

MAINE STATE LEGISLATURE

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FIRST SPECIAL SESSION

ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 2313

H. P. 1816

House of Representatives, January 7, 1974

Referred to the Committee on Judiciary. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Perkins of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FOUR

AN ACT Relating to Initial Changes in the Penal System of the State
and the Rights and Duties of Convicted Persons.

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

PART A

ESTABLISHING A CORRECTIONAL POLICY

FOR THE STATE OF MAINE

Sec. 1. R. S., T. 34, § 525, amended. Section 525 of Title 34 of the Revised Statutes, as enacted by chapter 20 of the public laws of 1967 and as amended by section 66 of chapter 590 of the public laws of 1969, is further amended by adding at the end the following:

The State of Maine recognizes that society is best and most effectively served by the adoption of a correctional system designed to protect the public welfare; and it is the intention of the State of Maine to:

1. Protect the public welfare by emphasizing efforts to assure that an offender will not return to criminal activity after release from the correctional system;
2. Direct that the courts and all other elements of the criminal justice system are so administered that an offender's individual correctional program is the least drastic measure consistent with the offender's needs and the public safety, and to direct that confinement, which is the most drastic disposition for an offender and the most expensive for the public, is the last alternative considered;

3. Direct the Department of Mental Health and Corrections to administer its correctional institutions in a manner designed to emphasize safe and reasonable reintegration of the offender into society, rather than punitive incarceration;

4. Recognize a legal right on the part of persons confined within state correctional institutions to services designed to reintegrate such persons adequately into society, and to recognize the prohibition of involuntary participation by confined persons in such services; and

5. Direct the Department of Mental Health and Corrections and other elements of the criminal justice system to develop to the maximum extent possible community-based programs and facilities in lieu of institutionalization, utilizing all state and federal assistance possible for this purpose.

This State's correctional policy is established mindful of the realities that nearly all criminal offenders eventually return to society, and that primary reliance upon centralized custodial institutions insulated from the larger community is self-defeating, results in unnecessarily high costs to the taxpayer and ignores the advantages and economies of correctional treatment in the open community.

The Department of Mental Health and Corrections is directed to cooperate fully with any persons seeking enforcement of the policies enumerated in this section without stigma or retaliation against such persons who are inmates of state correctional institutions, and is directed generally to administer the correctional system of this State in consonance with the purposes and stated policy of this section.

PART B

STANDARDS FOR DISQUALIFICATIONS OF APPLICANTS WITH CRIMINAL RECORDS FOR A LICENSE OR PERMIT TO PRACTICE A TRADE OR OCCUPATION

Sec. 2. R. S., T. 5, c. 347, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 347 to read as follows:

CHAPTER 347

OCCUPATIONAL LICENSE DISQUALIFICATION ON BASIS OF CRIMINAL RECORD

§ 4701. Eligibility for occupational license or permit

1. Subject to subsection 2, and sections 4702 and 4703, in determining eligibility for the granting of any occupational license or permit issued by the State, the licensing agency may take into consideration conviction of certain crimes which have not been set aside, pardoned or expunged, but such convictions shall not operate as an automatic bar to being licensed or permitted to practice any trade or occupation.

2. The following criminal records shall not be used, distributed or disseminated in connection with an application for a license or permit:

- A. Records of arrest not followed by a valid conviction;
- B. Convictions which have been set aside, pardoned or expunged;
- C. Misdemeanor convictions not involving moral turpitude; and
- D. Misdemeanor convictions for which no jail sentence can be imposed.

§ 4702. Denial or revocation of licenses because of criminal record

1. Licensing agencies may refuse to grant or renew, or may suspend or revoke any occupational license or permit for any one or combination of the following causes:

- A. Where the applicant has been convicted of a felony or a misdemeanor involving moral turpitude or for which a jail sentence may be imposed, and such criminal conviction directly relates to the trade or occupation for which the license or permit is sought; but only
- B. If the licensing agency determines, after complete investigation, that the applicant so convicted has not been sufficiently rehabilitated to warrant the public trust.

2. The licensing agency shall explicitly state in writing the reasons for a decision which prohibits the applicant from practicing the trade or occupation if such decision is based in whole or part on conviction of any crime described in subsection 1, paragraph A. For purposes of subsection 1, paragraph B, successful completion of probation or parole supervision, or final discharge, or release from any term of imprisonment without any subsequent conviction, shall constitute a rebuttable presumption of sufficient rehabilitation.

§ 4703. Denial or revocation of licenses because of noncriminal standards

When considering noncriminal standards such as good moral character, unethical conduct or habitual intemperance in the use of intoxicants, in the granting, renewal, suspension or revocation of occupational licenses or permits, the licensing agency may not take into consideration conviction of any crime. Nothing in this chapter shall be construed to otherwise affect proceedings before the licensing agency involving standards of good moral character which do not involve conviction of a crime.

§ 4704. Appeals

Any person who is aggrieved by the decision of any licensing agency in possible violation of this chapter may file a statement of complaint with the Administrative Court Judge designated in Title 5, chapters 301 to 307.

PART C

ECONOMIES IN THE ADMINISTRATION OF THE
WOMEN'S CORRECTIONAL CENTER

Sec. 3. R. S., T. 34, § 851, amended. The first paragraph of section 851 of Title 34 of the Revised Statutes, as repealed and replaced by section 15 of

chapter 391 of the public laws of 1967, is repealed and the following enacted in place thereof:

The Women's Correctional Center shall be maintained for the confinement and rehabilitation of:

Sec. 4. R. S., T. 34, § 851-A, sub-§ 1, repealed and replaced. Subsection 1 of section 851-A of Title 34 of the Revised Statutes, as enacted by section 16 of chapter 391 of the public laws of 1967, is repealed and the following enacted in place thereof:

1. Center. "Center" as used in this chapter shall mean the Women's Correctional Center.

Sec. 5. R. S., T. 34, § 852-A, additional. Title 34 of the Revised Statutes is amended by adding a new section 852-A to read as follows:

§ 852-A. Designation of Women's Correctional Center

The Commissioner of Mental Health and Corrections shall designate a state institution as and for the Women's Correctional Center.

Sec. 6. R. S., T. 34, § 859, amended. The first sentence of the last paragraph of section 859 of Title 34 of the Revised Statutes, as repealed and replaced by section 20 of chapter 391 of the public laws of 1967, is repealed and the following enacted in place thereof:

The superintendent shall certify the fact of each instance of escape to the county attorney for the county in which the center is located, who shall prosecute such inmate or prisoner therefor.

PART D

AUTHORIZATION OF A NONGEOGRAPHIC SCHOOL

ADMINISTRATIVE UNIT FOR THE BUREAU OF CORRECTIONS

Sec. 7. R. S., T. 34, § 529, additional. Title 34 of the Revised Statutes is amended by adding a new section 529 to read as follows:

§ 529. Institutional school administrative units authorized

The Bureau of Corrections may establish and operate schools in the various institutions under its general administrative supervision. The Bureau of Corrections shall constitute a nongeographic school administrative unit and schools established and operated under this section shall constitute public schools, for the purposes of Title 20, wherever applicable.

1. Eligibility of students. All persons under sentence to such institutions, who are not otherwise eligible to attend public schools, are eligible to attend such schools. In addition, such schools shall be open to members of the public in the open community at the discretion of the Bureau of Corrections.

2. **Grants.** The Bureau of Corrections may accept grants from both public and private organizations and expend such funds for the purpose of operating such schools.

3. **Matching grants solicited by State.** The State shall solicit matching grants from the Federal Government to defray the costs of operating the schools authorized by this section and the funds received shall be allocated to the Bureau of Corrections. No part of the operating cost of such schools shall be charged to any of the school districts of this State.

Sec. 8. R. S., T. 20, § 3452, sub-§ 1, amended. Subsection 1 of section 3452 of Title 20 of the Revised Statutes is amended to read as follows:

1. **Administrative unit.** "Administrative unit" shall include all municipal or quasi-municipal corporations responsible for operating public schools or those school administrative units otherwise authorized by the Legislature.

PART E

EARNING OF GOOD TIME BY INMATES

Sec. 8. R. S., T. 34, § 705, amended. The first paragraph of section 705 of Title 34 of the Revised Statutes, as amended by chapter 210 of the public laws of 1965, is repealed and the following enacted in place thereof:

Each inmate whose record of conduct shows that he has faithfully observed all the rules and requirements of the State Prison shall earn a deduction of 12½ days a month from the minimum term of his sentence, commencing on the first day of his arrival at the State Prison. An additional 2 days a month may be deducted from the sentence of those inmates who are assigned duties outside the prison walls or security system, or those inmates within the prison walls who are assigned to work or educational or rehabilitative programs deemed by the Warden of the State Prison to be of sufficient importance and responsibility to warrant such deduction. Any portion of the time deducted from the sentence of any inmate for good behavior may be withdrawn by the Warden of the State Prison for the infraction of any rule of the State Prison, for any misconduct or for the violation of any law of the State, not to exceed ⅓ of the inmate's accumulated good time for each offense. Such withdrawal of good time shall be proportionate to the offense and may be made in accordance with procedural due process by the warden who may restore any portion thereof if the inmate's later conduct and outstanding effort warrant such restoration. This section shall apply to the sentences of all inmates now or hereafter confined within the State Prison, and shall not be construed to prevent the allowance of good time from maximum sentences or definite sentences.

Sec. 9. R. S., T. 34, § 865, repealed and replaced. Section 865 of Title 34 of the Revised Statutes, as enacted by section 25 of chapter 391 of the public laws of 1967, is repealed and the following enacted in place thereof:

§ 865. Deduction from sentence

Each prisoner whose record of conduct shows that she has faithfully observed all the rules and requirements of the center shall earn a deduction of

12½ days a month from the minimum term of her sentence, commencing on the first day of her arrival at the center. An additional 2 days a month may be deducted from the sentence of those prisoners who are assigned duties outside the institution or its security system, or those prisoners within the institution who are assigned to work or educational or rehabilitative programs deemed by the superintendent to be of sufficient importance and responsibility to warrant such deduction. Any portion of the time deducted from the sentence of any prisoner for good behavior may be withdrawn by the superintendent for the infraction of any rule of the center, for any misconduct or for the violation of any law of the State, not to exceed ⅓ of the inmate's accumulated good time for each offense. Such withdrawal of good time shall be proportionate to the offense and may be made in accordance with procedural due process by the superintendent, who may restore any portion thereof if the prisoner's later conduct and outstanding effort warrant such restoration. This section shall apply to the sentences of all prisoners now, or hereafter, confined within the center, and shall not be construed to prevent the allowance of good time from maximum sentences or definite sentences.

PART F

A PERMANENT ADVISORY COMMITTEE ON CORRECTIONS

Sec. 10. R. S., T. 34, § 530, additional. Title 34 of the Revised Statutes is amended by adding a new section 530 to read as follows:

§ 530. Maine Advisory Committee on Corrections; duties

There shall be a Maine Advisory Committee on Corrections composed of 15 members, consisting of one member from the House of Representatives appointed by the Speaker of the House and one member from the Senate appointed by the President of the Senate and 13 representative citizens, including at least one full-time employee from the correctional system and at least one inmate from each adult correctional institution, appointed by the Governor, who shall designate a chairman. Of the first gubernatorial appointments, 5 shall be for a term of one year, 4 for 2 years and 4 for 3 years. Thereafter, appointments shall be made for a term of 3 years. Each member of the committee shall receive as full compensation for each day actually spent on the work of the committee the sum of \$25 and his actual and necessary expenses incurred in the performance of duties pertaining to his office. In addition, the committee shall be authorized to receive public and private grants to aid in defraying the cost of its operation.

The duties of the Maine Advisory Committee on Corrections shall be to act in an advisory capacity to the Commissioner of Mental Health and Corrections and to the Director of the Bureau of Corrections in assessing present programs, planning future programs and in developing on-going policies to meet the correctional needs of the State of Maine. To this end, the committee shall issue a report containing the results of its studies to the Legislature, the Governor and to the Commissioner of Mental Health and Corrections on August 31st of each year, the preparation and printing of the report to be paid for by the Bureau of Corrections. The committee shall meet as often as necessary to carry out its duties, at the discretion of the chairman.

Sec. 11. Appropriation. There is appropriated from the General Fund to the Maine Advisory Committee on Corrections the sum of \$6,000 to carry out the purposes of Part F. The breakdown shall be as follows:

1974-75

MENTAL HEALTH AND CORRECTIONS,
DEPARTMENT OF

Bureau of Corrections	
Maine Advisory Committee on Corrections	
All Other	\$6,000

Sec. 12. Effective date. Part F of this Act shall become effective on September 1, 1974.

STATEMENT OF FACT

Part A is a policy preamble to the Bureau of Corrections statute, and appears here as an amendment to Title 34, section 525 of the Maine Revised Statutes. The present Bureau of Corrections Statute in Title 34 provides almost no coherent policy direction for the bureau, and the statutory amendment proposed here represents a consensus policy statement of the Governor's Task Force on Corrections, the Law Enforcement Assistance Agency of the United States Department of Justice, the Commissioner of Mental Health and Corrections, the Director of the Bureau of Corrections and Bureau of Corrections personnel.

PART B

Obtaining jobs for exoffenders is a critical need. Part B outlines the degree to which state occupational licensing boards may take into consideration an applicant's prior criminal record and prohibits the denial of an occupational license to a former offender unless the license applied for "directly relates" to the applicant's prior criminal activity. The basic premise of the legislation is that while the prior conviction of any applicant may be considered fully and thoroughly by an occupational licensing agency under guidelines, in no case shall such a prior conviction constitute an automatic or arbitrary bar to obtaining a license to work.

PART C

Part C is a series of amendments which together authorize the Commissioner of Mental Health and Corrections to close at some time in the future all or part of the Women's Correctional Center presently located at Skowhegan, Maine in the interests of saving money and providing more efficient rehabilitation of women offenders.

PART D

Part D authorizes the Bureau of Corrections to establish a non-geographic school administrative unit for its correctional institutions, allowing the bu-

reau to receive federal educational funds to be applied to adult as well as juvenile offenders in its institutional programs.

PART E

Reduction of sentence for good behavior is a valuable rehabilitative tool. Part E simply amends existing "good time" statutory provisions in Maine relating to prisoners serving determinate sentences at the State Prison and at the Women's Correctional Center, bringing the amount of good time allowed each month to inmates at such facilities in Maine up closer to the national and New England averages for such allowances.

PART F

The Bureau of Corrections is drastically short of personnel to serve as a research, investigative and policy-making body to deal with corrections problems in the State of Maine. Part F creates a permanent legislative and citizens advisory committee to the Bureau of Corrections, reporting to the Legislature, the Governor and the bureau, designed to continue the work of the Governor's Task Force on Corrections and to aid the Bureau of Corrections in its research and decision-making duties.