-A. Unless the court orders otherwise, any juvenile
12 put on conditional release by a juvenile community corrections
officer remains on conditional release until disposition.

14 Detention may not be ordered unless a Juvenile Court Judge
16 or justice of the peace has determined pursuant to section
3203-A, subsection 4-A, the Juvenile Court has determined at a
18 prior appearance or the Juvenile Court determines at the
appearance that there is probable cause to believe that the
juvenile has committed a juvenile crime.

20 When a court orders detention or a conditional release that
22 authorizes even temporarily the juvenile's removal from the
juvenile's home or when a court allows a conditional release
24 ordered by a juvenile community corrections officer that
authorizes, even temporarily, the juvenile's removal from the
26 juvenile's home to remain in effect, the court shall determine
whether reasonable efforts have been made to prevent or eliminate
28 the need for removal of the juvenile from the juvenile's home or
that no reasonable efforts are necessary because of the existence
30 of an aggravating factor as defined in Title 22, section 4002,
subsection 1-B, and whether continuation in the juvenile's home
32 would be contrary to the welfare of the juvenile. This
determination does not affect whether the court orders detention
34 or a conditional release or allows a conditional release to
remain in effect, which continues to be governed by section
36 3203-A.

38 **Sec. A-4. 17-A MRSA §1204, sub-§1-B**, as amended by PL 1995, c.
502, Pt. F, §12, is further amended to read:

40 **1-B.** Upon the request of the Department of Corrections, the
42 court shall attach as a condition of probation that the convicted
person pay, through the department, an electronic monitoring fee,
44 a substance testing fee or both, as determined by the court, for
the term of probation. In determining the amount of the fees,
46 the court shall take into account the financial resources of the
convicted person and the nature of the burden the payment
48 imposes. A person may not be sentenced to imprisonment without
probation solely for the reason the person is not able to pay the
50 fees. When a person on probation fails to pay the fees, the

2 court may revoke probation as specified in section 1206, unless
3 the person shows that failure to pay was not attributable to a
4 willful refusal to pay or to a failure on that person's part to
5 make a good faith effort to obtain the funds required for the
6 payment. The court, if it determines that revocation of
7 probation is not warranted, shall issue a judgment for the total
8 amount of the fees and shall issue an order attaching a specified
9 portion of money received by or owed to the person on probation
10 until the total amount of the fees has been paid. If the person
11 makes this showing, the court may allow additional time for
12 payment within the remaining period of probation or reduce the
13 size of the fees, but may not revoke the requirement to pay the
14 fees unless the remaining period of probation is 30 days or
15 less. Fees received from probationers must be deposited into the
16 department's ~~Correctional---Program---Improvement---Fund~~ adult
17 community corrections account, except that when authorized by the
18 Department of Corrections, a person on probation may be required
19 to pay fees directly to a provider of electronic monitoring,
20 substance testing or other services. Funds from this account,
21 which may not lapse, must be used to defray costs associated with
22 the purchase and operation of electronic monitoring and substance
23 testing programs.

24 **Sec. A-5. 17-A MRSA §1253, sub-§2**, as amended by PL 2003, c.
25 205, §6, is further amended to read:

26
27 **2.** Each person sentenced to imprisonment who has previously
28 been detained for the conduct for which the sentence is imposed
29 in any state facility or county institution or facility or in any
30 local lockup awaiting trial, during trial, post-trial awaiting
31 sentencing or post-sentencing prior to the date on which the
32 sentence commenced to run either to await transportation to the
33 place of imprisonment specified, or pursuant to court order, and
34 not in execution of any other sentence of confinement, is
35 entitled to receive a day-for-day deduction from the total term
36 of imprisonment required under that sentence. Each person is
37 entitled to receive the same deduction for any such period of
38 detention in any federal, state or county institution, local
39 lockup or similar facility in another jurisdiction, including any
40 detention resulting from being a fugitive from justice, as
41 defined by Title 15, section 201, subsection 4, unless the person
42 is simultaneously being detained for non-Maine conduct.

43
44 For the purpose of calculating the day-for-day deduction
45 specified by this subsection, a "day" means 24 hours.

46
47 The total term required under the sentence of imprisonment is
48 reduced by the total deduction of this subsection prior to
49 applying any of the other deductions specified in this section or
50 in Title 30-A, section 1606.

2 The If requested by the court, the attorney representing this
3 State shall furnish inform the court, at the time of sentencing
4 ~~or within 10 days thereafter, a statement showing~~ of the total
5 deduction of this subsection, to that point in time, ~~and the~~
6 ~~statement must be attached to the official records of the~~
7 commitment.

8
9 The sheriff or other person upon whom the legal duty is imposed
10 to deliver a sentenced person who has been detained as specified
11 in this subsection shall, within 30 days of delivery, furnish to
12 the custodian a statement showing the length of that detention.
13 In addition, the transporter shall furnish to the attorney for
14 the State the same statement. The custodian shall use the
15 statement furnished to determine the day-for-day deduction to
16 which the person is entitled, if any, unless, within 15 days of
17 its receipt, the attorney for the State furnishes a revised
18 statement to the custodian.

19 **Sec. A-6. 17-A MRSA §1326-D** is enacted to read:

20 **§1326-D. Victim unable to be located**

21 If the location of a victim can not, with due diligence, be
22 ascertained, the money collected as restitution must be forwarded
23 to the Treasurer of State to be handled as unclaimed property.

24 **Sec. A-7. 20-A MRSA §1, sub-§34-A, ¶E**, as enacted by PL 1997,
25 c. 326, §1 and amended by PL 2001, c. 439, Pt. G, §6, is further
26 amended to read:

27 E. In the custody or under the supervision of the
28 Department of Corrections, including, but not limited to, a
29 juvenile on conditional release, an informally adjusted
30 juvenile, a probationer or a juvenile on ~~aftercare~~ community
31 reintegration status from the Long Creek Youth Development
32 Center or the Mountain View Youth Development Center and who
33 is placed, for reasons other than educational reasons,
34 pursuant to a court order or with the agreement of an
35 authorized agent of the Department of Corrections, outside
36 the juvenile's home.

37 **Sec. A-8. 34-A MRSA §3032, sub-§5-A, ¶B-1** is enacted to read:

38 B-1. A prisoner or juvenile who is discharged from the
39 facility remains liable for any restitution authorized under
40 this chapter. If the prisoner or juvenile is returned to
41 the custody of the department, any facility in which the
42 prisoner or juvenile resides shall collect the restitution

2 and ensure that it is used to defray the costs as set out in
3 this chapter.

4 **Sec. A-9. 34-A MRSA §3805**, as amended by PL 2001, c. 354,
5 §3, is further amended to read:

6 **§3805. Detention and commitment**

7
8 **1. Eligibility.** Only a juvenile, as defined in Title 15,
9 section 3003, subsection 14, who is 11 years of age or older at
10 the time of commitment may be committed to the facility pursuant
11 to this subchapter and Title 15, Part 6.

12
13 **2. Limitations.** A person may not be detained at or
14 committed to the facility who is ~~blind or who is a proper subject~~
15 eligible for any residential services provided by or through the
16 Department of Behavioral and Developmental Services.

17
18 **3. Certification.** When a person is detained at or
19 committed to the facility, the court making the detention or
20 commitment shall certify on the mittimus the person's birthplace,
21 parentage and legal residence.

22
23 **Sec. A-10. 34-A MRSA §3809-A, sub-§3**, as amended by PL 2003,
24 c. 410, §15, is further amended to read:

25
26 **3. Psychiatric hospitalization.** The commissioner has all
27 the power over a juvenile client or juvenile detainee that a
28 guardian has over a ward and that a parent has over a child with
29 regard to necessary psychiatric hospitalization, including
30 hospitalization in a nonstate mental health institution or
31 hospital for the mentally ill. If a juvenile client or juvenile
32 detainee is or becomes 18 years of age while still under
33 commitment or while still detained, the statutory guardianship of
34 the commissioner over the juvenile client or juvenile detainee
35 terminates, but the juvenile client or juvenile detainee remains
36 subject to the control of the commissioner and staff and rules of
37 the facility until the expiration of the period of commitment or
38 until release or discharge from the facility. Nothing in this
39 subsection may be construed to override the requirement to make
40 application for psychiatric hospitalization in accordance with
41 Title 34-B, section 3863, unless hospitalization is made with the
42 juvenile client's or juvenile detainee's consent in accordance
43 with Title 34-B, section 3831. ~~The commissioner may make~~
44 ~~application for necessary psychiatric hospitalization of a~~
45 ~~juvenile detainee, including hospitalization in a nonstate mental~~
46 ~~health institution or hospital for the mentally ill, in~~
47 ~~accordance with Title 34-B, section 3863.~~
48

2 **Sec. A-11. 34-A MRSA §4104**, as amended by PL 1999, c. 583,
§42 and PL 2001, c. 354, §3 and c. 439, Pt. G, §8, is further
4 amended to read:

6 **§4104. Detention and commitment**

8 **1-A. Eligibility.** Only a juvenile, as defined in Title 15,
section 3003, subsection 14, who is 11 years of age or older at
10 the time of commitment may be committed to the Mountain View
Youth Development Center pursuant to this subchapter and Title
12 15, Part 6.

14 **2. Limitations.** A person may not be detained at or
committed to the Mountain View Youth Development Center who is
16 ~~blind or who is a proper subject~~ eligible for any residential
services provided by or through the Department of Behavioral and
18 Developmental Services.

20 **3. Certification.** When a person is detained at or
committed to the Mountain View Youth Development Center, the
22 court ordering the detention or commitment shall certify on the
mittimus the person's birthplace, parentage and legal residence.

24 **Sec. A-12. 34-A MRSA §4111, sub-§3**, as amended by PL 2003, c.
410, §19, is further amended to read:

26 **3. Psychiatric hospitalization.** The commissioner has all
28 the power over a juvenile client or juvenile detainee that a
guardian has over a ward and that a parent has over a child with
30 regard to necessary psychiatric hospitalization, including
hospitalization in a nonstate mental health institution or
32 hospital for the mentally ill. If a juvenile client or juvenile
detainee is or becomes 18 years of age while still under
34 commitment or while still detained, the statutory guardianship of
the commissioner over the juvenile client or juvenile detainee
36 terminates, but the juvenile client or juvenile detainee remains
subject to the control of the commissioner and staff and rules of
38 the facility until the expiration of the period of commitment or
until release or discharge from the facility. Nothing in this
40 subsection may be construed to override the requirement to make
application for psychiatric hospitalization in accordance with
42 Title 34-B, section 3863, unless hospitalization is made with the
juvenile client's or juvenile detainee's consent in accordance
44 with Title 34-B, section 3831. ~~The commissioner may make~~
~~application for necessary psychiatric hospitalization of a~~
46 ~~juvenile detainee, including hospitalization in a nonstate mental~~
~~health institution or hospital for the mentally ill, in~~
48 ~~accordance with Title 34-B, section 3863.~~

2 the county jail. In the case of outpatient hospital services,
3 this limitation is deemed to have been met if the county or its
4 contracted medical provider pays a percentage, as determined by
5 the Department of Human Services, of the published MaineCare rate.

6 **Sec. B-2. 34-A MRSA §3031-B** is enacted to read:

8 **§3031-B. Limitation on reimbursement rate to medical service**
9 **providers for services outside department facility**

10 Effective July 1, 2004, the department or its contracted
11 medical provider may pay to a provider of a medical service for a
12 person residing in a correctional or detention facility an amount
13 no greater than the reimbursement rate applicable to that
14 provider and that service as established by rule of the
15 Department of Human Services for the MaineCare program under
16 Title 22. This limitation applies to all medical care services,
17 goods, prescription drugs and medications provided to a person
18 outside the facility. In the case of outpatient hospital
19 services, this limitation is deemed to have been met if the
20 department or its contracted medical provider pays a percentage,
21 determined by the Department of Human Services, of the published
22 MaineCare rate.

23 **Sec. B-3. 34-A MRSA §3069, sub-§1**, as amended by PL 2003, c.
24 482, Pt. B, §1, is further amended to read:

25 **1. Involuntary.** When an-inmate a prisoner of a correctional
26 ~~or-detention~~ facility has been determined by a-competent-medical
27 authority the facility's treating physician, psychiatrist or
28 psychologist to require inpatient treatment for mental illness,
29 the chief administrative officer of that facility shall make
30 application in accordance with Title 34-B, section 3863.

31 **A.** Any person with respect to whom an application and
32 certification under Title 34-B, section 3863 are made may be
33 admitted to either state mental health institute.

34 **B.** Except as otherwise specifically provided in this
35 section, Title 34-B, chapter 3, subchapter ~~IV~~ 4, Article ~~III~~
36 3, is applicable to the person as if the admission of the
37 person were applied for under Title 34-B, section 3863.

38 **C.** A copy of the document by which the person is held in
39 the facility must accompany the application for admission.

40 **D.** If the sentence being served at the time of admission
41 has not expired or commitment has not been terminated in
42 accordance with law at the time the person is ready for
43 discharge from hospitalization, the person must be returned
44

2 by the appropriate officers of the correctional or detention facility.

4 E. Admission to a hospital under this section has no effect
6 upon a sentence then being served or a commitment then in effect. The sentence continues to run and the commitment remains in force, unless terminated in accordance with law.

8 **Sec. B-4. PL 2001, c. 659, Pt. H, §1,** is repealed and the
10 following enacted in its place:

12 **Sec. H-1. Use of medications to treat mentally ill persons.** The
14 Department of Corrections formulary of medications to treat
16 persons with mental illness must be comparable to the formulary
18 used by the State's mental health institutes and must be
consistent with the MaineCare program. The department shall
ensure that effective medications are available and used and that
clinical care needs primarily govern the use of medications.

20 **Sec. B-5. Retroactivity.** That section of this Part that enacts
22 the Maine Revised Statutes, Title 34-A, section 3031-B applies
retroactively to July 1, 2004.

24 **PART C**

26 **Sec. C-1. 17-A MRSA c. 54-E,** as amended, is repealed.

28 **Sec. C-2. 34-A MRSA §5003, sub-§1, ¶B,** as amended by PL 1995,
30 c. 502, Pt. F, §31, is further amended to read:

32 B. This subsection applies to interferences with the
34 probation of probationers who are under the supervision and
control of the department at the request of other states
36 under terms of the Uniform-Act-for-Out-of-State-Parolee
Supervision Interstate Compact for Adult Offender
Supervision and the Interstate Compact for Juveniles.

38 **Sec. C-3. 34-A MRSA §5003, sub-§2, ¶B,** as amended by PL 1995,
40 c. 502, Pt. F, §31, is further amended to read:

42 B. This subsection applies to interferences with the parole
44 of parolees who are under the supervision and control of the
department at the request of other states under terms of the
46 Uniform-Act-for-Out-of-State-Parolee-Supervision Interstate
Compact for Adult Offender Supervision and the Interstate
Compact for Juveniles.

48 **Sec. C-4. 34-A MRSA c. 9, sub-c. 5,** as amended, is repealed.
50

STATE COUNCIL

2
4 §9921. State Council for Juvenile and Adult Offender
 Supervision established

6 The State Council for Juvenile and Adult Offender
7 Supervision, referred to in this section as "the council," is
8 established to provide oversight and guidance to the State's
9 participation in the Interstate Compact for Adult Offender
10 Supervision and the Interstate Compact for Juveniles.

12 1. Membership. The council consists of at least 8 members
13 as follows:

14 A. One member of the Senate, appointed by the President of
15 the Senate;

16 B. One member of the House of Representatives, appointed by
17 the Speaker of the House;

18 C. Three members who are appointed by the Governor for a
19 term of 4 years, or until a successor is appointed, and who
20 are eligible for reappointment at the discretion of the
21 Governor;

22 (1) One prosecutor;

23 (2) One representative of a statewide association
24 representing victims of crime; and

25 (3) One representative representing law enforcement;

26 D. The compact administrators for the Interstate Compact
27 for Adult Offender Supervision and the Interstate Compact
28 for Juveniles, who may be designees appointed by the
29 Commissioner of Corrections to administer the Interstate
30 Compact for Adult Supervision and the Interstate Compact for
31 Juveniles;

32 E. The Associate Commissioner for Adult Services or the
33 associate commissioner's designee; and

34 F. The Associate Commissioner for Juvenile Services or the
35 associate commissioner's designee.

36 The council shall invite the Chief Justice of the Supreme
37 Judicial Court to designate a trial judge to act as advisor to
38 the council.

SUMMARY

2

4 Part A of the bill requires that a juvenile detention order
6 be reviewed by the court within 10 days. The bill also changes
8 the fund to which fees received from probationers are deposited
10 to the adult community corrections account. The bill requires
12 restitution collected for victims who can not be located to be
14 forwarded to the Treasurer of State to be handled as unclaimed
16 property. The bill clarifies that a person who is discharged
18 from a facility is still liable for restitution ordered and if
20 that person is remanded to another facility, the restitution
collected must be used to defray the facility's costs. It also
requires a bound-over juvenile who is to be detained to be
detained with adults once that person becomes 18 years of age.
It adds the requirement of a determination of probable cause
before a juvenile may be detained to the initial appearance
provision in the Maine Juvenile Code. It clarifies the
limitations on juvenile detention and commitment. It changes the
psychiatric provisions for juvenile detainees to be identical to
the ones for committed juveniles.

22 Part B of the bill limits the reimbursement rate for medical
24 services provided outside the Department of Corrections
26 facilities to the MaineCare rate and ensures that medications
28 used by the department are consistent with the MaineCare
program. It adds a similar provision to the equivalent county
jail statute.

30 Part C of the bill establishes the state council required
32 under the Interstate Compact for Adult Offender Supervision and
the Interstate Compact for Juveniles; designates the compact
administrators; and repeals the obsolete Interstate Compact for
Out-of-State Parolee Supervision.