

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL



Memo From

COURTLAND D. PERRY
ASSISTANT ATTORNEY GENERAL
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: September 12, 1975

To: G. S. Mullaney, Warden Dept: Maine State Prison

Subject: Appropriate venue for prosecution for escape of transferee from Maine State Prison to Men's Correctional Center

This informal opinion is in response to your inquiry relative to the appropriate venue for prosecution for escape of an inmate transferred from the Maine State Prison to the Men's Correctional Center, which escape was from the custody of officers while the inmate was on an escorted recreational trip away from the Men's Correctional Center, and whether such escape is from the Maine State Prison or from the Men's Correctional Center.

The inmate was transferred from the Maine State Prison to the Men's Correctional Center under 34 M.R.S.A. § 705.

Title 34, Section 807, provides:

"Any inmate of the center who feloniously assaults any officer or other person employed in the government of the center or who breaks or escapes therefrom or forcibly attempts to do so, upon conviction therefor, shall be punished by imprisonment in accordance with Title 17, section 1405. Upon conviction and sentence, under this section, the inmate's former sentence shall terminate and he shall begin in execution of the sentence imposed under this section at the Maine State Prison. Any prisoner transferred to the center, under section 705, who violates this section shall be subject to section 710. The superintendent shall certify the fact of the violation of this section to the county attorney for Cumberland County who shall prosecute any such inmate or transferred prisoner therefor."

The quoted language is clear on its face in its direction that the superintendent of the Men's Correctional Center certify the escape of a transferee under § 705 to the county attorney for Cumberland County (now District Attorney for Prosecutorial District No. 2) and that the appropriate venue for prosecution is Cumberland County.

It also appears from the language of § 807 that the escape in this instance is from lawful detention at the Men's Correctional Center arising from the sentence

of the court to the Maine State Prison and transfer therefrom to the Men's Correctional Center in accordance with Title 34, § 705. Section 807 speaks in terms of the transferee's violation of § 807; i.e., escape from the Men's Correctional Center, and sets forth in the last sentence that the transferee shall be prosecuted therefor. Section 807 establishes the substantive offense with which we are concerned here, escape from the Men's Correctional Center, clearly fixes the venue for prosecution in Cumberland County, and by use of the language, "shall be subject to section 710," makes applicable the penalty provision of Title 34 § 710, distinguishing in the latter instance between the punishment to which an inmate of the Men's Correctional Center is subject and the punishment to which a transferred prisoner is subject in the event of escape.

Courtland D. Perry
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CDP/a

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