

MAINE STATE LEGISLATURE

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ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 224

H. P. 214

House of Representatives, February 9, 1977

Reported by Mrs. Berube from Joint Select Committee on County Government pursuant to H. P. 1670 and 2,000 printed under Joint Rules No. 17.

EDWIN H. PERT, Clerk

Filed by the Joint Select Committee on County Government, under Joint Rule 17, pursuant to House Paper 1670.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

**AN ACT to Clarify and Reform the Laws Relating to County Law
Enforcement.**

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

Sec. 1. 28 MRSA § 1151, 1st sentence, as amended by PL 1973, c. 567, § 20, is further amended to read:

Sheriffs and their deputies and district attorneys shall diligently and faithfully inquire into all violations of law within their respective counties and institute proceedings in case of violations or supposed violations of law, and particularly the law against the illegal sale of liquor, gambling houses or places and houses of ill fame except sheriffs and their deputies shall only be required to perform specific law enforcement functions throughout the county as provided under Title 30, chapter 1.

Sec. 2. 30 MRSA § 853 is enacted to read:

§ 853. Definitions

For the purposes of this subchapter, the following words shall have the following meanings, unless the context indicates otherwise.

1. Deputy. "Deputy" shall mean either a full-time or part-time county law enforcement officer appointed under section 951.

2. Full-time deputy. "Full-time deputy" means a deputy who is compensated on a salaried or per diem basis under section 958, subsection 1, and who is employed in county law enforcement for at least 40 hours a week.

3. Part-time deputy. "Part-time deputy" means a deputy who is compensated on an hourly or per diem basis under section 958, subsection 2, and who does not receive more than \$2,500 in any one calendar or fiscal year for performing county law enforcement duties.

4. Special deputy. "Special deputy" means a person appointed under section 952 who is authorized to exercise the powers of a deputy only when a state of war or emergency exists.

Sec. 3. 30 MRSA § 901, last sentence, is amended to read:

Every person elected or appointed sheriff for the Counties of York, Cumberland, Kennebec or Penobscot, before receiving his commission, shall give bond to the Treasurer of State with at least 3 sufficient sureties or with the bond of a surety company authorized to do business in this State as surety, in the sum of \$40,000, and for any of the other counties, in the sum of \$25,000, conditioned for the faithful performance of the duties of his office and to answer for all neglect and misdoings of his ~~deputies~~ chief deputy.

Sec. 4. 30 MRSA § 951, as last amended by PL 1971, c. 213, is repealed and the following enacted in its place:

§ 951. Deputies; appointments and removal

The sheriff may appoint, with the approval of the county commissioners or the county personnel board, if one has been established under subchapter VII, full-time or part-time deputies, whose special duties shall be to enforce the criminal laws in the county. All deputies shall be appointed without regard to any political affiliation and solely on the basis of professional qualifications relating to law enforcement duties or potential for acquiring those qualifications. Professional qualifications shall include actual experience in law enforcement duties, training in criminal justice or law enforcement from an accredited college or university or from the Maine Criminal Justice Academy, or knowledge of the duties, activities and responsibilities of a deputy gained from other experience or training.

Deputies shall be originally appointed for a probationary period of not more than 6 months and thereafter may be appointed or reappointed for a term of 3 years. The sheriff may dismiss, suspend or otherwise discipline a deputy during the term of his appointment only for cause. In every case of dismissal, suspension or other disciplinary action, at the request of the deputy, the county commissioners or county personnel board, if one has been established under subchapter VII, shall investigate the circumstances and fairness of the action, and, if it finds the charges unwarranted, shall order the reinstatement of the deputy to his former position with no loss of pay, rights or benefits resulting from the dismissal, suspension or disciplinary action. Cause for dismissal, suspension or disciplinary action shall be a just, reasonable, appropriate and substantial reason for the action taken that relates to or affects the ability, performance of duties, authority or actions of the deputy or to the public's rights or interest.

The sheriff shall furnish to the clerk of courts in each county the names of the deputies appointed by him from time to time, with the residence and post office address of each.

A full-time deputy shall not hold any other municipal, county or state office, and may reside outside the county during the term of his appointment only with the permission of the sheriff and county commissioners.

Sec. 5. 30 MRSA § 952, as amended by PL 1973, c. 537, § 35, is further amended by adding after the first sentence the following new sentences:

The appointment shall be in writing, signed by the sheriff and shall include the residence and post office address of each special deputy. The appointment shall be recorded in the office of the clerk of courts in the county and shall not be valid until recorded.

Sec. 6. 30 MRSA § 952, 2nd sentence, as amended by PL 1973, c. 709, § 4, is further amended to read:

The sheriff or his chief deputy shall **only** order ~~any or all of said~~ special deputies to active duty when a state of war exists, or when the Governor shall proclaim an emergency under Title 37-A, chapter 3, or when the State Director of the Bureau of Civil Emergency Preparedness declares that a state of emergency is imminent.

Sec. 7. 30 MRSA § 952, 3rd sentence, is amended to read:

Such special deputies shall exercise all the powers of deputy sheriffs appointed under the general law, except the service of civil process, **only** for the duration of the emergency that exists or which has been proclaimed or during the time for which they have been ordered to active duty.

Sec. 8. 30 MRSA § 953, is repealed and the following enacted in its place:
§ 953. Deputies; uniforms

The sheriffs shall require each deputy, while engaged in the enforcement of Title 29, section 2121, to wear a uniform sufficient to identify himself as an officer of the law. Each county shall furnish the sheriff and each full-time deputy with one uniform required by this section and, after approval of the county commissioners, may provide more than one uniform for each.

Sec. 9. 30 MRSA § 954 is amended to read:

§ 954. Chief deputy

~~Subject to section 951, the~~ The sheriff in each county shall, as soon as may be after he takes office, appoint a chief deputy to serve under him, who shall have all the powers and duties of a deputy sheriff and who shall be subject to the direction of the sheriff in the administration of his office. **The chief deputy shall serve at the pleasure of the sheriff.**

The appointment shall be in writing, signed by the sheriff and recorded in the office of the clerk of courts in the county. The appointment is not valid until recorded, except by operation of law or by vacancy in the office of sheriff.

The sheriff is answerable for the official misconduct or neglect of his chief deputy.

Sec. 10. 30 MRSA § 955, 1st sentence is amended to read:

Every person appointed chief deputy under section 954, or appointed a deputy under section 951, shall give bond to the Treasurer of State before receiving his commission with at least 3 sufficient sureties, or with the bond of a surety company authorized to do business in this State as surety, in such sum as the county commissioners of his county shall require, conditioned for the faithful performance of the duties of his office ~~and to answer for all neglect and misdoings of the deputies in said county during such time as he shall serve in the period of a vacancy in the office of sheriff.~~

Sec. 11. 30 MRSA § 958, as last repealed and replaced by PL 1973, c. 274, is repealed and the following enacted in its place:

§ 958. Full-time or part-time deputies; special deputies; compensation

1. Full-time deputies. Full-time deputies shall be compensated at a rate not less than \$21 per day, or at a rate not less than \$23 per day if the deputy has:

A. An associate degree in criminal justice, with an emphasis on law enforcement from an accredited college or university; or

B. Successfully completed the basic training course at the Maine Criminal Justice Academy or its equivalent, as determined by the board of trustees of the academy and has served at least 3 years as a full-time law enforcement officer in the preceding 4 years.

The minimum compensation rate shall not apply to any deputy sheriff who is in a probationary period or who is undergoing disciplinary action.

Such compensation shall be established by the respective county commissioners and paid from the respective county treasuries, together with such incidental expenses as may be necessary for the proper enforcement of the laws, bills for which shall be audited as provided in Title 15, section 1902.

2. Part-time deputies. Part-time deputies shall be compensated at a reasonable rate as established by the county commissioners, which shall not exceed the lowest per diem compensation rate of a full-time deputy in the county. No part-time deputy shall be compensated under this section more than \$2,500 in any one calendar or fiscal year. Incidental expenses as may be necessary for the proper enforcement of the laws shall also be paid in the same manner as provided for full-time deputies, and shall not be included in the \$2,500 limitation on compensation.

3. Special deputies. Special deputies shall only be compensated when on active duty as provided under section 952. They shall be compensated at a rate equal to the rate of compensation of full-time or part-time deputies, depending on the actual duties performed while on active service.

Sec. 12. 30 MRSA § 959, is enacted to read :

§ 959. Political activities

1. Sheriff. No sheriff shall directly or indirectly coerce, attempt to coerce or command any county employee or deputy to pay, lend or contribute anything of value to, or to engage in any political service or activity on behalf of, a party, committee, organization, agency or person for political purposes.

2. Deputies. No deputy, whether a full-time, part-time or chief deputy shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, contribution or political service, whether voluntary or involuntary, for any political purpose from any person; except that while off duty and not in uniform a deputy may engage in political activities relating to nonpartisan municipal, school board or special district elections.

3. Official duties. Official duties undertaken solely to preserve the public peace and the order and security of polling places are not political services or activities.

4. Rights of voting and free expression. A sheriff or any deputy shall retain the right to vote as he chooses and to express his opinions on political subjects or candidates.

Sec. 13. 30 MRSA § 1001 is repealed and the following enacted in its place :

§ 1001. County law enforcement administration

1. Sheriff's duties. The sheriff shall act as the chief law enforcement officer of the county and shall be responsible for administering and directing the sheriff's department and county law enforcement activities, as authorized by the county budget. The sheriff shall keep the county commissioners informed of county law enforcement activities on a regular basis and shall meet with the commissioners as required under subsection 3.

2. County commissioners duties. The county commissioners shall regularly review the sheriff's operations and shall insure that the law enforcement functions required under the budget are being adequately performed. The commissioners, after consulting the sheriff, shall establish general policies for county law enforcement. The county commissioners shall execute their general policies solely through the sheriff and shall not give orders directly to any deputies or other subordinates of the sheriff, either publicly or privately.

3. Meetings with municipal officers. At least twice each year, the county commissioners and sheriff shall hold a special meeting for reviewing county law enforcement activities. The county commissioners shall set a date, time and place for this meeting and inform the sheriff and all municipal officers, including all municipal police chiefs within the county, of the meeting at least one week in advance. The purpose of this meeting shall be to review activities of the sheriff's department, to coordinate law enforcement activities throughout the county and to resolve problems in law enforcement.

4. Other orders. Sheriffs shall obey all orders relating to law enforcement which they receive from the Governor, and each sheriff shall undertake any other duties they are directed to perform by the county commissioners which are not in conflict with this chapter or general law.

Sec. 14. 30 MRSA c. 1, sub-c. VI, art. 7 is enacted to read:

ARTICLE 7. REMOVAL OF SHERIFF

§ 1111. Removal of sheriff

Whenever the county commissioners shall find that the sheriff is not faithfully or efficiently performing any duty imposed on him by this chapter or that the sheriff is improperly exercising or acting outside his authority, the commissioners may file a complaint with the Governor setting forth in detail the facts of such actions or omissions and requesting the Governor to remove the sheriff from office and appoint another sheriff in his place for the remainder of the term.

Sec. 15. 30 MRSA c. 1, sub-c. VI, art. 8 is enacted to read:

ARTICLE 8. COUNTY LAW ENFORCEMENT FUNCTIONS

§ 1121. Definitions

As used in this article, unless the context otherwise requires, the following words shall have the following meanings.

1. Ambulance services. "Ambulance services" means those emergency services primarily designed to transport ill or injured persons to available medical facilities and to administer first aid and emergency life-supporting systems in the interim period.

2. Civil emergency services. "Civil emergency services" means those emergency services administered to populations or areas to minimize and repair injury and damage resulting from disasters or catastrophes caused by hostile action or natural events.

3. Communications. "Communications" means a system for sending and receiving information to aid in law enforcement or law enforcement functions between fixed or mobile points, including telephone, teletype or radio systems. Communications also includes dispatching, which means the operation of sending messages and directing the operations of mobile units from a central fixed-base transmitter.

4. Detention. "Detention" means the confining of a person held in lawful custody in a specially constructed or modified facility designed to insure continued custody and control. Detention may be confinement prior to trial or to serve court imposed sentences and may be in a jail or lockup.

5. Emergency services. "Emergency services" means assistance or aid or both, given to one or more persons or areas, when there is imminent danger of damage or injury to property or personal health and safety, and includes ambulance services, civil emergency services and rescue services.

6. Intelligence. "Intelligence" means the collection, storage, retrieval, analysis and use of information about persons known to be repeatedly violating the criminal law in a manner difficult to detect as part of a covertly planned, deliberate or organized attempt to undertake criminal acts.

7. Investigation. "Investigation" means the inquiry about, or examination or observation of, persons or objects to gather evidence concerning unlawful acts or the apprehension of wrongdoers. Investigation may also mean examination, inquiry or observation of persons or things in order to determine compliance with qualifications or requirement for the issuing of licenses or permits, when such actions are taken at the request of the issuing authority.

8. Jail. "Jail" means a specially constructed or modified facility designated by law or regularly used for detention for a period of up to 12 months.

9. Juvenile services. "Juvenile services" means the personnel, procedures and services provided to deal with delinquents or criminal offenders under 18 years of age. "Delinquent" means a person under 18 years of age who: Is habitually truant; behaves in an incorrigible or indecent and lascivious manner; knowingly and willfully associates with vicious, criminal or grossly immoral people; repeatedly deserts home without just cause; or lives in a circumstance of manifest danger of falling into habits of vice or immorality.

10. Laboratory services. "Laboratory services" means those services which concern the testing or analyzing of physical evidence, by chemical or physical science methods and techniques, in order to determine its properties, composition, attributes or other information required for law enforcement purposes.

11. Law enforcement functions. "Law enforcement functions" means functions or services related to law enforcement, including patrol, laboratory services, intelligence, investigation, juvenile services, emergency services, detention and communications, whether or not those services are administered or directed through the sheriff's department or municipal police departments.

12. Lock-up. "Lock-up" means a facility designated by law or regularly used for detention for a temporary period prior to trial or transfer to a jail or other facility.

13. Patrol. "Patrol" means the regular and repeated circuit of the jurisdictional area as a method of deterring criminal activities, of observing or inspecting for possible violations or criminal activities, of providing for rapid response to calls for assistance and of maintaining order and the general peace. Patrol includes regulating and facilitating the movement of people and vehicles and maintaining highway safety by routine enforcement of the traffic laws and also the response to particular calls for assistance. Patrol may be conducted on foot or in a motor vehicle or aircraft.

14. Rescue. "Rescue" means those services required to free or save persons from imminent injury or death due to accidents or other emergencies.

§ 1122. Patrol

The sheriff in each county, in person or by his deputies, may patrol throughout the county, but shall not be required by law to patrol the entire county.

The county commissioners, with the agreement of the sheriff, may enter into a contract with a municipality under section 63 to provide specific patrol services by the sheriff's department in return for payment for such services.

§ 1123. Communications centers

Each county may establish a communications center, separate from any communications function of the sheriff's department and capable of serving the communication needs of the county and the municipalities which may wish to utilize the center.

The county commissioners, after consulting with municipal police chiefs, shall be responsible for setting policies for the communications center, and shall appoint a director or chief dispatcher, who will be responsible for carrying out their policies. The director or chief dispatcher may be the County Director of Civil Emergency Preparedness, if he is qualified.

The county communications center shall provide communication services for the sheriff's department, county civil emergency services, county or municipal rescue or ambulance services, county or municipal fire departments or municipal police departments.

The county commissioners, after consulting with the director or chief dispatcher, may enter into an agreement with a municipality under section 63 to provide specific communications for municipal law enforcement functions, including dispatching of municipal units, in return for payment for such services.

§ 1124. Detention

Each county shall provide detention facilities, either within the county or, by contract with another county, outside the county. Adjoining counties may enter into an agreement under chapter 203 to provide consolidated detention facilities for the use of those counties.

§ 1125. Investigation, intelligence or laboratory services

Counties may provide investigation, intelligence or laboratory services within the sheriff's department to aid county law enforcement, municipal police departments or the district attorney. The county may set uniform charges payable by municipalities for specific laboratory procedures or tests, when such charges reflect the actual cost of such procedures or tests; but shall not require or accept any additional payments, other than the county tax, for investigation, intelligence or other laboratory services when they are provided to municipal departments or the district attorney.

§ 1126. Rescue services

Each county may provide rescue services through the sheriff's department and deputies.

§ 1127. Ambulance services

1. Scope of service. Each county may provide ambulance service throughout the county, if this function is approved by the majority of the voters of

the county. The ambulance service may be provided to all or part of the county and may be provided by county personnel and vehicles or by contract with private organizations, corporations or persons or with municipalities under section 63 or chapter 203.

The county commissioners, by majority vote, may order the submission to the voters of the question authorizing county ambulance services. On the written petition of a number of county voters equal to at least 20% of the number of votes cast in the county at the last gubernatorial election, the county commissioners shall order the submission to the voters of the question authorizing county ambulance services. The referendum on the issue shall be held within 90 days of the order, by ballot at any special or general county-wide election. The county commissioners are authorized to expend such funds as are necessary to implement the referendum.

The county commissioners shall cause the preparation of the required ballots on which they shall state the subject matter of the authorization in the following question:

“Shall (name) county be authorized to provide ambulance services throughout the county, as provided under Title 30, section 1127?”

The voters shall indicate by a cross or check mark placed against the words “Yes” or “No” their opinion of the same.

The county shall be authorized to provide ambulance services under this section immediately upon the approval of that authorization by a majority of the legal voters voting at the election; provided that the total number of votes cast for and against the approval of the authorization equals or exceeds 30% of the total votes for all candidates for Governor cast in the last gubernatorial election in the county.

This question shall not be submitted to the voters more than once in any calendar year.

§ 1128. Juvenile services

Each county may provide juvenile services either through the sheriff's department or by other county personnel.

§ 1129. Administrative services

Each county may undertake administrative, management and supporting functions required to implement the law enforcement functions authorized by this chapter, including the recruitment and training of county personnel, maintenance of records and preservation of evidence, purchasing of necessary supplies and planning and budget preparation.

Sec. 16. 30 MRSA c. 1, sub-c. VII is enacted to read:

SUBCHAPTER VII

COUNTY PERSONNEL BOARD

§ 1131. Establishment

The county commissioners may, after a public hearing, establish a County

Personnel Board. The County Personnel Board shall have the duties and powers set forth in section 951, this subchapter and Title 34, section 901.

§ 1132. Membership, term and compensation

The County Personnel Board shall be composed of 3 members, who shall not be county officers or employees of the sheriff's department. The members shall be appointed by the county commissioners. The terms of the members shall be 3 years, except that for the first appointment there shall be one appointed for one year, one for 2 years and one for 3 years. Vacancies shall be filled for the remainder of the term of the vacated appointment. The board shall elect its own chairman annually. The members shall receive \$25 a day for the time actually spent in the discharge of their duties and their necessary expenses.

§ 1133. Powers and duties

The board shall have the following powers and duties:

1. Director. To appoint a director;
2. Appointments. To approve appointments as authorized under section 951 and Title 34, section 901;
3. Dismissals, suspensions or disciplinary actions. To investigate and make orders in cases of dismissal, suspension or other disciplinary action as authorized under section 951 and Title 34, section 901;
4. Investigations, hearings and reports. To investigate, hold hearings and report its findings, recommendations and orders for the purpose of approving appointments or reviewing dismissals, suspensions or other disciplinary actions;
5. Rules and regulations. After a public hearing, to adopt or amend rules or regulations relating to:
 - A. Examination or standards for appointments;
 - B. Probationary period;
 - C. Reinstatement;
 - D. Demotion;
 - E. Suspension, layoff or dismissal;
 - F. Provisional, emergency, exceptional and temporary appointments; and
 - G. Leave of absence, resignation, hours of service, vacations and sick leave;
6. Enforcement. To enforce the rules and regulations made thereunder;
7. Report. To receive, review and transmit to the county commissioners and sheriff the annual report of the director. The report of the director may be supplemented by any additional comment, criticism or suggestion for the more effectual accomplishment of the purposes of this chapter that the commission may care to submit;

8. Minutes. To keep full and complete minutes of its proceedings, which shall, subject to reasonable regulations, be open to public inspection; and

9. Hearings. In the course of any investigation through any member of the board, to have the power to administer oaths and to subpoena and require the attendance of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to such investigation.

In the case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the Superior Court in the county on application of any one of the members of the commission or of the director, when authorized by the commission, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey such order of the court may be punished by the court as contempt thereof.

§ 1134. Director; qualifications; tenure; compensation; powers and duties

The director shall be, at the time of his appointment, a person familiar with the principles, methods and techniques of public personnel administration on the merit basis. His tenure of office shall be at the pleasure of the appointing commission and he shall receive such compensation as shall be fixed by the commission with approval of the county commissioners.

The director shall have the power and duty to administer and make effective this chapter and the rules and regulations of the commission.

Sec. 17. 34 MRSA § 901, 1st ¶, is repealed and the following enacted in its place:

The sheriff has the custody and charge of the jail in his county and of all prisoners therein and shall keep it himself, or by his deputy as jailer, master or keeper. The jailer, master or keeper shall appoint, with the approval of the county commissioners or the county personnel board, if one has been established under Title 30, chapter 1, subchapter VII, all subordinate assistants and employees. Subordinate assistants and employees shall be appointed in the same manner and for the same period and shall be dismissed, suspended or disciplined in the same manner that is provided for deputy sheriffs under Title 30, section 951. The professional qualifications required of them shall emphasize training or experience in or knowledge of corrections. The pay of the jailer, master or keeper and all subordinate assistants and employees shall be fixed by the county commissioners and paid by their several counties, except when otherwise provided by law.

Title 30, section 801, shall apply to sick leave and vacation of the full-time employees of the sheriff's department of each county.

STATEMENT OF FACT

The purpose of this bill is to implement the recommendations of the study on county government by the Joint Select Committee on County Government.

A detailed statement of the intentions, purposes and provisions of this bill is contained in the committee's narrative report. Generally, this bill does the following:

1. Defines county law enforcement functions ;
2. Defines the relationship of the county commissioners and the sheriffs ;
and
3. Increases the professionalism of sheriff's deputies by prohibiting certain political activities and establishing a simple modified civil service approach to hiring and firing, including authorization to establish a County Personnel Board.