

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 832

7 H.P. 583

House of Representatives, February 22, 1983

8 Reported by Representative Manning from the Transitional Committee of
9 the Department of Corrections. Sent up for concurrence and ordered printed.

10 EDWIN H. PERT, Clerk

Reported from the Transitional Committee of the Legislature under Joint Rule
18, pursuant to Public Laws of 1981, Chapter 493, §5.

11
12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Recodify the Statutes
18 Relating to Corrections and Mental Health
19 and Mental Retardation.
20

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

23 Sec. 1. 15 MRSA c. 409, as amended, is repealed.

24 Sec. 2. 22 MRSA c. 404 is enacted to read:

25 CHAPTER 404

26 PRIVATE MENTAL HOSPITALS

27 §1781. License; visitation; penalty

28 The Department of Human Services may license any
29 suitable person to establish and keep a private
30 hospital or private house for the reception and

1 treatment of patients who are mentally deranged. The
2 hospital or private house shall be subject to visita-
3 tion by the department or any member thereof.

4 Whoever establishes or keeps the private hospital
5 or private house without a license, or after revoca-
6 tion or during suspension of the license, shall be
7 fined not more than \$500.

8 §1782. Visitation

9 Each of the licensed hospitals or houses shall be
10 visited at least once a year, and oftener if the Com-
11 missioner of Human Services so directs, by a member
12 of the Department of Human Services, who shall care-
13 fully inspect every part of the hospital or house
14 visited with reference to its cleanliness and sani-
15 tary conditions and who shall make a report to the
16 department with such recommendations to improve con-
17 ditions as the department deems necessary.

18 §1783. Revocation or suspension of license after
19 hearing

20 When the Department of Human Services believes a
21 license should be suspended or revoked, it shall file
22 a statement or complaint with the Administrative
23 Court Judge, designated in the Maine Administrative
24 Procedure Act, Title 5, chapter 375. A person
25 aggrieved by the refusal of the department to issue a
26 license may file a statement or complaint with the
27 Administrative Court Judge.

28 Sec. 3. 22 MRSA c. 405-B is enacted to read:

29 CHAPTER 405-B

30 TUBERCULOSIS SANATORIUMS

31 §1871. Establishment and maintenance

32 The State shall maintain by building, lease or by
33 purchase one or more sanatoriums in such districts of
34 the State as seems best to serve the needs of the
35 people for the care and treatment of persons affected
36 with tuberculosis. If at any time the number of per-
37 sons requiring such care and treatment in these sana-

1 toriums decreases to a level which, in the judgment
2 of the Commissioner of Human Services, makes contin-
3 ued operation and maintenance of a sanatorium imprac-
4 ticable, the commissioner, with the advice and con-
5 sent of the Governor, may close any or all sana-
6 toriums. In the event that all sanatoriums are
7 closed as provided, any funds from the sanatorium ac-
8 counts and appropriations may, with the advice and
9 consent of the Governor, be made available to the
10 Commissioner of Human Services for the purpose of
11 providing alternative treatment and care for those
12 patients needing treatment and care. Where lease or
13 purchase is made, the State shall have the right to
14 enlarge or otherwise adapt the property to meet the
15 needs of the situation. These additions or improve-
16 ments shall be considered permanent. At the expira-
17 tion of the original lease of any property for use as
18 a tuberculosis sanatorium, the State shall have the
19 right of renewal or of purchase.

20 Without regard to the matter of sanatorium clo-
21 sure, the commissioner also may purchase care for
22 tuberculosis patients from private practitioners and
23 private medical institutions. In making payments for
24 care, he shall take into consideration payments that
25 may be available through insurance or other 3rd par-
26 ties.

27 §1872. Admission; charges

28 Patients may be admitted to these sanatoriums
29 upon application to the Department of Human Services,
30 if found to be suffering from tuberculosis or if sus-
31 pected of having tuberculosis. All patients in the
32 sanatoriums, the parents of minor children or the
33 spouse, shall pay to the State for treatment, includ-
34 ing board, supplies and incidentals necessary to the
35 prescribed medical and surgical treatment both for
36 inpatient and outpatient services, the amount deter-
37 mined by the department. The department may, if it
38 finds that the patient or relatives liable by law are
39 unable to pay the amount determined, in whole or in
40 part, waive payment or so much thereof as the circum-
41 stances appear to warrant.

42 All funds collected from this source shall be
43 credited to the General Fund. No pauper disabilities

1 shall be created by reason of any aid or assistance
2 given under this section.

3 This section does not apply to persons who may be
4 committed under section 1022.

5 Sec. 4. 30 MRSA c. 13 is enacted to read:

6 CHAPTER 13

7 COUNTY JAILS AND JAILERS

8 SUBCHAPTER I

9 OFFICIALS AND PERSONNEL

10 §1701. Custody of jail and prisoners; jailer

11 The sheriff has the custody and charge of the
12 jail in his county and of all prisoners therein and
13 shall keep it himself, or by his deputy as jailer,
14 master or keeper. The jailer, master or keeper shall
15 appoint, subject to the requirements of section 64-A,
16 all subordinate assistants and employees. Subordi-
17 nate assistants and employees shall be appointed for
18 the same period that is provided for deputy sheriffs
19 under section 951. The professional qualifications
20 required of them shall emphasize training or experi-
21 ence in or knowledge of corrections. The pay of the
22 jailer, master or keeper and all subordinate assis-
23 tants and employees shall be fixed by the county com-
24 missioners and paid by their several counties, except
25 when otherwise provided by law. The jailer and his
26 subordinate assistants and employees may be deputy
27 sheriffs.

28 §1702. Jailer's duties when office of sheriff vacant

29 When a vacancy occurs in the office of sheriff,
30 the jailer lawfully acting continues in office and
31 shall retain charge of the jail and of all prisoners
32 therein or committed thereto, and his official
33 neglects and misdoings are a breach of his
34 principal's official bond until a new sheriff is
35 qualified, or the Governor removes that jailer and
36 appoints another, which he may do. The jailer so
37 appointed shall give bond in the manner required of a
38 sheriff for the faithful discharge of his duties.

1 §1703. Offices of jailer and sheriff vacant;
2 appointment by county commissioners

3 If the office of jailer becomes vacant while the
4 office of sheriff is vacant, the county commissioners
5 may appoint a jailer, who shall give bond as a
6 sheriff is required to do and continue in office, if
7 his appointment is confirmed at the commissioners'
8 next meeting, during the vacancy in the office of
9 sheriff or until he is removed and a new jailer
10 appointed.

11 §1704. Jailer to return list of prisoners at each
12 criminal session of court

13 Every jailer, at the opening of every criminal
14 term of the Superior Court for his county, shall
15 return a list of prisoners in his custody and after-
16 wards a list of all committed during the session,
17 certifying the cause for which and the person by whom
18 committed, and shall have the calendar of prisoners
19 in court for its inspection. For neglecting to do
20 so, the court may impose a reasonable fine.

21 §1705. Official papers filed and kept with calendar
22 and delivered to successor

23 All warrants, mittimuses, processes and other
24 official papers by which any prisoner is committed or
25 liberated, or attested copies thereof, shall be regu-
26 larly filed in order of time and with the calendar
27 safely kept and when the sheriff vacates his office,
28 they shall be, by the sheriff or his personal repre-
29 sentative, delivered to his successor on penalty of
30 forfeiting \$200 to the county.

31 §1706. Sheriff answerable for delivery of prisoners
32 to successors

33 Every sheriff is answerable for the delivery to
34 his successor of all prisoners in his custody at the
35 time of his removal, and for that purpose shall
36 retain the keeping of the jail in his county and the
37 prisoners therein until his successor enters on the
38 duties of his office.

39 §1707. Liability of sheriff for escape

1 When a prisoner escapes through the insufficiency
2 of the jail or the negligence of the sheriff or
3 jailer, the sheriff is chargeable to the creditor or
4 other person at whose suit he was committed or to
5 whose use any forfeiture was adjudged against that
6 prisoner.

7 §1708. Escape through insufficiency of jail; sum
8 paid; reimbursed

9 When an escape happens through the insufficiency
10 of the jail, the county commissioners may order the
11 county treasurer to pay to the sheriff the amount
12 paid by him to that party. If they do not make an
13 order within 6 months after the demand is laid before
14 them, the sheriff may bring his action against the
15 inhabitants of that county, to be tried therein or in
16 an adjoining county, and service shall be made as in
17 other actions.

18 §1709. Appointment of agent to defend county; execu-
19 tion

20 The commissioners may appoint an agent to appear
21 and defend the action. If they have no meeting
22 between the time of service and the time within which
23 the answer is required to be served, it shall be con-
24 tinued for such time as the court directs, saving all
25 advantages to the defendants. If judgment is
26 rendered against the county, the execution may be
27 levied on the estate of any inhabitant who has his
28 remedy against the county to recover the amount so
29 levied.

30 §1710. Liability of keeper and sheriff for escape

31 If any jail keeper, through negligence, suffers a
32 prisoner charged with an offense to escape, he shall
33 be fined according to the nature of the offense
34 charged against the escaped prisoner, but if a person
35 committed for debt escapes from jail and the sheriff
36 or jail keeper, within 3 months thereafter, returns
37 him thereto, the sheriff is liable only for the costs
38 of any action commenced against him therefor.

39 §1711. Administration of medication

1 1. Administration of medication by sheriff or
2 deputy. The sheriff of any county may administer to
3 any prisoner in his custody and charge any oral or
4 topical medication as prescribed by a licensed physi-
5 cian or dentist or, if requested by a prisoner, any
6 nonprescription medication in accordance with the
7 directions on its container. The sheriff may dele-
8 gate this authority to administer medication to his
9 deputy who is in charge of the county jail or to the
10 master or keeper of the county jail.

11 2. Limitations on administration of medica-
12 tion. The sheriff or his delegate shall not adminis-
13 ter any prescription or nonprescription medication to
14 any prisoner who has been incarcerated in the county
15 jail for less than 24 hours, unless the sheriff or
16 his delegate has consulted with and received permis-
17 sion to administer that medication from a licensed
18 physician.

19 3. Insulin injections. No provision under this
20 section may prevent any prisoner from
21 self-administering insulin injections, provided that:

22 A. A duly licensed physician has authorized that
23 self-administration; and

24 B. That self-administration takes place in the
25 presence of the sheriff or his delegate.

26 4. Statement by prisoner. Before administering
27 any nonprescription medication to any prisoner who
28 has been incarcerated in the county jail for 24 hours
29 or longer, the sheriff or his delegate shall secure a
30 written statement signed by the prisoner, which
31 states that the prisoner has requested that medica-
32 tion and had no previous adverse allergic reaction to
33 that medication.

34 5. Records of medication administered. Every
35 sheriff or his delegate shall maintain for at least 2
36 years a record which shall include a description of
37 each prescription and nonprescription medication ad-
38 ministered in the county jail and the identity of
39 each person to whom that medication is administered.

1 §50; to be recovered for the county by indictment, or
2 by any person suing therefor, to his own use; and
3 shall be removed from office and shall be incapable
4 of holding the office of sheriff, deputy sheriff or
5 jailer for 5 years.

6 §1755. Federal prisoners

7 The keepers of the several jails shall receive
8 and safely keep all prisoners committed under author-
9 ity of the United States until discharged, under the
10 penalties provided for the safekeeping of prisoners
11 under the laws of this State.

12 §1756. Prisoners to attend funerals

13 Prisoners at the several county jails may, at the
14 discretion of the sheriff, attend funerals of their
15 legally considered mother, father, husband, wife, son
16 or daughter, if the funeral is held within the State.
17 A prisoner shall pay the cost of transportation and
18 the fee and expenses of the officer who takes him to
19 the funeral.

20 §1757. Disposal of body of person who died in jail

21 When a person dies in jail, the jailer or sheriff
22 shall deliver the body to his friends, if requested.
23 Otherwise, he shall dispose of it for anatomical pur-
24 poses, as provided in Title 22, chapter 709, unless
25 the deceased at any time requested to be buried, in
26 which case he shall bury the body in the common bury-
27 ing ground and the expenses thereof shall be paid by
28 the town in which he had a settlement, if he had any
29 in the State and, if not, by the State.

30 §1758. Record of persons committed

31 Every sheriff shall keep in a suitable bound book
32 a true and exact calendar containing, distinctly and
33 fairly registered, the names of all prisoners commit-
34 ted to the jail under his charge, their places of
35 abode, additions, time of their commitments, for what
36 cause and by what authority, and a particular de-
37 scription of the persons of those committed for
38 offenses. He shall register in that book the name
39 and description, the time when and the authority by

1 which any prisoner was discharged, and the time and
2 manner of any prisoner's escape.

3 §1759. Assistance to discharged prisoners

4 The sheriff or his deputy keeping the jail may,
5 at the expense of the county, give a prisoner about
6 to be discharged from jail a sum of money not exceed-
7 ing \$2 and wearing apparel to the value of not
8 exceeding \$10 and may furnish to that discharged
9 prisoner a railroad ticket, nontransferable, to any
10 place to which the fare does not exceed \$8. All sums
11 so expended by the sheriff or jailer shall be repaid
12 to him from the county treasury after the account
13 thereof has been audited and the amount found correct
14 by the county commissioners.

15 SUBCHAPTER III

16 PRISON LABOR

17 §1801. Employment of prisoners generally

18 The county commissioners may authorize the
19 employment, for the benefit of the county or of
20 dependent families of prisoners committed for crime,
21 in some suitable manner not inconsistent with their
22 security and the discipline of the prison, and may
23 pay the proceeds of that labor, less a reasonable sum
24 to be deducted therefrom for the cost of maintenance
25 of those prisoners, to the families of such person or
26 persons as may be dependent upon them for support.

27 This section does not apply to sections 1802 and
28 1803.

29 §1802. Charitable organizations

30 The county commissioners may authorize the use of
31 such prisoners to provide assistance in the improve-
32 ment of property owned by charitable organizations as
33 may be approved by the county commissioners, provided
34 that the charitable organizations pay for the trans-
35 portation of the prisoners and for the transportation
36 and per diem compensation for any guards who accompa-
37 ny the prisoners.

1 §1803. Contracts subject to cancellation or suspen-
2 sion

3 Any contract for the employment of prisoners not
4 provided for in section 1802, which may be made by
5 the county commissioners of any county with any
6 person, firm or corporation, shall be made subject to
7 the right of the county commissioners to withdraw,
8 cancel or suspend the contract in whole or in part.

9 §1804. Employment of county jail prisoners

10 1. Order of release; purpose. Any person sen-
11 tenced or committed to a county jail for crime, non-
12 payment of a fine or forfeiture or court order, or
13 criminal or civil contempt of court, may be granted
14 the privilege of leaving the jail during necessary
15 and reasonable hours for any of the following pur-
16 poses:

17 A. Employment;

18 B. Conducting his or her own business or occupa-
19 tion, including, in the case of a person prima-
20 riarily responsible for the housekeeping and domes-
21 tic needs of his or her family, housekeeping and
22 attending the needs of his or her family;

23 C. Attendance at a weekly religious service;

24 D. Attendance at an educational institution;

25 E. Medical treatment;

26 F. Voluntary services within the county in which
27 the jail is located; or

28 G. To work or provide service to the victim of
29 his crime in accordance with Title 17-A, chapter
30 54, but only with the express approval of the
31 victim.

32 2. Petition; withdrawal. Unless a privilege is
33 expressly granted by the court, the prisoner is sen-
34 tenced to ordinary confinement. The court may grant
35 that privilege at the time of sentence or commitment
36 or thereafter. The court may withdraw the privilege

1 at any time by order entered with or without notice
2 of hearing.

3 3. Wages, self-employment income; collec-
4 tion. If a prisoner is employed for wages or salary,
5 the sheriff shall collect the wages or salary or re-
6 quire the prisoner to turn over his wages or salary
7 in full when received and, if the prisoner is self-
8 employed, his self-employment income shall be turned
9 over to the sheriff as may be ordered by the court,
10 and the sheriff shall deposit the income in a trust
11 checking account and shall keep a ledger showing the
12 status of the account of each prisoner. The wages or
13 salary is not subject to trustee process in the hands
14 of either the employer or the sheriff, and the self-
15 employment income is not subject to trustee process
16 in the hands of the sheriff during the prisoner's
17 term and shall be disbursed only as provided in this
18 section, but for tax purposes it is income of the
19 prisoner.

20 4. Board; transportation. Every prisoner gain-
21 fully employed is liable for the cost of his board in
22 the jail, as fixed by the county commissioners. If
23 necessarily absent from jail at a mealtime, he shall
24 at his request be furnished with an adequate nour-
25 ishing lunch to carry to work. The sheriff shall
26 charge his account, if he has one, for his board.

27 If the prisoner is gainfully self-employed, he shall
28 pay the sheriff for his board, in default of which
29 his privilege under this section is automatically
30 forfeited.

31 If the jail food is furnished directly by the county,
32 the sheriff shall account for and pay over these
33 board payments to the county treasurer. The county
34 commissioners may provide that the county furnish or
35 pay for the transportation of prisoners employed
36 under this section to and from the place of employ-
37 ment.

38 5. Disbursements. By order of the court, the
39 wages or salaries of employed prisoners and employ-
40 ment income of self-employed prisoners shall be dis-
41 bursed by the sheriff for the following purposes, in
42 the order stated:

- 1 A. The board of the prisoner;
2 B. Necessary travel expense to and from work and
3 other incidental expenses of the prisoner;
4 C. Support of the prisoner's dependents, if any;
5 D. Payment, either in full or ratably, of resti-
6 tution, and of the prisoner's obligations, ac-
7 knowledged by him in writing, in accordance with
8 Title 17-A, chapter 54, or which have been
9 reduced to judgment; and
10 E. The balance, if any, to the prisoner upon his
11 release.

12 6. Employment in other county. The court may by
13 order authorize the sheriff, to whom the prisoner is
14 committed, to arrange with another sheriff for the
15 employment of the prisoner in the other's county, and
16 while so employed to be in the other's custody, but
17 in other respects to be and continue subject to the
18 commitment.

19 7. Dependents evaluation of need. The welfare
20 director or the overseers of the poor of the munici-
21 pality in which the prisoner's dependents reside, or
22 the Department of Human Services, shall at the
23 request of the court investigate and report to the
24 court the amount necessary for the support of the
25 prisoner's dependents.

26 8. Denial of privilege. The sheriff may refuse
27 to permit the prisoner to exercise his privilege to
28 leave the jail, as provided in subsection 1, for any
29 breach of discipline or other violation of jail regu-
30 lations. Any prisoner so disciplined may petition
31 either the District Court or the Superior Court for a
32 review of that disciplinary action. The court, after
33 review, shall make such order as it deems appropri-
34 ate.

35 9. Violations. Any person who willfully vio-
36 lates the terms of his release in relation to the
37 time for reporting to his place of employment or to
38 any other place to which he is authorized to be
39 released under subsection 1, paragraphs A to E, or

1 for reporting back to the county jail may be punished
2 by imprisonment for not more than 60 days. If the
3 prisoner does not return to the county jail within 48
4 hours from the time scheduled to return, he shall be
5 guilty of escape under Title 17-A, section 755.

6 10. Rules of procedure. Proceedings under this
7 section shall be subject to the rules of procedure
8 adopted under Title 4, section 9.

9 §1805. Furloughs

10 The sheriff may establish regulations for and
11 permit a prisoner under the final sentence of a court
12 a furlough from the county jail in which he is con-
13 finied. Furloughs may be granted for not more than 3
14 days at one time in order to permit the prisoner to
15 visit a dying relative or to obtain medical services,
16 which may be for a period of longer than 3 days if
17 medically required.

18 Any such prisoner permitted furlough under this
19 section from the county jail shall be furnished a
20 copy of the regulations of the county jail applicable
21 to his furlough and receipt of the copy shall be
22 attested by the prisoner.

23 Any such prisoner who willfully violates the
24 terms of his release under this section in relation
25 to the time for reporting to his place of furlough,
26 the activities he is authorized to conduct while on
27 furlough, or his time of reporting back to the county
28 jail, may be punished by imprisonment for not more
29 than 60 days; except that any prisoner who does not
30 return to the county jail within 24 hours from the
31 time he is scheduled to return may be prosecuted for
32 escape under Title 17-A, section 755. He shall be
33 prosecuted therefor in the county in which the jail
34 to which he was sentenced is located.

35 Any person over the age of 18 years who willfully
36 obstructs, intimidates or otherwise abets any pris-
37 oner on furlough under this section, and thereby con-
38 tributes to or causes the prisoner's violation of the
39 terms and conditions of his furlough, after having
40 been warned by the sheriff to cease and desist in
41 that relationship or association with the prisoner,

1 shall be punished by a fine of not more than \$500 or
2 by imprisonment for not more than 11 months, or by
3 both.

4 §1806. Prisoner participation in municipal public
5 work projects

6 The sheriff in charge of a county jail may, in
7 his discretion, permit certain inmates of that jail
8 to participate in public work-related projects in the
9 county where the jail is located. Before an inmate
10 is permitted to participate in this type of project,
11 the judge or justice who originally sentenced the
12 inmate to the county jail shall sign his approval to
13 the inmate's participation.

14 Any inmate participating in a public work-related
15 project under this section shall have his sentence to
16 the jail prorated at the rate of one day removed from
17 the sentence for ever 16 hours of participation in
18 the project.

19 Participation in this type of project shall not
20 be deemed employment under section 1804, subsections
21 3 to 7.

22 SUBCHAPTER IV

23 MISCELLANEOUS PROVISIONS

24 §1851. Examination of jails

25 At the commencement of each session required by
26 law, the county commissioners shall examine the
27 prison, take necessary precaution for the security of
28 prisoners, for the prevention of infection and sick-
29 ness and for their accommodations.

30 §1852. Jails to be clean and healthful

31 The sheriff shall see that the jail in his county
32 is kept as clean and healthful as may be, cause the
33 walls to be whitewashed in April or May annually and
34 as often as the county commissioners order, at the
35 expense of the county, and pay strict attention to
36 the personal cleanliness of the prisoners.

1 §1853. Bible, books and instruction for prisoners

2 The jailer, at the expense of the county, shall
3 furnish to each prisoner who is able to read a copy
4 of the Bible, and to all, on Sundays, such religious
5 instruction as he may be able to obtain without
6 expense, and to such as may be benefited hereby,
7 instruction in reading, writing and arithmetic one
8 hour every evening except on Sunday. It shall be his
9 duty to receive for their use from whatever source,
10 by loan or contribution, any books or literature of a
11 moral or religious tone and to exclude those of oppo-
12 site tendencies.

13 §1854. Supplies for jails; accounts audited

14 The county commissioners of the several counties
15 shall, without extra charge or commission to them-
16 selves or to any other person, procure all necessary
17 supplies, including necessary food, fuel, bedding and
18 clothing for the jails and the prisoners therein, to
19 be furnished and purchased under their direction and
20 at the expense of the counties. No county commis-
21 sioner may be interested directly or indirectly in
22 the purchase of any such supplies or in any contract
23 therefor made by the board of which and while he is a
24 member thereof, and all contracts made in violation
25 hereof are void. A suitable person shall be employed
26 to prepare the foods of the prisoner in each county
27 at the expense of the county, and the service of the
28 food to the prisoners shall be under the general
29 direction of the jailer, master or keeper. The
30 person employed to prepare the food of the prisoners
31 shall be appointed by the sheriff in each county,
32 subject to the approval of the county commissioners.
33 The county commissioners may at any time direct spe-
34 cific rations or articles of food, clothing, soap,
35 fuel or other necessities to be furnished and served
36 to the prisoners. The bills and accounts for sup-
37 plies furnished and the items of expense incurred in
38 preparing and serving the same shall be audited by
39 the Department of Audit, as provided by Title 5,
40 section 243, subsection 2.

41 §1855. Cumberland commissioners annually advertise
42 for supplies

1 The county commissioners of the County of Cumber-
2 land may each year, as soon after January 1st as may
3 be, make an estimate of the amount of food, fuel,
4 clothing and supplies as far as practicable which
5 will be required by the county jail and for the sup-
6 port of the prisoners therein for the current year,
7 and advertise for sealed proposals for furnishing the
8 same according to specifications furnished by them,
9 in the daily papers of the City of Portland, 3 days
10 successively, at least 14 days before the time
11 limited for the reception of those proposals, at
12 which time they shall examine all the proposals and
13 award the contract to the lowest responsible bidder.
14 The county commissioners shall procure such other
15 necessary supplies and articles for the foregoing
16 purposes as may not be furnished by contract and ac-
17 count for the same in the manner provided for in
18 section 1854.

19 §1856. Transfer of prisoners when jail unfit or
20 insecure

21 Whenever complaint on oath is made to a Justice
22 of the Superior Court that any jail is unfit for
23 occupation or is insufficient for the secure keeping
24 of any person charged with crime and committed to
25 await trial or under sentence, he shall cause not
26 less than 3 days' notice of that complaint to be
27 given to the jailer or sheriff of the county and to
28 the warden or chief administrative officer of the
29 state correctional facility, if transfer to a state
30 facility is anticipated, to appear at the time and
31 place fixed in that notice. If on examination the
32 matter complained of is found to be true, and the
33 proposed transfer is to a county jail, he may issue
34 his warrant for the transfer of that prisoner at the
35 expense of the county to any jail. If the complaint
36 is found true and the proposed transfer is to a state
37 correctional facility, the Justice of the Superior
38 Court may issue a warrant for the transfer of the
39 prisoner at the expense of the county to a state cor-
40 rectional facility, provided that he also finds that
41 the transfer is for the good of the inmate, the
42 receiving institution is able to resolve the problem
43 causing the need to transfer, the nature of the
44 offense committed by the prisoner is so severe that
45 it requires sending to the receiving institution and

1 the security of the sending facility is inadequate to
2 handle the problem. If by fire or other casualty any
3 jail is destroyed or rendered unfit for use, any Jus-
4 tice of the Superior Court may, upon being notified
5 by the district attorney of the county where that
6 jail was or is located, issue his order to the
7 sheriff and his deputies and constables of that
8 county to cause all prisoners who might be liable to
9 imprisonment in that county to be imprisoned in the
10 jail of some adjoining county or in any other place
11 of confinement, the order to be printed in the news-
12 papers of that county.

13 §1857. Fines applied to building and repair of jail

14 All fines imposed by this chapter and chapter 1,
15 subchapter VI; Title 14, section 555; and Title 14,
16 chapter 203, subchapter VI, not otherwise appropri-
17 ated, shall be applied to building and repairing the
18 jails in the county where the offense is committed.

19 §1858. Additional accommodations

20 The county commissioners may make such additions
21 in workshops, fences and other suitable accommoda-
22 tions in, adjoining or appurtenant to the jails in
23 the several counties as may be found necessary for
24 the safekeeping, governing and employing of offenders
25 committed thereto by authority of the State or the
26 United States. For the better employing of these
27 offenders, they may lease or purchase necessary lands
28 or buildings anywhere within their respective coun-
29 ties and may authorize the employment on those lands
30 for the benefit of the county or of dependent fam-
31 ilies of prisoners committed for crime, as provided
32 in section 1801. Whenever the county commissioners
33 shall determine that the use of these land and build-
34 ings is unnecessary for that use, they may sell and
35 dispose of the land and buildings in the manner re-
36 quired by law. The county commissioners may raise by
37 loan of their several counties, or otherwise, a total
38 sum not exceeding \$5,000 to make those purchases,
39 alterations and improvements, and may expend so much
40 thereof as is necessary.

41 Sec. 5. 34 MRSA, as amended, is repealed.

1 Sec. 6. 34-A MRSA is enacted to read:

2 TITLE 34-A

3 CORRECTIONS

4 CHAPTER 1

5 GENERAL PROVISIONS

6 SUBCHAPTER I

7 DEFINITIONS

8 §1001. Definitions

9 As used in this Title, unless the context other-
10 wise indicates, the following terms have the follow-
11 ing meanings.

12 1. Chief administrative officer of a correc-
13 tional facility. "Chief administrative officer of a
14 correctional facility" means the head of a correc-
15 tional facility, including, but not limited to:

16 A. The Warden of the Maine State Prison;

17 B. The Superintendent of the Maine Correctional
18 Center;

19 C. The Director of the Charleston Correctional
20 Facility; and

21 D. The Superintendent of the Maine Youth Center.

22 2. Commissioner. "Commissioner" means the Com-
23 missioner of Corrections or his designee, except
24 that, when the term "commissioner and only the com-
25 missioner" is used, the term applies only to the
26 person appointed Commissioner of Corrections and not
27 to any designee.

28 3. Committed offender. "Committed offender"
29 means a prisoner, juvenile client, probationer or
30 parolee.

1 4. Contract agency. "Contract agency" means a
2 facility or program outside the jurisdiction of the
3 department, providing services under contract to the
4 department.

5 5. Contract client. "Contract client" means a
6 committed offender residing in a facility or parti-
7 cipating in a program outside the jurisdiction of the
8 department under an agreement between the department
9 and the contract agency.

10 6. Correctional facility. "Correctional facil-
11 ity" means the Maine State Prison, Maine Correctional
12 Center, Charleston Correctional Facility, Maine Youth
13 Center or any other entity which falls under the
14 jurisdiction of the department, but does not include
15 a county jail, holding facility or short-term deten-
16 tion area.

17 7. Correctional program. "Correctional program"
18 includes, but is not limited to, probation and
19 parole, court intake and jail inspection.

20 8. Department. "Department" means the Depart-
21 ment of Corrections.

22 9. Holding facility. "Holding facility" means a
23 facility, or part of a building, used for the tempo-
24 rary detention of pretrial detainees prior to
25 arraignment, release or transfer to another facility
26 or authority, but not for the serving of sentences.
27 Holding facilities are classified as follows:

28 A. Those in which the maximum time of detention
29 is 12 hours; and

30 B. Those in which the maximum time of detention
31 is 48 hours.

32 10. Informally adjusted juvenile. "Informally
33 adjusted juvenile" means a juvenile participating in
34 a program of informal adjustment, as defined in Title
35 15, section 3003, subsection 10.

36 11. Juvenile client. "Juvenile client" means a
37 juvenile committed to the Maine Youth Center who is
38 either residing at the center or is under aftercare
39 supervision.

1 Corrections to improve the administration of correc-
2 tional facilities, programs and services for commit-
3 ted offenders.

4 §1202. Establishment

5 There is established a Department of Corrections
6 to be responsible for the direction and general
7 administrative supervision, guidance and planning of
8 adult and juvenile correctional facilities and pro-
9 grams within the State.

10 1. Cabinet level. The department is a
11 cabinet-level department.

12 2. Commissioner. The department is under the
13 control and supervision of the Commissioner of Cor-
14 rections.

15 §1203. Office of Advocacy

16 1. Establishment. The Office of Advocacy is
17 established within the department to investigate the
18 claims and grievances of committed offenders, infor-
19 mally adjusted juveniles and contract clients and to
20 advocate for compliance by the department, any cor-
21 rectional facility or any contract agency with all
22 laws, administrative rules and institutional and
23 other policies relating to the rights and dignity of
24 committed offenders, informally adjusted juveniles
25 and contract clients.

26 2. Chief advocate. A chief advocate shall
27 direct and coordinate the program of the office.

28 A. The chief advocate shall report only to the
29 commissioner.

30 B. The chief advocate shall, with the approval
31 of the commissioner, select other advocates
32 needed to carry out the intent of this section
33 and who shall report only to the chief advocate.

34 C. The chief advocate and all other advocates
35 shall be classified state employees.

36 3. Duties. The Office of Advocacy, through the
37 chief advocate and the other advocates, shall:

1 A. Receive or refer complaints made by committed
2 offenders, informally adjusted juveniles and con-
3 tract clients;

4 B. Intercede on behalf of these persons with
5 officials of the department, any correctional
6 facility or any contract agency or assist these
7 persons in the initiation of grievance proceed-
8 ings established by the commissioner under
9 section 1402, subsection 5;

10 C. As an information source regarding the rights
11 of these persons, keep informed about all laws,
12 administrative rules and institutional and other
13 policies relating to the rights and dignity of
14 these persons and about relevant legal decisions
15 and other developments related to the field of
16 corrections, both in this State and in other
17 parts of the country; and

18 D. Make and publish reports necessary to the
19 performance of the duties described in this
20 section, except that only the chief advocate may
21 report any findings of the office to groups out-
22 side the department, such as legislative bodies,
23 advisory committees to the Governor, boards of
24 visitors, law enforcement agencies and the press.

25 4. Powers. The Office of Advocacy, through the
26 chief advocate and the other advocates, may:

27 A. Take action only on complaints which it deems
28 not to be trivial or moot or for which there is
29 clearly not another remedy available; and

30 B. Have access, limited only by the law, to the
31 files, records and personnel of the department,
32 any correctional facility or any contract agency.

33 5. Confidentiality. Requests for action by the
34 office shall be treated confidentially as follows.

35 A. Any request by a committed offender, infor-
36 mally adjusted juvenile or contract client for
37 action by the office and all written records or
38 accounts related to the request shall be confi-
39 dential as to the identity of the requesting
40 person.

1 B. The records and accounts may be released only
2 as provided in section 3003.

3 §1204. Maine Correctional Advisory Commission

4 There is established the Maine Correctional Advi-
5 sory Commission.

6 1. Composition. The commission shall consist of
7 12 members to be appointed as follows:

8 A. One member from the House of Representatives
9 appointed by the Speaker of the House;

10 B. One member from the Senate appointed by the
11 President of the Senate; and

12 C. Ten representative citizens appointed by the
13 Governor, including at least one full-time nonad-
14 ministrative employee from the correctional sys-
15 tem and at least one former inmate of the correc-
16 tional system.

17 2. Chairman. The Governor shall designate the
18 chairman of the commission.

19 3. Duration of appointments. The duration of
20 appointments is determined as follows.

21 A. Of the first gubernatorial appointments, 4
22 shall be for terms of 3 years, 3 shall be for
23 terms of 2 years and 3 shall be for terms of one
24 year.

25 B. Appointments after the first gubernatorial
26 appointments shall be for terms of 3 years, plus
27 the time period until a successor is appointed.

28 C. Legislative appointments shall be for the
29 legislative term of office of the person
30 appointed.

31 4. Expenses. Commission expenses shall be
32 treated as follows.

33 A. Each member of the commission may receive his
34 actual and necessary expenses incurred in the

1 performance of duties pertaining to his office.

2 B. The commission may receive public and private
3 grants to aid in defraying the expenses of its
4 operation.

5 5. Duties. The commission shall:

6 A. Act in an advisory capacity to the commis-
7 sioner in assessing present programs, in planning
8 future programs and in developing ongoing poli-
9 cies to meet the correctional needs of the State;

10 B. Regularly advise the executive, legislative
11 and judicial branches of government concerning
12 correctional policy;

13 C. Issue a report containing the results of its
14 studies to the Legislature, the Governor and the
15 commissioner on December 31st of each year;

16 D. Meet as often as necessary, at the discretion
17 of its chairman; and

18 E. Adopt its own rules of procedure necessary to
19 carry out its duties.

20 §1205. Statewide correctional program improvement

21 1. Purpose. The purpose of this section is to
22 provide the means for the development, expansion and
23 improvement of correctional programs throughout the
24 State and to encourage participation in correctional
25 programs by persons, unincorporated associations,
26 charitable nonstock corporations, local and county
27 governmental units and state agencies.

28 2. Commissioner's powers. The commissioner has
29 the following powers.

30 A. The commissioner may provide or assist in the
31 provision of correctional services relating to
32 all facets of rehabilitation and community life
33 adjustment, but the services shall be limited to:

34 (1) Services to the courts;

- 1 (2) Predelinquency services;
2 (3) Diversionary services;
3 (4) Prerelease and halfway house services;
4 and
5 (5) Aftercare and post-release services.

6 B. To accomplish the purpose of paragraph A, the
7 commissioner may cooperate with persons, unincor-
8 porated associations, charitable nonstock corpo-
9 rations, municipalities, other governmental units
10 and state agencies.

11 C. The commissioner may promulgate and enforce
12 rules, in accordance with the Maine Administra-
13 tive Procedure Act, Title 5, chapter 375, for the
14 administration of all services delivered and
15 funded under this section.

16 D. The commissioner may receive and use, for the
17 purposes of this section, money appropriated by
18 the State, grants from the United States and
19 funds from any other sources.

20 E. The commissioner may make grants of funds to
21 any person or entity described in this section
22 who applies for the funds, to be used in the man-
23 agement and delivery of correctional services,
24 programs approved by, or approved and supervised
25 by, the commissioner.

26 F. The commissioner may, by contract, purchase
27 professional and other specialized services when
28 necessary to the provision of direct services
29 under this section.

30 3. Correctional Program Improvement Fund. All
31 funds appropriated for the purposes of this section
32 and all grants and other funds received by the
33 department for the purposes of this section shall be
34 credited to a special revenue account in the depart-
35 ment to be known as the Correctional Program Improve-
36 ment Fund.

1 A. Any state funds appropriated to this special
2 revenue account unexpended at the end of the
3 fiscal year for which the funds are appropriated
4 do not lapse, but shall carry forward into subse-
5 quent fiscal years to be expended for the pur-
6 poses of this section.

7 B. No funds appropriated or received under this
8 section may be used for the construction of new
9 facilities or for the reconstruction, renovation
10 or expansion of any existing facilities, except
11 that the funds may be used for minor renovations
12 necessary to meet state or local licensing re-
13 quirements.

14 §1206. Agreements with community agencies

15 1. Definitions. As used in this section, unless
16 the context otherwise indicates, the following terms
17 have the following meanings.

18 A. "Agreement" means a legally binding document
19 between 2 parties, including documents commonly
20 referred to as accepted application, proposal,
21 prospectus, contract, grant, joint or cooperative
22 agreement or purchase of service.

23 B. "Community agency" means a person, a state
24 governmental or private nonprofit organization or
25 a firm, partnership or business corporation oper-
26 ated for profit, which:

27 (1) Operates a human service program at the
28 community level; and

29 (2) Is not an administrative unit of the
30 Federal Government or State Government.

31 C. "Funds" means any and all general funds, ded-
32 icated funds, fees, special revenue funds, 3rd
33 party reimbursements, vendor payments or other
34 funds available for expenditure by the department
35 in support of the provision of human service.

36 D. "Human service" means any alcoholism, chil-
37 dren's community action, corrections, criminal
38 justice, developmental disability, donated food,

1 education, elderly, food stamp, income mainte-
2 nance, health, juvenile, law enforcement, legal,
3 medical care, mental health, mental retardation,
4 poverty, public assistance, rehabilitation,
5 social, substance abuse, transportation, welfare
6 or youth service operated by a community agency
7 under an agreement financially supporting the
8 service, wholly or in part, by funds authorized
9 for expenditure for the department.

10 E. "Nonprofit organization" means any agency,
11 institution or organization which is, or is owned
12 and operated by, one or more corporations or
13 associations, no part of the net earnings of
14 which inures, or may lawfully inure, to the bene-
15 fit of any private shareholder or individual and
16 which has a territory of operations that may
17 extend to a neighborhood, community, region or
18 the State.

19 2. Commissioner's powers. The commissioner may
20 disburse funds to a community agency for the purpose
21 of financially supporting human service, only if the
22 disbursement is covered by a written agreement
23 between the department and the agency, specifying at
24 least the following:

25 A. The human service to be provided by the com-
26 munity agency;

27 B. The method of payment by the department to
28 the community agency; and

29 C. The criteria for monitoring and evaluating
30 the performance of the community agency in the
31 provision of the human service.

32 3. Commissioner's duties. The commissioner's
33 duties are as follows.

34 A. The commissioner shall promulgate rules, in
35 accordance with the Maine Administrative Proce-
36 dure Act, Title 5, chapter 375, consistent with
37 and necessary for the effective administration of
38 this section.

1 B. When making agreements with community agen-
2 cies for the provision of a human service, the
3 commissioner shall use uniform agreement forms
4 and shall develop uniform procedures.

5 C. When disbursing funds pursuant to an agree-
6 ment, the commissioner shall require uniform ac-
7 counts payable forms or uniform supporting docu-
8 mentation and information.

9 D. When accounting for funds disbursed under an
10 agreement, the commissioner shall use uniform ac-
11 counting principles, policies and procedures.

12 §1207. Out-of-state prison-made goods

13 1. Purpose. The purpose of this section is to
14 take advantage of the so-called Hawes-Cooper bill,
15 entitled "AN ACT to Divest Goods, Wares, and Merchan-
16 dise Manufactured, Produced, or Mined by Convicts or
17 Prisoners of Their Interstate Character in Certain
18 Cases" and to prohibit the sale or use within the
19 State of any goods, wares or merchandise produced in
20 penal institutions outside of the State and trans-
21 ported into the State.

22 2. Prohibited acts. Prohibited acts under this
23 section are governed as follows.

24 A. A person commits the civil violation of sale
25 of out-of-state prison-made goods if he sells
26 within this State any goods, wares or merchandise
27 manufactured, produced or mined, wholly or in
28 part, by nonparoled convicts or prisoners, or in
29 any penal or reformatory institution, in another
30 state and transported into this State.

31 B. A person commits the civil violation of use
32 of out-of-state prison-made goods if he uses,
33 consumes or stores within this State any goods,
34 wares or merchandise manufactured, produced or
35 mined, wholly or in part, by nonparoled convicts
36 or prisoners, or in any penal or reformatory
37 institution, in another state and transported
38 into this State.

39 SUBCHAPTER III

1 A. The commissioner shall establish, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, such rules as he determines appropriate or necessary for the care and management of the property of all correctional facilities, for the production and distribution of industrial products of the correctional facilities and for the execution of the statutory purposes and functions of correctional facilities or correctional programs.

11 B. The central principle underlying all rules relating to committed offenders is that the committed offenders shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law.

16 4. Vocational education. Establishment of vocational education shall be as follows.

18 A. The commissioner shall establish and maintain suitable courses for vocational education in the correctional facilities.

21 (1) The commissioner shall install equipment necessary to carry out this duty.

23 (2) The commissioner shall employ suitable and qualified instructors necessary to carry out this duty, subject to the approval of the Associate Commissioner of the Bureau of Vocational Education.

28 B. The expenses of carrying out this subsection shall be paid from the appropriations for the correctional facilities.

31 5. Grievance procedures. The commissioner shall establish procedures for hearing grievances of committed offenders, informally adjusted juveniles and contract clients under section 1203, subsection 3.

35 6. County jail, holding facility and short-term detention area standards. County jail, holding facility and short-term detention area standards are governed as follows.

1 A. The commissioner shall establish standards
2 for all county jails, holding facilities and
3 short-term detention areas which shall approxi-
4 mate, insofar as possible, the standards estab-
5 lished by the Inspector of Jails of the Federal
6 Bureau of Prisons.

7 B. The commissioner shall inspect all county
8 jails, holding facilities and short-term deten-
9 tion areas at least once a year and may make more
10 frequent inspections.

11 (1) The commissioner shall report to the
12 Governor before December 1st of each year on
13 the condition of the county jails, holding
14 facilities and short-term detention areas.

15 (2) The commissioner may contract with any
16 qualified person to serve as a consultant to
17 the department for the purpose of inspec-
18 tions under this section and to inspect the
19 county jails, holding facilities and short-
20 term detention areas and, any law to the
21 contrary notwithstanding, the qualified
22 person may be an officer or employee of the
23 department.

24 C. If a failure of the county commissioners to
25 maintain the standards established under this
26 section is discovered during a jail inspection
27 conducted under this section, the commissioner
28 shall report in writing to the county commis-
29 sioners of the county in which the jail is located,
30 specifying deficiencies and departures from the
31 standards and ordering their correction.

32 (1) The county commissioners shall cause
33 the deficiencies to be corrected and the
34 standards to be restored within 6 months
35 from the receipt of the report and order of
36 the commissioner.

37 (2) If the county commissioners fail to
38 comply with the order, the commissioner may
39 order the county jail to be closed and the
40 prisoners transferred to the nearest county
41 jail or jails meeting the prescribed stan-

1 dards and having available room for the
2 prisoners.

3 (3) The cost of transfer, support and
4 return of the prisoners shall be paid by the
5 county from whose jail the prisoners are
6 transferred, as provided in section 3068.

7 §1403. Powers

8 In addition to other powers granted in this
9 Title, the commissioner has the following powers.

10 1. General powers. The commissioner may perform
11 any legal act relating to the care, custody, treat-
12 ment, relief and improvement of committed offenders
13 or may purchase residential services when the depart-
14 ment's correctional facilities do not provide the
15 appropriate services for the committed offender.

16 2. Appointments. The commissioner's appointment
17 powers are as follows.

18 A. The commissioner may appoint, subject to the
19 Personnel Law and except as otherwise provided,
20 any employees who may be necessary.

21 B. The commissioner may appoint and set the
22 salary for an associate commissioner to assist in
23 carrying out the responsibilities of the depart-
24 ment.

25 (1) The appointment shall be for an inde-
26 terminate term and until a successor is
27 appointed and qualified or during the pleas-
28 ure of the commissioner.

29 (2) To be eligible for appointment as an
30 associate commissioner, a person must have
31 training and experience in general manage-
32 ment.

33 3. Delegation. The commissioner's delegation
34 powers are as follows.

35 A. Unless a specific statute otherwise directs,
36 the commissioner may delegate powers and duties

1 given under this Title to the associate commis-
2 sioner and to chief administrative officers of
3 correctional facilities.

4 B. The commissioner may empower the associate
5 commissioner and chief administrative officers of
6 correctional facilities to further delegate
7 powers and duties delegated to them by the com-
8 missioner.

9 4. Funding sources. The commissioner may use
10 the following funding sources.

11 A. The commissioner may accept for the State any
12 federal funds appropriated under federal law
13 relating to the juvenile offender and may do
14 whatever is necessary to carry out the federal
15 law.

16 B. The commissioner may accept, from any other
17 agency of government, person, group or corpora-
18 tion, any funds which may be available in carry-
19 ing out this Title.

20 C. The commissioner may apply for and receive
21 federal funds under the United States Housing Act
22 of 1954, Public Law 560, Title 7.

23 5. Lease of unused buildings. The commissioner
24 may, with the approval of the Director of Public
25 Improvements, lease unused buildings at the correc-
26 tional facilities for the purposes of providing ser-
27 vices to committed offenders.

28 A. The leases shall be for a period not to
29 exceed one year.

30 B. The commissioner shall submit a plan of the
31 proposed leases and their impact on the correc-
32 tional facilities and committed offenders to the
33 joint standing committee of the Legislature hav-
34 ing jurisdiction over health and institutional
35 services no later than January 31st of each year.

36 CHAPTER 3

1 under the department and for the Governor Baxter
2 School for the Deaf within the Department of Educa-
3 tional and Cultural Services.

4 A. The terms of the members of the boards of
5 visitors are for one year.

6 B. Members of the boards of visitors are eligi-
7 ble for reappointment at the expiration of their
8 terms.

9 C. No member of the Legislature may serve on any
10 board of visitors.

11 D. Members of the boards of visitors are not
12 entitled to compensation.

13 2. Powers. Each board of visitors may inspect
14 the correctional facility to which it is assigned and
15 may make recommendations on the management of the
16 facility to the commissioner.

17 3. Duties. Boards of visitors have the follow-
18 ing duties.

19 A. Boards of visitors shall send copies of all
20 recommendations to the members of the joint
21 standing committee of the Legislature having
22 jurisdiction over health and institutional ser-
23 vices.

24 B. Each board of visitors shall appear before
25 the joint standing committee of the Legislature
26 having jurisdiction over health and institutional
27 services upon request.

28 §3003. Confidentiality of information

29 1. Limited disclosure. All orders of commit-
30 ment, medical and administrative records, applica-
31 tions and reports, and facts contained in them, per-
32 taining to any person receiving services from the
33 department, shall be kept confidential and may not be
34 disclosed by any person, except that:

35 A. A person receiving services, his legal
36 guardian, if any, or, if he is a minor, his

1 parent or legal guardian may give his informed
2 written consent to the disclosure of information,
3 if he has been given the opportunity to review
4 the information sought to be disclosed;

5 B. Information may be disclosed if necessary to
6 carry out any of the statutory functions of the
7 department; and

8 C. Information may be disclosed if ordered by a
9 court of record, subject to any limitation in the
10 Maine Rules of Evidence, Rule 503.

11 2. Prohibited acts. Prohibited acts under this
12 section are governed as follows.

13 A. A person is guilty of unlawful disclosure of
14 information if he discloses information in viola-
15 tion of this section.

16 B. Unlawful disclosure of information is a Class
17 D crime.

18 §3004. Legal actions

19 1. Contract actions. Actions founded on any
20 contract made with the State Purchasing Agent, or
21 with any official of the department under the author-
22 ity granted by the State Purchasing Agent, on behalf
23 of a correctional facility may be brought by the
24 official making the contract or his successor in
25 office.

26 2. Actions for injuries to property. Actions
27 for injuries to the real or personal property of the
28 State, used by any correctional facility and under
29 the management of an officer of the facility, may be
30 prosecuted in the name of the officer or his succes-
31 sor in office.

32 §3005. Emergencies

33 When emergency situations are certified by the
34 chief administrative officer to exist at a correc-
35 tional facility, the commissioner may, with the
36 approval of the Governor, assign personnel as may be
37 necessary from another facility or division of the

1 department to assist in controlling the emergency
2 situation.

3 1. Temporary assignment. The assignment of per-
4 sonnel shall be only for the period during which the
5 emergency exists.

6 2. Compensation. Any personnel transferred are
7 entitled to receive compensation as required by the
8 Personnel Law, rules and contract terms.

9 §3006. Improper conduct of correctional facility
10 officers

11 The commissioner may inquire into any improper
12 conduct imputed to correctional facility officers in
13 relation to the concerns of their facilities and for
14 that purpose may:

15 1. Subpoenas. Issue subpoenas for witnesses and
16 compel their attendance and the production of papers
17 and writings by punishment for contempt in case of
18 willful failure, neglect or refusal;

19 2. Examination of witnesses. Examine witnesses
20 under oath; and

21 3. Adjudication. Adjudicate cases of alleged
22 improper conduct in a manner similar to and with
23 similar effect as cases of arbitration.

24 §3007. Posting of political material

25 The chief administrative officer of each correc-
26 tional facility shall provide in at least one acces-
27 sible area in each facility an appropriate space for
28 the posting of written political material sent for
29 that purpose to the chief administrative officer by
30 candidates for state or federal office.

31 1. One item limit. No more than one item of
32 written political material may be posted in one place
33 on behalf of any one candidate.

34 2. Removal. Written political material shall be
35 removed after the elections for which it is intended
36 for use.

1 3. Voting place. If there is a voting place
2 within the facility, the posting place may not be
3 located within 250 feet of the entrance to the voting
4 place.

5 4. Violation. The posting of written political
6 material under this section is not a violation of
7 Title 21, section 1575-A, or Title 21, section 1579,
8 subsection 7.

9 §3008. Reallocation of correctional facility appro-
10 riations

11 In administering the policy and purposes of this
12 Title, the commissioner may expend correctional
13 facility appropriations on committed offenders parti-
14 cipating in halfway house, prerelease, vocational
15 training, educational, drug treatment or other cor-
16 rectional programs being administered physically
17 apart from the facilities to which the persons were
18 originally sentenced or committed to defray the costs
19 of the persons' participation in the programs.

20 §3009. Public ways and parking areas

21 1. Rules. The chief administrative officers of
22 correctional facilities may promulgate and enforce
23 rules, subject to the approval of the commissioner,
24 governing the use of public ways and parking areas
25 maintained by the State at the facilities.

26 A. The rules shall be promulgated in accordance
27 with the Maine Administrative Procedure Act,
28 Title 5, chapter 375.

29 B. The Secretary of State shall forward a copy
30 of the rules, attested under the Great Seal of
31 the State of Maine, to the District Court in the
32 area of jurisdiction.

33 2. Special police officers. The chief adminis-
34 trative officers of correctional facilities may
35 appoint and employ, subject to the Personnel Law,
36 special police officers for the purpose of enforcing
37 rules promulgated under subsection 1.

38 A. The special police officers shall:

1 (1) Patrol all the public ways and parking
2 areas subject to this section;

3 (2) Enforce rules promulgated under this
4 section; and

5 (3) Arrest and prosecute violators of the
6 rules.

7 B. The State Police, sheriffs, deputy sheriffs,
8 police officers and constables who have jurisdic-
9 tion over the areas in which the correctional
10 facilities are located shall, insofar as poss-
11 ible, cooperate with the special police officers
12 in the enforcement of the rules promulgated under
13 subsection 1.

14 3. Court procedure. The District Court, in the
15 areas in which the correctional facilities are locat-
16 ed, has jurisdiction in all proceedings brought under
17 this section.

18 A. The District Court shall take judicial notice
19 of all rules promulgated under subsection 1.

20 B. In any prosecution for a violation of the
21 rules, the complaint may allege the offense as in
22 prosecutions under a general statute and need not
23 recite the rule.

24 4. Prohibited acts. Prohibited acts under this
25 section are governed as follows.

26 A. A person is guilty of a public ways or park-
27 ing violation if he violates any rule promulgated
28 pursuant to this section.

29 B. Upon conviction of a public ways or parking
30 violation, a person shall pay a fine as follows:

31 (1) For the first offense in any calendar
32 year, a fine of \$1;

33 (2) For the 2nd offense in any calendar
34 year, a fine of \$2; and

35 (3) For each offense in excess of 2 in any
36 calendar year, a fine of \$5.

1 and orderly procedure for processing disciplinary
2 complaints. The rules shall conform to the following
3 requirements.

4 1. Fairness and equity. The rules shall ensure
5 the maintenance of a high standard of fairness and
6 equity.

7 2. Corporal punishment. Corporal punishment may
8 not be imposed.

9 3. Segregation. The imposition of segregation
10 at all correctional facilities, except the Maine
11 Youth Center, shall be subject to the following con-
12 ditions.

13 A. All punishments involving segregation shall
14 be first approved by the chief administrative
15 officer of the correctional facility.

16 B. The prisoner shall be provided with a suffi-
17 cient quantity of wholesome and nutritious food.

18 C. Adequate sanitary and other conditions re-
19 quired for the health of the prisoner shall be
20 maintained.

21 D. When segregation exceeds 24 hours, the chief
22 administrative officer of the correctional facil-
23 ity shall cause the facility's physician or a
24 member of the facility's medical staff to visit
25 the person forthwith and, at least once in each
26 succeeding 24-hour period of confinement, to
27 examine the person's state of health.

28 (1) The chief administrative officer shall
29 give full consideration to recommendations
30 of the physician or medical staff member as
31 to the person's dietary needs and the condi-
32 tions of the person's confinement required
33 to maintain his health.

34 (2) If the recommendations of the physician
35 or medical staff member regarding a person's
36 dietary or other health needs while in
37 segregation are not carried out, the chief
38 administrative officer shall send a written
39 report of that fact to the commissioner.

- 1 (3) The segregation shall be discontinued
2 if the physician states that it is harmful
3 to the mental or physical health of the
4 person.
- 5 E. If a person is held in segregation or soli-
6 tary confinement for more than 5 days, the chief
7 administrative officer shall send a report of the
8 confinement to the commissioner, giving the
9 reasons for the confinement.
- 10 4. Loss of earned good time. All punishments
11 involving loss of earned good time shall be first
12 approved by the chief administrative officer.
- 13 5. Specific facilities. Punishment at specific
14 correctional facilities is governed as follows.
- 15 A. Punishment at all correctional facilities,
16 except the Maine Youth Center, may consist of
17 warnings, loss of privileges, confinement to a
18 cell, segregation or a combination of these.
- 19 B. Punishment at the Maine Youth Center may con-
20 sist of seclusion, in accordance with section
21 3809, warnings and loss of privileges.
- 22 6. Impartial hearing. If the punishment may
23 affect the term of commitment, sentence or parole
24 eligibility or may involve segregation, the chief
25 administrative officer of the facility shall, before
26 imposing punishment, provide an impartial hearing at
27 which the committed offender has the following
28 rights.
- 29 A. He is entitled to be informed in writing of
30 the specific nature of his alleged misconduct.
- 31 B. He is entitled to the right to be present.
- 32 C. He is entitled to present evidence on his own
33 behalf.
- 34 D. He is entitled to call one or more witnesses,
35 which right may not be unreasonably restricted.

1 E. He is entitled to question any witness who
2 testifies at the hearing, which right may not be
3 unreasonably restricted.

4 F. He is entitled to be represented by counsel
5 substitute as prescribed in the rules.

6 G. A record shall be maintained of all disci-
7 plinary complaints, hearings, proceedings and
8 dispositions.

9 H. He is entitled to appeal the final disposi-
10 tion, before imposition of punishment, to the
11 chief administrative officer of the correctional
12 facility.

13 I. If, at any stage of the proceedings, he is
14 cleared of the charges in a complaint, or the
15 complaint is withdrawn, all documentation relat-
16 ing to the complaint shall be expunged.

17 §3033. Work assignments

18 1. Public works. The commissioner may authorize
19 the employment of able-bodied prisoners in the prison
20 or Maine Correctional Center in the construction and
21 improvement of highways or other public works within
22 the State under such arrangements as may be made with
23 the Department of Transportation or with another
24 department or commission of the State, county or
25 municipality in charge of these public works, and the
26 commissioner may prescribe whatever rules and condi-
27 tions he deems expedient to insure the proper care
28 and treatment of the prisoners while so employed and
29 to ensure their safekeeping and return.

30 2. Fire or disaster. The commissioner may
31 authorize the training and use of able-bodied pris-
32 oners in the prison or in the Maine Correctional Cen-
33 ter by the Bureau of Forestry or the Bureau of Civil
34 Emergency Preparedness to fight fires or provide
35 assistance during or after a civil disaster.

36 3. Charitable property improvement. The commis-
37 sioner may authorize the use of able-bodied prisoners
38 in the prison or Maine Correctional Center to provide
39 assistance in the improvement of property owned by

1 charitable organizations, as may be approved by the
2 commissioner, if the charitable organizations pay for
3 the transportation of the prisoners and for the
4 transportation and per diem compensation of any
5 guards who accompany the prisoners.

6 4. Prohibited act. A person is guilty of escape
7 under Title 17-A, section 755, if he escapes from any
8 assignments described in this section or from any
9 other assignment beyond the walls of the prison or
10 off the grounds of the Maine Correctional Center.

11 §3034. Prisoner labor

12 The keeper of the jail, workhouse or house of
13 correction or, in the case of a sentence to a town
14 farm or almshouse, the overseers of the poor of the
15 town or the keeper or agent of the town farm or alms-
16 house may:

17 1. Work requirement. Require a prisoner to
18 labor at any lawful work within the town in which the
19 institution is located;

20 2. Keeper. Appoint any suitable person keeper
21 over the prisoner;

22 3. Collection of wages. Collect and receive the
23 wages, compensation or profits of the prisoner's
24 labor; and

25 4. Payment. At the expiration of his sentence,
26 pay to the prisoner reasonable compensation for his
27 labor, deducting from that amount the costs of com-
28 mitment.

29 §3035. Rehabilitative programs

30 The commissioner may adopt, implement and estab-
31 lish rules for rehabilitative programs, including
32 work release, restitution and furlough, as authorized
33 by Title 17-A, chapter 54, within the correctional
34 facilities under his control.

35 1. Work release and restitution. The chief
36 administrative officer of a correctional facility may
37 permit any committed offender considered to be worthy

1 of trust to participate in activities outside the
2 facility under the following conditions.

3 A. Activities may include training and employ-
4 ment.

5 B. Activities are subject to rules promulgated
6 by the commissioner.

7 C. Activities shall, in the judgment of the
8 chief administrative officer, contribute to the
9 reformation of the committed offender and assist
10 in preparing him for eventual release.

11 2. Furlough. The commissioner may grant to a
12 committed offender furlough from the facility in
13 which he is confined under the following conditions.

14 A. Furlough may only be granted subject to rules
15 adopted by the commissioner.

16 B. Furlough may be granted for not more than 10
17 days at one time for a visit to a dying relative,
18 for attendance at the funeral of a relative, for
19 the contacting of prospective employers or for
20 any other reason consistent with the rehabilita-
21 tion of a committed offender.

22 C. Furlough may be granted for the obtaining of
23 medical services for a period longer than 10 days
24 if medically required.

25 3. Copy of rules. Copies of rules shall be pro-
26 vided to committed offenders as follows.

27 A. The chief administrative office of a facility
28 adopting a rehabilitative program under this
29 section shall provide, to any committed offender
30 permitted outside a facility under this section,
31 a copy of the rules of the commissioner applica-
32 ble to the program in which he is permitted to
33 participate, or to his furlough.

34 B. The committed offender shall attest to the
35 receipt of the copy of the rules.

36 4. Prohibited acts. Prohibited acts under this
37 section are governed as follows.

1 A. A person who has passed his 17th birthday is
2 guilty of interference with a rehabilitative pro-
3 gram or furlough if he willfully obstructs,
4 intimidates or otherwise abets any committed
5 offender participating in a program, or on fur-
6 lough, under this section, and thereby contrib-
7 utes or causes the committed offender to violate
8 the terms of his program participation or fur-
9 lough, after having been warned by the chief
10 administrative officer of the facility to end the
11 relationship or association with the committed
12 offender.

13 B. Interference with a rehabilitative program or
14 furlough is a Class E crime, except that the
15 court may sentence a person to imprisonment for
16 not more than 11 months.

17 §3036. Halfway house program

18 1. Establishment. The commissioner may promul-
19 gate rules establishing a halfway house program to
20 provide an environment of community living and con-
21 trol.

22 2. Participation. Committed offenders at any
23 correctional facility or at any county jail may be
24 paroled, furloughed, transferred or entrusted to par-
25 ticipate in the halfway house program in accordance
26 with applicable provisions of law.

27 §3037. Physical and mental examination

28 1. Requirement. The commissioner may require a
29 physical and mental examination of any committed
30 offender.

31 2. Examiners. The commissioner shall designate
32 competent examiners.

33 §3038. Administration of medication

34 The administration of medication in correctional
35 facilities operated by the department shall be in ac-
36 cordance with rules established by the State Board of
37 Nursing.

1 1. Maine Administrative Procedure Act. The
2 State Board of Nursing shall establish rules in ac-
3 cordance with the Maine Administrative Procedure Act,
4 Title 5, chapter 375.

5 2. Considerations. In establishing rules for
6 each type of facility, the State Board of Nursing
7 shall consider, among other factors:

8 A. The general health of the persons likely to
9 receive medication;

10 B. The number of persons served by the facility;
11 and

12 C. The number of persons employed at the facil-
13 ity.

14 §3039. Committed offenders' money

15 When any committed offender confined in a correc-
16 tional facility receives money from any source,
17 including compensation for work authorized under
18 other sections of the Revised Statutes or by a policy
19 of the department, and the money or any part of it is
20 retained to be given to the committed offender upon
21 release:

22 1. Account. The money shall be placed in an
23 interest-bearing account of the committed offender's
24 choice; and

25 2. Payment. The principal and interest shall be
26 paid to the committed offender at the time of his
27 release.

28 §3040. Committed offender's abandoned property

29 Any property abandoned or unclaimed by a commit-
30 ted offender in a correctional facility shall be dis-
31 posed of according to Title 33, chapter 27.

32 §3041. Reduction of sentence

33 A prisoner in any correctional facility may have
34 his sentence reduced by 5 days for each pint of blood
35 donated by him to a veterans' organization, civil

1 defense unit, blood bank, hospital, the Armed Forces
2 of the United States or the Red Cross, or for the
3 purpose of scientific research.

4 1. Applicability. The reduction of sentence is
5 applicable to the minimum sentence of the prisoner.

6 2. Limitation. Each prisoner is limited to one
7 donation every 6 months.

8 3. No forfeiture. Any reduction of sentence
9 earned under this section is not subject to forfei-
10 ture.

11 4. Nonprofit. Blood donated under this section
12 may not be used in any way commercially or for a
13 profit.

14 5. Donor list. The chief administrative officer
15 of the correctional facility shall keep a list of all
16 blood donors under this section and the amounts of
17 blood donated by each.

18 §3042. Disposition of detainees

19 1. Notice to prisoner. The commissioner, warden
20 or other official having custody of a prisoner
21 serving a term of imprisonment in a correctional
22 facility in this State shall promptly inform the
23 prisoner in writing of:

24 A. The source and contents of any untried
25 indictment, information or complaint pending in
26 this State against the prisoner of which the com-
27 missioner, warden or other official has knowl-
28 edge; and

29 B. The prisoner's right to request a final dis-
30 position of the untried indictment, information
31 or complaint.

32 2. Right to trial. A prisoner serving a term of
33 imprisonment in a correctional facility in this State
34 is entitled to be brought to trial on any untried
35 indictment, information or complaint pending in this
36 State against him within 180 days after giving proper
37 notice in accordance with subsections 3 and 4.

1 3. Proper notice. To constitute proper notice
2 under subsection 2, the prisoner must send to the
3 prosecuting official of the county in which the
4 indictment, information or complaint is pending, and
5 to the appropriate court, the following:

6 A. Written notice of the place of imprisonment;

7 B. Written notice of the request for final dis-
8 position to be made of the untried indictment,
9 information or complaint; and

10 C. A certificate of the commissioner, warden or
11 other official having custody of the prisoner
12 stating:

13 (1) The term of commitment under which the
14 prisoner is held;

15 (2) The time already served on the sen-
16 tence;

17 (3) The time remaining to be served;

18 (4) The amount of good time earned;

19 (5) The time of parole eligibility of the
20 prisoner; and

21 (6) Any decisions of the State Parole Board
22 relating to the prisoner.

23 4. Manner of giving proper notice. The manner
24 of giving proper notice under subsection 2 is as fol-
25 lows.

26 A. The prisoner shall give or send the written
27 notice of place of imprisonment and the written
28 notice of request for final disposition to the
29 commissioner, warden or other official having
30 custody of him.

31 B. The commissioner, warden or other official
32 having custody of the prisoner shall promptly
33 forward the written notices, together with the
34 certificate to the appropriate prosecuting offi-
35 cial and court by registered or certified mail,
36 return receipt requested.

1 5. Continuance. The court having jurisdiction
2 of the matter may grant any necessary or reasonable
3 continuance for good cause shown in open court by the
4 prisoner or his counsel.

5 6. Time limitation. If the prisoner is not
6 brought to trial on the untried indictment, informa-
7 tion or complaint within 180 days after the prisoner
8 gave or sent proper notice under subsection 2:

9 A. The untried indictment, information or com-
10 plaint is no longer of any force of effect;

11 B. No court has jurisdiction over it; and

12 C. The appropriate court shall enter an order
13 dismissing it with prejudice.

14 7. Effect of escape. If a prisoner escapes from
15 custody after his execution of the request for final
16 disposition, his request is voided.

17 8. Exception. This section does not apply to
18 any person adjudged to be mentally ill.

19 §3043. Aliens

20 1. Notification of immigration officer. When a
21 person is admitted or committed to a correctional
22 facility, a county jail or any other state, county,
23 city or private institution which is supported wholly
24 or in part by public funds, the chief administrative
25 officer of the facility, jail or institution shall
26 inquire at once into the nationality of the person
27 and, if it appears that the person is an alien, the
28 chief administrative officer shall notify immediately
29 the United States immigration officer in charge of
30 the district in which the facility, jail or institu-
31 tion is located, of:

32 A. The date of and the reason for the alien's
33 admission or commitment;

34 B. The length of time for which the alien is
35 admitted or committed;

36 C. The country of which the alien is a citizen;
37 and

1 D. The date on which and the port at which the
2 alien last entered the United States.

3 2. Copy of record to immigration officer. Upon
4 the official request of the United States immigration
5 officer in charge of the territory or district in
6 which is located any court committing an alien to a
7 state, county or private institution which is sup-
8 ported wholly or in part by public funds, the clerk
9 of the court shall furnish without charge a certified
10 copy of:

11 A. The complaint, information or indictment;

12 B. The judgment and sentence; and

13 C. Any other record pertaining to the alien's
14 case.

15 §3044. Apprehension of escapees and fugitives

16 1. Generally. The commissioner shall take all
17 proper measures for, and may offer a reward for, the
18 apprehension and return of any committed offender in
19 any correctional institution who has escaped from the
20 control of the department.

21 A. The reward may not exceed \$100.

22 B. Upon satisfactory proof that the terms of the
23 reward offer have been complied with, the depart-
24 ment shall pay the reward.

25 2. Capital crimes and high offenses. When a
26 prisoner convicted of or charged with a capital crime
27 or other high offense escapes from prison, or there
28 is reasonable cause to believe that a person charged
29 with such an offense and unapprehended for it cannot
30 be arrested and secured in the ordinary course of
31 proceedings, the Governor may, upon application in
32 writing of the Attorney General or district attorney
33 for the county in which the offense was committed,
34 and upon terms which he deems expedient and proper,
35 offer a suitable reward for the arrest, return and
36 delivery into custody of the escaped prisoner or
37 fugitive from justice.

1 B. The person becomes eligible for release and
2 discharge as provided in Title 17-A, section
3 1254.

4 §3062. Transfer from the prison to a federal correc-
5 tional institution

6 1. Requirements. The commissioner may transfer
7 a person committed to the prison to a federal penal
8 or correctional institution if:

9 A. The warden certifies in writing to the com-
10 missioner that:

11 (1) The person's presence may be seriously
12 detrimental to the well-being of the prison;

13 (2) The person willfully and persistently
14 refuses to obey prison rules; or

15 (3) The person is considered an incorri-
16 gible prisoner; and

17 B. The Attorney General of the United States ac-
18 cepts the commissioner's application for transfer
19 of the person.

20 2. Contract. The commissioner may contract with
21 the Attorney General of the United States, or such
22 officer as the Congress may designate under the
23 United States Code, Title 18, Section 5003 and acts
24 supplementing and amending it, in each individual
25 case for the care, custody, subsistence, education,
26 treatment and training of any person transferred
27 under this section.

28 A. The contract shall provide for the reimburse-
29 ment of the United States in full for all costs
30 or other expenses involved, the costs and
31 expenses to be paid from the appropriation for
32 the operation of the prison.

33 B. The warden shall affix to the contract a copy
34 of the mittimus or mittimuses under which the
35 prisoner is held.

1 C. The contract and mittimus or mittimuses are
2 sufficient authority for the United States to
3 hold the prisoner on behalf of the State.

4 3. Effect on prisoner. The rights of trans-
5 ferred prisoners are governed as follows.

6 A. A prisoner transferred under this section is
7 subject to the terms of his original sentence or
8 sentences as if he were serving the sentence or
9 sentences within the confines of the prison.

10 B. Nothing in this section deprives a prisoner
11 transferred under this section of his rights to
12 parole or his rights to legal process in the
13 courts of this State.

14 §3063. Transfer from the prison to the Maine Correc-
15 tional Center

16 1. Transfer requirements. The commissioner may,
17 upon the joint recommendation of the warden and the
18 Superintendent of the Maine Correctional Center,
19 transfer a prisoner in execution of sentence at the
20 prison to the Maine Correctional Center if the trans-
21 fer would be in the best interest of the transferee,
22 of public safety or of the security and orderly
23 administration of the facility.

24 A. The transferred prisoner shall serve the sen-
25 tence imposed upon him by the court at the Maine
26 Correctional Center.

27 B. During execution of the sentence at the Maine
28 Correctional Center, the transferred prisoner is
29 entitled to receive the same deductions for good
30 time as he would have received at the prison.

31 2. Return requirements. The commissioner may,
32 upon the joint recommendation of the warden and the
33 Superintendent of the Maine Correctional Center,
34 order a prisoner transferred under subsection 1 to be
35 returned to the prison to continue in execution of
36 his sentence, if the transferred prisoner is not com-
37 patible to the Maine Correctional Center program.

38 §3064. Transfer from the prison to the minimum
39 security unit

1 The warden may, at his discretion, transfer pris-
2 oners from the prison to the Maine State Prison mini-
3 imum security unit at South Warren, which is consid-
4 ered a part of the prison.

5 1. Effect on sentences. Prisoners transferred
6 under this section are deemed to be serving their
7 sentences as if confined within the walls of the
8 prison.

9 2. Rules. Prisoners transferred under this
10 section are subject to the same rules as prisoners
11 confined within the walls of the prison.

12 3. Escape. Prisoners who escape from the mini-
13 imum security unit are guilty of escape as if the
14 escape were from the confines of the prison and are
15 punishable in accordance with Title 17-A, section
16 755.

17 §3065. Transfer from the prison to jails

18 1. Requirements. The commissioner may authorize
19 the warden to transfer as many prisoners as necessary
20 to a jail if the warden certifies to the commissioner
21 that there are more prisoners in the prison than can
22 be confined there securely.

23 2. Jailer's compensation. The jailer who
24 receives prisoners under subsection 1 is entitled to
25 receive whatever compensation from the State Treasury
26 that he and the warden agree upon.

27 3. Return to prison. When the prison can safely
28 accommodate prisoners transferred under subsection 1,
29 the warden shall transfer the prisoners back to the
30 prison.

31 4. Effect on sentences. Prisoners are entitled
32 to have the time served in jail under this section
33 deducted from their sentences.

34 §3066. Transfer from the Maine Correctional Center

35 1. Transfer to the prison. Transfers to the
36 prison are governed as follows.

1 A. The commissioner may, upon the joint recom-
2 mendation of the warden and the Superintendent of
3 the Maine Correctional Center, transfer a pris-
4 oner convicted of a Class A, Class B or Class C
5 crime and committed to the center to the prison
6 if:

7 (1) Reasons of security or overcrowding at
8 the center so require; or

9 (2) In the interest of the prisoner and the
10 public, the result is the most effective use
11 of available correctional programs with
12 respect to the prisoner.

13 B. Any prisoner transferred under paragraph A
14 shall serve the sentence imposed on him by the
15 court at the prison.

16 C. The commissioner may, upon the joint recom-
17 mendation of the warden and the Superintendent of
18 the Maine Correctional Center, return the pris-
19 oner to the center to continue in execution of
20 his sentence, if the reasons for the transfer no
21 longer obtain.

22 2. Transfer to jails. Transfers to jails are
23 governed as follows.

24 A. The commissioner may authorize the Superin-
25 tendent of the Maine Correctional Center to
26 transfer as many prisoners as necessary to a jail
27 if the superintendent certifies to the commis-
28 sioner that there are more prisoners in the cen-
29 ter than can be confined there securely.

30 B. The jailer who receives prisoners under para-
31 graph A is entitled to receive whatever compensa-
32 tion from the State Treasury that he and the
33 superintendent agree upon.

34 C. When the center can safely accommodate pris-
35 oners transferred under paragraph A, the superin-
36 tendent shall transfer the prisoners back to the
37 center.

1 D. Prisoners are entitled to have the time
2 served in jail under this section deducted from
3 their sentences.

4 §3067. Transfer from the Charleston Correctional
5 Facility

6 1. Transfer to the prison or the Maine Correctional
7 Center. The Director of the Charleston Cor-
8 rectional Facility may transfer any prisoner, in ac-
9 cordance with the department's classification pro-
10 cess, to the prison or the Maine Correctional Center
11 for reasons of security, overcrowding or failure to
12 participate satisfactorily in the work and rehabili-
13 tative programs of the Charleston Correctional Facil-
14 ity.

15 2. Other transfers. Other transfers from the
16 Charleston Correctional Facility are governed as fol-
17 lows.

18 A. The director may transfer prisoners to
19 prerelease centers, work release centers, halfway
20 houses, specialized treatment facilities or
21 county jails to meet correctional objectives.

22 B. Prisoners transferred under this subsection
23 are entitled to credit to their sentences for all
24 time spent in county jails and other correctional
25 facilities or programs.

26 §3068. Transfer from jails

27 The commissioner may transfer a prisoner serving
28 a sentence in a county jail from one jail to another
29 to serve any part of his sentence, upon request of
30 the sheriff and approval of the county commissioners
31 of the county of the sending jail and upon the
32 approval of the sheriff and county commissioners of
33 the county of the receiving jail.

34 1. Cost of transfer or return. The cost of the
35 transfer or return of the prisoner shall be paid by
36 the county of the sending jail.

37 2. Cost of support. The cost of the support of
38 the prisoner in the receiving jail shall be the

1 amount agreed upon by the county commissioners party
2 to the transfer and shall be paid by the county of
3 the sending jail.

4 §3069. Hospitalization for mental illness

5 1. Involuntary. When the chief administrative
6 officer of a correctional facility believes that any
7 person in his facility is mentally ill, requires
8 hospitalization and meets requirements for admission,
9 the chief administrative officer shall make applica-
10 tion in accordance with Title 34-B, section 3863.

11 A. Any person with respect to whom an applica-
12 tion and certification under Title 34-B, section
13 3863 are made may be admitted to either state
14 mental health institute.

15 B. Except as otherwise specifically provided in
16 this section, Title 34-B, chapter 3, subchapter
17 IV, Article III, is applicable to the person as
18 if the admission of the person were applied for
19 under Title 34-B, section 3863.

20 C. A copy of the document by which the person is
21 held in the correctional facility shall accompany
22 the application for admission.

23 D. If the sentence being served at the time of
24 admission has not expired or commitment has not
25 been terminated in accordance with law at the
26 time the person is ready for discharge from
27 hospitalization, he shall be returned by the
28 appropriate officers of the correctional facil-
29 ity.

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

35 2. Voluntary. The chief administrative officer
36 of a correctional facility may permit a person con-
37 fin ed in the facility to apply for informal admission
38 to a state hospital for the mentally ill under Title
39 34-B, section 3831.

1 A. Except as otherwise provided in this section,
2 the provisions of law applicable to persons
3 admitted to a state hospital for the mentally ill
4 under Title 34-B, chapter 3, subchapter IV, Arti-
5 cle II, shall apply to any person confined in a
6 correctional facility who is admitted to a state
7 mental health institute under that section.

8 B. A copy of the document by which the person is
9 held in the correctional facility shall accompany
10 the application for admission.

11 C. If the sentence being served at the time of
12 admission has not expired or commitment has not
13 been terminated in accordance with law at the
14 time the person is ready for discharge from
15 hospitalization, he shall be returned by the
16 appropriate officers of the correctional facil-
17 ity.

18 D. Admission to a hospital under this section
19 has no effect upon a sentence then being served
20 or a commitment then in effect. The sentence
21 continues to run and the commitment remains in
22 force, unless terminated in accordance with law.

23 §3070. Hospitalization for mental retardation

24 1. Application. When the chief administrative
25 officer of a correctional facility believes that any
26 person confined in his facility is mentally retarded
27 and in need of services available at the Pineland
28 Center and is a proper subject for admission to the
29 Pineland Center, he shall apply in writing for the
30 admission of the person.

31 A. A copy of the document by which the person is
32 held in the correctional facility shall accompany
33 the application for admission.

34 B. Admission to the Pineland Center shall be
35 effected in accordance with Title 34-B, sections
36 5473 to 5478.

37 2. Unexpired sentence. If the sentence being
38 served at the time of admission has not expired or
39 commitment has not been terminated in accordance with

1 law at the time the person is ready for discharge
2 from the Pineland Center, he shall be returned by the
3 appropriate officers of the correctional facility.

4 3. Expired sentence. If, at the time of expira-
5 tion of the original sentence or termination of the
6 commitment, it is the opinion of the Superintendent
7 of the Pineland Center that the patient should remain
8 in residence at the Pineland Center after expiration
9 of sentence or termination of commitment, the patient
10 may be readmitted to the Pineland Center in accord-
11 ance with Title 34-B, sections 5473 to 5478.

12 4. Effect on sentence. The sentences of hospi-
13 talized prisoners are governed as follows.

14 A. Admission to a hospital under this section
15 has no effect upon a sentence then being served
16 or a commitment then in effect.

17 B. The sentence continues to run and the commit-
18 ment remains in force, unless terminated in ac-
19 cordance with law.

20 §3071. Removal for disease

21 1. Dangerous diseases. Removal of prisoners
22 afflicted with dangerous diseases is governed as fol-
23 lows.

24 A. If a prisoner in a jail, house of correction
25 or workhouse is attacked with a disease which the
26 local health officer, by medical advice, consid-
27 ers dangerous to the safety and health of other
28 prisoners or of the inhabitants of the town, the
29 local health officer shall, by written order,
30 direct the person's removal to some place of
31 safety, to be securely kept and provided for
32 until the officer's further order.

33 B. If the person recovers from the disease, he
34 shall be returned to his place of confinement.

35 C. A removal under this section may not be
36 deemed an escape.

1 D. If the diseased person was committed to the
2 place of confinement by an order of court or
3 judicial process, the local health officer shall
4 send to the office of the clerk of the court from
5 which the order or process was issued:

6 (1) The order for the diseased person's
7 removal or a copy of the order attested by
8 the local health officer; and

9 (2) A statement describing the actions
10 taken pursuant to the order.

11 2. Contagious diseases. If a pestilence or con-
12 tagious disease breaks out among the committed
13 offenders in any correctional facility or county
14 jail, the commissioner may:

15 A. Cause any of the committed offenders to be
16 removed to some suitable place of security where
17 they shall receive all necessary care and medical
18 attention; and

19 B. Cause the committed offender or offenders to
20 be returned as soon as possible to the jail or
21 institution to be confined according to their
22 sentences, if unexpired.

23 3. Tuberculosis. The commissioner may transfer
24 committed offenders in any correctional institution
25 who are afflicted with tuberculosis to state sana-
26 toriums.

27 A. When a committed offender in a correctional
28 facility becomes afflicted with tuberculosis so
29 that the welfare of the committed offender or the
30 safety of the other committed offenders in the
31 facility requires his removal, the commissioner,
32 with the approval of the Governor, may cause the
33 committed offender to be removed to one of the
34 state sanatoriums to be kept and treated until he
35 may be safely returned to the correctional facil-
36 ity.

37 B. The officers of state sanatoriums shall give
38 preference in the admission of new patients to
39 persons transferred under this subsection.

1 B. The warden shall cause all rules of the
2 prison to be strictly and promptly enforced.

3 C. The warden shall observe and oversee the con-
4 duct of the prisoners.

5 D. The warden shall have command of all the
6 force for guarding the prison, and all officers
7 and persons employed under him in overseeing,
8 guarding and governing it.

9 E. The warden shall constantly keep on hand a
10 suitable and sufficient supply of arms and ammu-
11 nition.

12 F. The warden shall give the commissioner
13 immediate information of any officer who refuses
14 or neglects to enforce the discipline established
15 and shall remove forthwith any such officer.

16 G. The warden shall cause a record to be kept of
17 all punishments imposed upon prisoners at the
18 prison, as provided in section 3032 and in rules
19 of the prison, setting forth the reasons for the
20 imposition of the punishments.

21 H. The warden shall serve, execute and return
22 all processes within the exterior walls of the
23 prison yard.

24 (1) All processes shall be directed to the
25 warden.

26 (2) Both the warden and his designee are
27 answerable for the actions of the designee.

28 (3) The warden shall charge the same fees
29 as sheriffs for serving, executing and
30 returning processes.

31 I. The warden shall, on demand of an officer
32 having a writ commanding him to replevy from the
33 warden's possession any goods or chattels of a
34 private individual who is not a prisoner, expose
35 the goods and chattels outside the prison yard so
36 that they may be replevied.

1 (1) The officer shall pay the warden a
2 reasonable charge for the removal of the
3 goods and chattels.

4 (2) The officer shall tax that charge in
5 his fees on the writ.

6 J. The warden shall be the contracting agent for
7 all sales of articles from the prison, for the
8 letting to hire of such prisoners as the commis-
9 sioner deems expedient and for all other con-
10 tracts made on account of the prison, except
11 those made by the State Purchasing Agent.

12 (1) All contracts shall be made in the man-
13 ner prescribed by the commissioner.

14 (2) No contract may be accepted by the
15 warden, unless the contractor gives satis-
16 factory security for its performance.

17 (3) No officer of the prison may be
18 directly or indirectly interested in any
19 contract.

20 K. The warden shall receive and take care of any
21 property that a person has with him at the time
22 he enters the prison, keep an account of the
23 property and give the property back to the person
24 on his discharge.

25 L. Upon the advice of the prison physician and
26 in other cases when he deems it necessary, the
27 warden shall cause any sick prisoner to be
28 removed forthwith to a hospital, where the pris-
29 oner shall receive such care, attention, medicine
30 and diet as his situation requires, until the
31 prison physician determines that the prisoner may
32 leave the hospital without injury to his health.

33 M. The warden shall cause all articles and goods
34 manufactured at the prison for sale to be dis-
35 tinctly labeled or branded with the words "Manu-
36 factured at the Maine State Prison."

37 N. The warden may not carry on or be concerned
38 in trade or commerce during his continuance in
39 office.

1 4. Powers. In addition to other powers granted
2 in this Title, the warden has the following powers.

3 A. The warden may require all officers and other
4 citizens to aid him in suppressing an insur-
5 rection among the prisoners in the prison and in
6 preventing their escape or rescue from the prison
7 or from any other legal custody or confinement.

8 B. The warden may transport prisoners to induc-
9 tion centers whenever necessary to comply with
10 rules of selective service, and in so doing shall
11 take such measures as the commissioner feels are
12 necessary for the public safety.

13 C. If any subordinate officer is guilty of
14 negligence or unfaithfulness in the discharge of
15 his duties or of a violation of any of the laws
16 or rules for the government of the prison and, if
17 the commissioner approves, the warden may deduct
18 from the wages of the subordinate officer a sum
19 not exceeding a month's pay.

20 D. Under the direction of the commissioner, the
21 warden may sell and convey any real estate to
22 which he acquires title in the adjustment of
23 debts in behalf of the State.

24 5. Civil process or execution. The warden may
25 not be arrested on any civil process or execution
26 while in office, but execution upon any judgment
27 against him personally, and not in his official
28 capacity, may be issued against his goods and estate
29 only.

30 A. If the execution is returned unsatisfied, the
31 creditor may file with the Governor a copy of the
32 execution and return and may serve on the warden
33 a copy of that copy attested by the Secretary of
34 State, with a notice under the Secretary of
35 State's hand of the day on which the copy was
36 filed.

37 B. If the warden does not, within 40 days after
38 the day of service of the copy, pay the creditor
39 his full debt, with reasonable costs for copies
40 and service of the copies, the commissioner shall
41 remove the warden from office.

1 C. When the person appointed warden ceases to be
2 warden, alias executions may be issued against
3 his body or property as in other cases.

4 §3232. Deputy warden

5 1. Appointment. The warden shall appoint deputy
6 wardens subject to the Personnel Law.

7 2. Unavailability of warden. When the warden is
8 absent from the prison or unable to perform the
9 duties of his office, the deputy warden designated by
10 the warden has the powers, duties, obligations and
11 liabilities of the warden.

12 §3233. Prison employees

13 1. Duties. Prison employees have the following
14 duties.

15 A. Prison officers shall perform the services in
16 the managing, superintending and guarding of the
17 prison as prescribed by the rules or as directed
18 by the warden.

19 B. If a prisoner at the prison resists the
20 authority of any uniformed or ununiformed officer
21 or refuses to obey his lawful commands, the offi-
22 cer shall immediately enforce obedience.

23 2. Powers. Prison employees have the following
24 powers.

25 A. Employees of the prison have the same power
26 as sheriffs in their respective counties to
27 search for and apprehend escapees from the
28 prison, when authorized to do so by the warden.

29 B. Employees of the prison, when authorized by
30 the warden, may carry weapons inside and outside
31 the prison in connection with their assigned
32 duties or training.

33 3. Uniforms. Prison employee uniforms are gov-
34 erned as follows.

1 A. Employees of the prison may be provided, at
2 the expense of the State, with distinctive uni-
3 forms for use when required for the performance
4 of their official duties and which shall remain
5 the property of the State.

6 B. Employees of the prison may be provided with
7 an equivalent clothing allowance when the private
8 purchase of special clothing is similarly re-
9 quired for the performance of their official
10 duties.

11 §3234. Overseers

12 1. Employment. When practicable, the warden
13 shall employ persons having suitable knowledge and
14 skill in the fields of labor and manufacture carried
15 on in the prison to supervise activities in those
16 fields assigned to them by the warden.

17 2. Services. Persons employed under subsection
18 1 shall perform the services in the managing, super-
19 vising and guarding of the prison as prescribed by
20 the prison rules or as directed by the warden.

21 §3235. Physician

22 1. Appointment. The warden shall appoint some
23 suitable person as physician of the prison.

24 2. Duties. The prison physician has the follow-
25 ing duties.

26 A. The prison physician shall visit the prison
27 as necessary to attend and prescribe for sick
28 prisoners and, when requested by the warden,
29 shall determine their ability to work.

30 B. The prison physician shall advise the warden
31 when the illness of any prisoner requires his
32 removal to a hospital.

33 §3236. Chaplain

34 1. Appointment. The warden shall appoint suit-
35 able persons as chaplains.

1 2. Duties. The prison chaplains shall, in ac-
2 cordance with the rules of the prison:

3 A. Conduct religious services;

4 B. Visit the sick;

5 C. Labor deligently and faithfully for the
6 mental, moral and religious improvement of the
7 prisoners; and

8 D. Aid the prisoners, when practicable, in
9 obtaining employment after their discharge.

10 2. Powers. The chaplains may, with the assent
11 of the warden, establish a religious educational pro-
12 gram and may admit persons of proper character from
13 outside the prison to assist in it.

14 ARTICLE III

15 PRISONERS

16 §3261. Delivery of convicted men to the prison

17 When a male person is convicted and sentenced to
18 the prison from any county:

19 1. Duties of clerk of court. The clerk of the
20 sentencing court shall immediately notify the warden
21 and the sheriff of the county in which the sentencing
22 court is located;

23 2. Duties of the sheriff. The sheriff of the
24 county in which the sentencing court is located
25 shall:

26 A. Transport the convict to the prison, using a
27 sufficient number of his appointed deputies when
28 necessary; and

29 B. Deliver the convict to the officer in charge
30 of the prison before 4 p.m. on any day, accompa-
31 nied by a duly signed warrant of commitment and
32 record, as provided by Title 15, section 1707;

1 3. Duties of the jail keeper. When, during the
2 conveyance of a convict to the prison in pursuance of
3 his sentence, it is necessary or convenient to lodge
4 him for safekeeping in a jail until the remainder of
5 the conveyance can be conveniently performed, the
6 keeper of the jail shall:

7 A. Receive and safely keep and provide for the
8 convict, reasonable charges and expenses for this
9 service to be paid from the State Treasury; and

10 B. Deliver the convict to the custody of the
11 person employed to convey him, when that person
12 calls for the convict; and

13 4. Duties of the warden. The warden shall:

14 A. File the warrant and record, as provided by
15 Title 15, section 1707, with his return thereon
16 in his office; and

17 B. Cause a copy of the warrant of commitment to
18 be filed in the office of the clerk of court from
19 which it was issued.

20 §3262. Receipt of United States prisoners

21 1. Requirements. A prisoner convicted of an
22 offense against the United States and committed for a
23 term of imprisonment in excess of one year to the
24 custody of the Attorney General of the United States
25 may be received in the prison, if:

26 A. The Attorney General of the United States
27 designates the prison as the place of confinement
28 for the prisoner; and

29 B. The commissioner approves and agrees to ac-
30 cept the prisoner to be kept in the prison in
31 pursuance of his sentence.

32 2. Contracts. Contracts for the receipt of
33 United States prisoners are governed as follows.

34 A. The commissioner may contract with the Attor-
35 ney General of the United States or such officer
36 as the Congress may designate for the care, cus-

1 today, subsistence, education, treatment and
2 training of any prisoner accepted under this
3 section.

4 B. All sums paid pursuant to contracts author-
5 ized under this section shall accrue to the Gen-
6 eral Fund.

7 §3263. Sentence duration

8 1. Commencement of sentence. A prisoner's sen-
9 tence begins on the day he is received into the
10 prison and that day is counted as the first full day
11 of the sentence.

12 2. Discharge from sentence. The warden shall
13 discharge a prisoner from his sentence only when the
14 prisoner:

15 A. Has served the full term for which he was
16 sentenced, except that, if the computation of a
17 prisoner's sentence fixes his release or dis-
18 charge date on a Saturday, Sunday or legal holi-
19 day, the warden may release or discharge the
20 prisoner on the last regular business day of the
21 prison preceding that Saturday, Sunday or legal
22 holiday;

23 B. Has been pardoned; or

24 C. Has been otherwise released by legal author-
25 ity.

26 §3264. Conditions of imprisonment

27 Prisoners in the prison, including prisoners
28 transferred under section 3066, shall work at tasks
29 normal to the maintenance, service, industrial, agri-
30 cultural and other activities of the prison.

31 §3265. Disciplinary action

32 1. Hard labor. The warden may subject a pris-
33 oner, including a prisoner transferred under section
34 3066, to confinement at hard labor only for the pur-
35 poses of prison discipline and government and control
36 of the prisoners.

1 2. Segregation. The warden may subject a pris-
2 oner, including a prisoner transferred under section
3 3066, to segregation only for the purposes of prison
4 discipline and government and control of the pris-
5 oners.

6 §3266. Prisoner employment and training

7 1. Minimum security unit. The warden may estab-
8 lish a vocational training program at the minimum
9 security unit to provide prisoners skills designed to
10 assist in the acquisition and retention of employment
11 following parole or discharge.

12 2. Leased facilities. The warden may employ or
13 provide training for prisoners in minimum security
14 facilities conducted on leased land in towns within
15 Knox County, and may detain and house the prisoners
16 in the barracks at the minimum security unit at South
17 Warren.

18 3. Effect on sentences. Prisoners in training
19 or employed under programs established under subsec-
20 tion 2 are deemed to be serving their sentences as if
21 confined in the minimum security unit.

22 4. Rules. Prisoners in training or employed
23 under programs established under subsection 2 are
24 subject to the same rules as prisoners confined in
25 the minimum security unit.

26 5. Escape. Prisoners who escape from the Maine
27 State Prison minimum security unit, or from land
28 leased by the warden while they are in training or
29 employed under programs established under subsection
30 2, are guilty of escape as if the escape were from
31 the confines of the prison and are punishable in ac-
32 cordance with Title 17-A, section 755.

33 §3267. Funerals and deathbed visits

34 At the discretion of the warden, a prisoner at
35 the prison may attend the funeral of his natural or
36 adoptive mother, father, son or daughter, of his
37 wife, his brothers or sisters, or may be permitted
38 one supervised deathbed visit to any of those per-
39 sons, if the funeral or visit is held within the
40 State.

1 1. Certification of terminal illness. Before a
2 deathbed visit is permitted, terminal illness must be
3 certified by the attending physician.

4 2. Costs. The prisoner, if able, shall pay the
5 cost of transportation and the per diem compensation
6 of the accompanying officer.

7 §3268. Discharge or parole

8 When any prisoner is paroled or discharged, the
9 warden:

10 1. Clothing. Shall ensure that he is provided
11 with decent clothing;

12 2. Money. May give him no more than \$50, except
13 that the warden may not give money to a prisoner who:

14 A. Has transferred from his account to any
15 person more than \$500, plus money necessary to
16 the support of his dependents and the payment of
17 his creditors; or

18 B. Has more than \$500 in his account; and

19 3. Transportation. Shall furnish transportation
20 to the place where the prisoner was convicted, except
21 that:

22 A. If the prisoner's home is within the State,
23 the warden shall furnish transportation to his
24 home;

25 B. If the prisoner has secured employment within
26 the State, the warden shall furnish transporta-
27 tion to the place of employment;

28 C. If the prisoner's home is outside the State,
29 the warden shall furnish transportation to the
30 place on the Maine border nearest to his home;
31 and

32 D. If the prisoner has secured employment out-
33 side the State, the warden shall furnish trans-
34 portation to the place on the Maine border near-
35 est the place of employment.

1 pursuant to the United States Code, Title 18,
2 Section 4002, for the imprisonment, subsistence,
3 care and proper employment of persons convicted
4 of crimes against the United States, and may
5 receive and detain such persons pursuant to the
6 contracts.

7 §3403. Prisoners generally

8 1. Conditions of confinement. Conditions of
9 confinement of prisoners are governed as follows.

10 A. The superintendent shall detain and confine
11 all persons committed to the center in accordance
12 with the sentences of the courts and with the
13 rules of the center.

14 B. The superintendent shall provide for the
15 safekeeping or employment of persons committed to
16 the center in order to teach them a useful trade
17 or profession and to improve their mental and
18 moral condition.

19 2. Housing. The superintendent shall maintain
20 separate housing facilities for men and women.

21 §3404. Pregnant women

22 If any woman is, at the time of her commitment to
23 the center, pregnant with a child which will be born
24 after her commitment, the custody of the child, at
25 the instance of the commissioner, shall be determined
26 in accordance with Title 22, chapter 1071.

27 §3405. Maine Correctional Center employees

28 1. Powers. Employees of the center have the
29 same power as sheriffs in their respective counties
30 to search for and apprehend escapees from the center,
31 when authorized to do so by the superintendent.

32 2. Uniforms. Maine Correctional Center employee
33 uniforms are governed as follows.

34 A. Employees of the center may be provided, at
35 the expense of the State, with distinctive uni-
36 forms for use when required for the performance

1 of their official duties and which shall remain
2 the property of the State.

3 B. Employees of the center may be provided with
4 an equivalent clothing allowance when the private
5 purchase of special clothing is similarly re-
6 quired for the performance of their official
7 duties.

8 §3406. Land grants to the Department of Conservation

9 The following lands of the former Women's Correc-
10 tional Center at Skowhegan are granted to the bureaus
11 of the Department of Conservation as follows.

12 1. Land grant to Bureau of Public Lands. All of
13 the open land and timberland north of Norridgewock
14 Avenue, excluding the land immediately adjacent to
15 the institutional buildings, is transferred to the
16 Bureau of Public Lands, which shall actively manage
17 the timberlands as a working forest.

18 2. Land grant to Bureau of Parks and Recreation.
19 All the land lying between Norridgewock Avenue
20 and the Kennebec River, with the exception of the
21 sewerage treatment plant and access thereto, is
22 transferred to the Bureau of Parks and Recreation to
23 be managed by the bureau.

24 SUBCHAPTER IV

25 CHARLESTON CORRECTIONAL FACILITY

26 §3601. Establishment

27 There is established the Charleston Correctional
28 Facility located at Charleston for the confinement
29 and rehabilitation of persons who have been duly sen-
30 tenced and committed to the Maine Correctional Center
31 or to the prison.

32 §3602. Purposes

33 The purposes of the Charleston Correctional
34 Facility include vocational and academic education
35 and work involving public restitution.

1 §3603. Director

2 1. Chief administrative officer. The chief
3 administrative officer of the Charleston Correctional
4 Facility is called the director and is responsible to
5 the commissioner.

6 2. Duties. In addition to other duties set out
7 in this Title, the director has the following duties.

8 A. The director shall exercise proper super-
9 vision over the employees, grounds, buildings and
10 equipment at the Charleston Correctional Facil-
11 ity.

12 B. The director shall supervise and control the
13 prisoners at the Charleston Correctional Facility
14 in accordance with departmental rules.

15 3. Powers. In addition to other powers granted
16 in this Title, the director may appoint one assistant
17 director, subject to the Personnel Law, and the
18 assistant director has the powers, duties, obli-
19 gations and liabilities of the director when the
20 director is absent or unable to perform his duties.

21 §3604. Prisoners generally

22 1. Evaluation. Before assignment to the
23 Charleston Correctional Facility, prisoners must be
24 evaluated for security status, program needs and emo-
25 tional stability by the classification process at the
26 Maine Correctional Center or the prison.

27 2. Transferred prisoners. All prisoners trans-
28 ferred to the Charleston Correctional Facility shall
29 be detained and confined in accordance with the sen-
30 tences of the court and the rules of the department.

31 3. Education. The director shall maintain suit-
32 able courses for academic and vocational education of
33 the prisoners.

34 A. The director shall maintain necessary equip-
35 ment and employ suitable qualified instructors as
36 necessary to carry out the objectives of the
37 facility's programs.

1 B. Before employing instructors in vocational
2 education, the director shall obtain the approval
3 of the Department of Educational and Cultural
4 Services.

5 4. Employment. The commissioner may authorize
6 the employment of prisoners of the Charleston Correc-
7 tional Facility on public works with any department,
8 agency or entity of the State, county or local gov-
9 ernment and may authorize the use of prisoners to
10 provide assistance in the improvement of property
11 owned by nonprofit organizations.

12 A. The commissioner shall promulgate such rules
13 as he deems proper to ensure the care and treat-
14 ment of the prisoners and the safe working condi-
15 tions of prisoners and departmental employees.

16 B. The purpose of the employment authorized in
17 this subsection is to provide training to the
18 prisoner and to be a form of public restitution
19 for the crime or crimes committed by the pris-
20 oner.

21 C. The prisoners employed under this subsection
22 may not be compensated monetarily for the work
23 performed.

24 D. The commissioner may request that nonprofit
25 organizations pay for the transportation of the
26 prisoners and pay the per diem compensation of
27 correctional officers or instructors who must ac-
28 company the prisoners or oversee the work to be
29 performed.

30 5. Escape. Any prisoner who escapes from the
31 facility, or from any assignment beyond the grounds
32 of the facility, is guilty of escape under Title
33 17-A, section 755.

34 §3605. Charleston Correctional Facility employees

35 Employees of the Charleston Correctional Facility
36 have the same power as sheriffs in their respective
37 counties to search for and apprehend escapees from
38 the facility, when authorized to do so by the direc-
39 tor.

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SUBCHAPTER V

MAINE YOUTH CENTER

§3801. Establishment

The State shall maintain the Maine Youth Center located at South Portland.

1. Coeducational. The center shall be coeducational.

2. Separate housing. The center shall fully separate the housing facilities for boys and girls.

§3802. Purposes

1. Statement. The purposes of the Maine Youth Center are:

A. To detain juveniles prior to Juvenile Court appearances on court order that the juvenile be securely detained;

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3318; and

C. To rehabilitate juveniles committed to it on being adjudicated as having committed a juvenile crime under Title 15, section 3310, subsection 5.

2. Accomplishment. To accomplish the purposes set out in subsection 1, the disciplines of education, casework, group work, psychology, psychiatry, medicine, nursing, vocational training and religion related to human relations and personality development shall be employed.

§3803. Superintendent

The chief administrative officer of the Maine Youth Center is called the superintendent.

§3804. Superintendent's powers

In addition to other powers granted in this subchapter, the superintendent has the following powers.

1 1. Juvenile clients. The superintendent has all
2 the power which a guardian has over his ward and
3 which a parent has over his child as to the person,
4 property, earnings and rehabilitation of every juve-
5 venile client. Each juvenile client is under the
6 direction of the superintendent, subject to rules of
7 the department, except that:

8 A. If a juvenile client is or becomes 18 years
9 of age while still under commitment, the statu-
10 tory guardianship of the superintendent over him
11 shall terminate; but

12 B. The juvenile client remains subject to the
13 control of the superintendent, staff and rules of
14 the center until the expiration of the period of
15 commitment or until discharge from the center.

16 2. Assistant superintendents. The superinten-
17 dent may appoint 2 assistant superintendents, subject
18 to the Personnel Law.

19 A. An assistant superintendent designated by the
20 superintendent has the powers, duties, obli-
21 gations and liabilities of the superintendent
22 when the superintendent is absent from the center
23 or unable to perform the duties of the office.

24 B. If there are no assistant superintendents,
25 another employee designated by the superintendent
26 has the powers, duties, obligations and liabili-
27 ties of the superintendent in the circumstances
28 described in paragraph A.

29 §3805. Commitment

30 1. Eligibility. Only a juvenile, as defined in
31 Title 15, section 3003, subsection 14, who is 11
32 years of age or older at the time of the court's dis-
33 position of the case may be committed to the center
34 pursuant to this subchapter and Title 15, Part 6.

35 2. Limitations. No person may be committed to
36 the center who is blind or who is a proper subject
37 for the Augusta Mental Health Institute, the Bangor
38 Mental Health Institute or the Pineland Center.

1 3. Certification. When a person is committed to
2 the center, the court making the commitment shall
3 certify on the mittimus the person's birthdate,
4 parentage and legal residence.

5 §3806. Federal juvenile offenders

6 The commissioner may contract with the Attorney
7 General of the United States for the confinement and
8 support in the Maine Youth Center of juvenile offend-
9 ers against the laws of the United States in accord-
10 ance with the United States Code, Title 18, Sections
11 706 and 707.

12 §3807. Human services' custody

13 1. Suspension. When the custody of a child at
14 the time of commitment is in the Department of Human
15 Services, that custody shall be temporarily suspended
16 while the child is in the Maine Youth Center.

17 2. Reversion. Upon discharge from the Maine
18 Youth Center, the custody of the child shall revert
19 to the Department of Human Services, if the child is
20 still under 18 years of age.

21 §3808. Overcrowding

22 When the superintendent reports that overcrowding
23 exists at the center, the commissioner may, with the
24 approval of the Governor, authorize the use of any
25 available facilities at the location in Hallowell
26 formerly known as the Stevens School and Women's Cor-
27 rectional Center.

28 §3809. Seclusion

29 1. Generally. When a juvenile client's behavior
30 presents a high likelihood of harm to himself or to
31 others, presents a substantial and imminent threat of
32 destruction of property or demonstrates a proclivity
33 to absent himself from the center without leave, the
34 juvenile client may be placed in seclusion if he has
35 demonstrated that anything less would be ineffectual
36 in the control of his behavior.

37 2. Conditions. The use of seclusion is subject
38 to the following conditions.

1 A. The use of seclusion shall be first approved
2 by the superintendent.

3 B. The juvenile client shall be provided with a
4 sufficient quantity of wholesome and nutritious
5 food.

6 C. Adequate sanitary and other conditions re-
7 quired for the health of the juvenile client
8 shall be maintained.

9 D. The use of seclusion may not exceed the
10 period of time necessary to alleviate and prevent
11 the reoccurrence of the offensive behavior.

12 E. When seclusion exceeds 12 hours, the superin-
13 tendent shall cause the center physician or a
14 member of the center medical staff to visit the
15 juvenile client forthwith and, at least once in
16 each succeeding 24-hour period, the client
17 remains in seclusion, to examine the client's
18 state of health.

19 (1) The superintendent shall give full con-
20 sideration to recommendations of the physi-
21 cian or medical staff member as to the
22 client's dietary needs and the conditions of
23 his confinement required to maintain his
24 health.

25 (2) Use of seclusion shall be discontinued
26 if the physician states that it is harmful
27 to the mental or physical health of the
28 client.

29 F. Seclusion may not exceed 72 hours without the
30 commissioner's approval, which shall:

31 (1) Be in writing;

32 (2) State the reasons for the approval; and

33 (3) Be kept on file.

34 G. If the recommendations of the physician or
35 medical staff member regarding the juvenile
36 client's dietary or other health needs while in

1 seclusion are not carried out, the superintendent
2 shall send a written justification to the commis-
3 sioner.

4 §3810. Entrustment

5 1. Superintendent's powers. During a juvenile
6 client's commitment to the center, the superintendent
7 may, at his discretion:

8 A. Keep the juvenile client at the center; or

9 B. Upon prior mutual agreement, entrust the
10 juvenile client, for a period not exceeding the
11 term of his commitment, to the care of:

12 (1) Any suitable person or persons;

13 (2) The Division of Probation and Parole;

14 (3) The Department of Human Services; or

15 (4) Some other public or private child care
16 agency.

17 2. Reports. As often as the superintendent re-
18 quires, the person or agency to whom the juvenile is
19 entrusted shall report to the superintendent:

20 A. The progress and behavior of the juvenile
21 client, whether or not the client remains under
22 the care of the person or agency; and

23 B. If the juvenile client is not under the care
24 of the person or agency, where the child is.

25 3. Center services. The superintendent shall
26 provide aftercare and entrustment services to juve-
27 nile clients.

28 4. Cancellation. If the superintendent is
29 satisfied at any time that the welfare of the juve-
30 nile client will be promoted by return to the center,
31 the superintendent may cancel the trust and resume
32 charge of the child with the same powers as before
33 the trust was made.

1 §3811. Return to the center

2 When a juvenile client who has been placed on
3 entrustment or who has absented himself from the center
4 without leave is taken into custody for the purpose
5 of return to the center by an officer or
6 employee of the center, at the direction of the
7 superintendent, or by a law enforcement officer, at
8 the request of the superintendent and because of the
9 juvenile client's distance from the center at the
10 time of being taken into custody, it becomes neces-
11 sary to detain the client overnight:

12 1. Temporary detention. The juvenile client may
13 be temporarily detained in a county jail; and

14 2. Return. The juvenile client shall be
15 returned to the center on the day after being taken
16 into custody, except that, if traveling conditions
17 are unsafe, the client shall be returned to the center
18 at the earliest possible time.

19 §3812. Discharge

20 1. Duty. The superintendent shall cause a juve-
21 nile client to be discharged from the center:

22 A. When the client becomes 21 years of age; or

23 B. When the superintendent determines that the
24 client has benefited optimally from the services
25 and facilities of the center.

26 2. Power. The superintendent may cause a juve-
27 nile client to be discharged from the center when the
28 superintendent determines that discharge is in the
29 best interest of the client.

30 CHAPTER 5

31 PROBATION AND PAROLE

32 SUBCHAPTER I

33 GENERAL PROVISIONS

1 §5001. Definitions

2 As used in this chapter, unless the context
3 otherwise indicates, the following terms have the
4 following meanings.

5 1. Board. "Board" means the State Parole Board.

6 2. Director. "Director" means the Director of
7 Probation and Parole.

8 3. Division. "Division" means the Division of
9 Probation and Parole under the Department of Correc-
10 tions.

11 4. Fine. "Fine" includes court costs whenever
12 applicable.

13 5. Juvenile. "Juvenile" means a person under
14 the age of 18 years or a person who is alleged to
15 have committed, while under the age of 18 years, any
16 acts or offenses covered by Title 25, Part 6, regard-
17 less of whether, at the time of the proceeding, the
18 person is of the age of 18 years or over.

19 6. Parole. "Parole" is a release procedure by
20 which a person may be released from a correctional
21 facility by the State Parole Board prior to the
22 expiration of his maximum term, parole status being
23 in effect under Title 17-A, section 1254, subsection
24 3, with all provisions of prior laws governing parole
25 continuing in effect.

26 7. Probation. "Probation" means a procedure
27 under which a person found guilty of an offense is
28 released by the court, without being committed to a
29 correctional facility, or with or without commitment
30 to jail or fine, subject to conditions imposed by the
31 court.

32 §5002. Pardons by the Governor

33 This chapter does not deprive the Governor of the
34 power to grant a pardon or commutation to any person
35 sentenced to a correctional facility.

36 §5003. Prohibited acts

1 1. Interference with probation. A person 18
2 years of age or older is guilty of interference with
3 probation if he willfully obstructs, intimidates or
4 otherwise abets a probationer under the supervision
5 and control of the division and thereby causes or
6 contributes to causing the probationer to violate the
7 conditions of his probation, after having been warned
8 in writing by the director to end his relationship or
9 association with the probationer.

10 A. Notwithstanding Title 17-A, section 4-A,
11 interference with probation shall be punished by
12 a fine of not more than \$500 or by imprisonment
13 for not more than 11 months, or by both.

14 B. This subsection applies to interferences with
15 the probation of probationers who are under the
16 supervision and control of the division at the
17 request of other states under terms of the Uni-
18 form Act for Out-of-State Parolee Supervision.

19 2. Interference with parole. A person 18 years
20 of age or older is guilty of interference with parole
21 if he willfully obstructs, intimidates or otherwise
22 abets a parolee under the supervision and control of
23 the division and thereby causes or contributes to
24 causing the parolee to violate the conditions of his
25 parole, after having been warned in writing by the
26 director to end his relationship or association with
27 the parolee.

28 A. Notwithstanding Title 17-A, section 4-A,
29 interference with parole shall be punished by a
30 fine of not more than \$500 or by imprisonment for
31 not more than 11 months, or by both.

32 B. This subsection applies to interferences with
33 the parole of parolees who are under the super-
34 vision and control of the division at the request
35 of other states under terms of the Uniform Act
36 for Out-of-State Parolee Supervision.

37 SUBCHAPTER II

38 PAROLE BOARD

1 §5201. Establishment

2 There is established within the Department of
3 Corrections a State Parole Board consisting of 5 mem-
4 bers.

5 §5202. Appointment

6 The Governor shall appoint as the 5 members of
7 the board persons who:

8 1. Citizens and residents. Are citizens and
9 residents of the State; and

10 2. Training or experience. Have special train-
11 ing or experience in law, sociology, psychology or
12 related branches of social science.

13 §5203. Terms

14 The terms of the members of the board are:

15 1. Four years. Four years plus the time period
16 until their successors have been appointed and quali-
17 fied; or

18 2. Pleasure of Governor. During the pleasure of
19 the Governor.

20 §5204. Vacancy

21 A vacancy on the board shall be filled for the
22 unexpired term in the same manner in which an
23 appointment is made.

24 §5205. Expenses

25 The members of the board shall be paid \$25 per
26 day and necessary expenses for each day actually
27 spent in the work of the board.

28 §5206. Meetings

29 1. Chairman. The members of the board shall
30 elect a chairman who shall preside at all meetings of
31 the board when he is present.

1 2. Frequency. The board shall meet a least once
2 every 2 months and may meet as often as necessary, at
3 such times and places as the chairman may designate.

4 3. Quorum. Any 3 members constitute a quorum
5 for the exercise of all powers of the board.

6 §5207. Cooperation

7 The Department of Human Services, Department of
8 Corrections and officers and staffs of correctional
9 facilities and law enforcement agencies in the State
10 shall cooperate with the board in exercising its
11 powers and duties.

12 §5208. Annual report

13 1. Board secretary's duty. The secretary of the
14 board shall, after June 30th of each year, send to
15 the commissioner a detailed report of the work of the
16 board and of the probation and parole activities of
17 the division for the preceding fiscal year.

18 2. Commissioner's duty. The commissioner shall
19 send the annual report to the Governor for submission
20 to the Legislature.

21 §5209. Administrative assistant

22 1. Appointment. The board shall appoint a full-
23 time administrative assistant to serve at the pleas-
24 ure of the board.

25 2. Compensation. The administrative assistant
26 is entitled to compensation in an amount to be deter-
27 mined by the Governor.

28 3. Duties. The administrative assistant shall
29 perform those duties assigned to him by the board.

30 4. Powers. The administrative assistant may,
31 subject to the rules of the board, conduct a prelimi-
32 nary hearing with a committed offender at any correc-
33 tional facility and make written recommendations to
34 the board concerning disposition.

35 §5210. Duties

1 The board shall:

2 1. Time of parole. Determine the time of parole
3 for each committed offender;

4 2. Parole revocation. Revoke parole when war-
5 ranted due to a parole violation;

6 3. Discharge from parole. Determine the time of
7 discharge of parolees from parole supervision; and

8 4. Advice to Governor. When requested by the
9 Governor, advise him concerning applications for
10 pardon, reprieve or commutation.

11 A. The board shall hold hearings, cause an
12 investigation to be made and collect records to
13 determine the facts and circumstances of a com-
14 mitted offender's crime, his past criminal
15 record, his social history and his physical and
16 mental condition as may bear on the application.

17 B. The board shall make recommendations regard-
18 ing action by the Governor on the application.

19 C. All information obtained under this subsec-
20 tion, and any report furnished to the Governor
21 under this subsection, is confidential.

22 §5211. Powers

23 1. Rules. The board may promulgate rules, in
24 accordance with the Administrative Procedure Act,
25 Title 5, chapter 375, pertaining to its functions set
26 out in this chapter.

27 2. Restitution. The board may authorize and
28 impose as a condition of parole that the person make
29 restitution to his victim or other authorized claim-
30 ant in accordance with Title 17-A, chapter 54.

31 3. Quasi-judicial powers. The board, or any
32 member of the board, may, in the performance of offi-
33 cial duties:

34 A. Issue subpoenas;

1 B. Compel the attendance of witnesses;

2 C. Compel the production of books, papers and
3 other documents pertinent to the subject of its
4 inquiry; and

5 D. Administer oaths and take the testimony of
6 persons under oath.

7 4. Grant or denial of parole. The board may
8 grant or deny parole in accordance with the following
9 procedures.

10 A. If the recommendation of the administrative
11 assistant under section 5209, subsection 4, is to
12 grant parole, the board may make a final decision
13 granting parole without a hearing.

14 B. If the recommendation of the administrative
15 assistant is to deny parole, the board shall
16 afford the committed offender a hearing before
17 the board and the board may not deny parole with-
18 out affording the committed offender a hearing.

19 SUBCHAPTER III
20 DIVISION OF
21 PROBATION AND PAROLE

22 §5401. Establishment

23 There is established within the Department of
24 Corrections a Division of Probation and Parole which
25 is charged with the administration of probation and
26 parole services within the State.

27 1. Director. The division is under the direc-
28 tion of the Director of Probation and Parole.

29 2. Employees. The division consists of field
30 probation and parole officers and of such other
31 administrative employees as may be necessary in
32 carrying out its functions.

33 §5402. Director

1 1. Appointment. The commissioner shall appoint
2 the Director of Probation and Parole, subject to the
3 Personnel Law.

4 2. Duties. The director shall:

5 A. Promulgate and enforce rules for the field
6 probation and parole service and parole officers
7 in correctional facilities;

8 B. Appoint, subject to the Personnel Law, dis-
9 trict probation and parole supervisors, field
10 probation and parole officers and such other
11 employees as may be required to carry out ade-
12 quate supervision of all probationers and of all
13 parolees from the correctional facilities;

14 C. Prescribe the powers and duties of persons
15 appointed under paragraph B;

16 D. Provide necessary investigation of any crimi-
17 nal case or matter, including presentence inves-
18 tigation, when requested by the court having
19 jurisdiction;

20 E. Provide investigation when requested by the
21 board;

22 F. Cooperate closely with the board, the crimi-
23 nal and juvenile courts, the chief administrative
24 officers of correctional facilities and other
25 correctional facility personnel;

26 G. Make recommendations to the board in cases of
27 violations of the conditions of parole;

28 H. Issue warrants for the arrest of parole vio-
29 lators;

30 I. Notify the chief administrative officers of
31 correctional facilities of determinations made by
32 the board;

33 J. Divide the State into administrative dis-
34 tricts and staff the districts;

35 K. Provide instruction and training courses for
36 probation and parole officers; and

1 L. Be executive officer and secretary of the
2 board.

3 3. Powers. The director may:

4 A. Provide necessary specialized services and
5 procedures for the constructive rehabilitation of
6 juveniles;

7 B. Obtain psychiatric, psychological and other
8 necessary services;

9 C. Sign documents, including warrants and extra-
10 dition papers for the board, when so instructed
11 by the board; and

12 D. With the approval of the commissioner, in
13 special instances and in the absence or illness
14 of the Assistant Director of Probation and
15 Parole, delegate any responsibilities of the
16 assistant director to a district supervisor.

17 (1) This delegation shall not exceed 20
18 working days.

19 (2) During the period of the delegation,
20 the district supervisor has all the respon-
21 sibilities and obligations of the assistant
22 director.

23 §5403. Assistant director

24 1. Acting director. The assistant director has
25 the powers, duties, obligations and liabilities of
26 the director when the director is absent or unable to
27 perform his duties.

28 2. Arrest warrants. Upon designation by the
29 director, the assistant director may issue warrants
30 for the arrest of parole violators.

31 §5404. Probation and parole officers

32 In addition to duties prescribed by the director
33 and by the court having jurisdiction, a probation and
34 parole officer shall:

1 JUVENILE PROBATION SERVICES

2 §5601. Interagency agreements

3 The department may enter into agreements with
4 state agencies, other public agencies and private
5 nonprofit agencies to provide supervision or other
6 services to juveniles placed on probation by the
7 Juvenile Court.

8 1. Terms. The terms of the agreements, includ-
9 ing any payments to be made by the department for the
10 services provided, shall be set forth in writing.

11 2. Termination. Any agreement made under this
12 section may be terminated upon 90 days' written
13 notice by either party to the agreement.

14 §5602. Juvenile probation officers

15 1. Investigations. Juvenile probation officers
16 shall make such investigations as the Juvenile Court
17 may direct and shall keep such written records of the
18 investigations as the Juvenile Court may direct.

19 2. Written statement of probation condi-
20 tions. When any juvenile is placed on probation, the
21 juvenile probation officer shall give the juvenile a
22 written statement of the conditions of his probation
23 and shall fully explain the conditions to him.

24 3. Keeping informed. Each juvenile probation
25 officer shall keep informed as to the condition and
26 conduct of each juvenile placed under his supervision
27 and shall report on the condition and conduct to the
28 court and to the department as they may direct.

29 4. Care and custody of juveniles. Each juvenile
30 probation officer shall use all suitable means,
31 including counseling, to aid each juvenile under his
32 supervision and shall perform such duties in connec-
33 tion with the care and custody of juveniles as the
34 court may direct.

35 5. Arrest. With respect to juveniles placed
36 under their supervision, juvenile probation officers
37 have the same arrest powers as other sworn law
38 enforcement officers.

1 2. Custody and control. While on parole, the
2 parolee is under the custody of the warden or super-
3 intendent of the institution from which he was
4 released, but under the immediate supervision of and
5 subject to the rules of the division or any special
6 conditions of parole imposed by the board.

7 §5803. Eligibility for hearing; State Prison

8 A prisoner at the Maine State Prison or Maine
9 Correctional Center becomes eligible for a hearing by
10 the board as follows:

11 1. Expiration of minimum term in minimum-maximum
12 sentence. Prior to the expiration of the prisoner's
13 minimum term of imprisonment, less the deduction for
14 good behavior, when the law provides for a
15 minimum-maximum sentence;

16 2. Expiration of 1/2 of term in certain
17 cases. Prior to the expiration of 1/2 of the term of
18 imprisonment imposed by the court, less the deduction
19 for good behavior, when the prisoner has been con-
20 victed of an offense under Title 17, section 1951,
21 3151, 3152 or 3153. This subsection applies to a
22 prisoner who has been convicted previously of an
23 offense under Title 17, section 1951, 3151, 3152 or
24 3153;

25 3. Expiration of 15-year term in life imprison-
26 ment cases. Prior to the expiration of a 15-year
27 term of imprisonment, less deduction for good behav-
28 ior, when the prisoner has been convicted of an
29 offense punishable only by life imprisonment; and

30 4. Expiration of 15-year term in other
31 cases. Prior to the expiration of a 15-year term of
32 imprisonment, less deduction for good behavior, when,
33 following conviction, the prisoner has been sentenced
34 to a minimum term of 15 years or more.

35 §5804. Maine Correctional Center

36 An inmate at the Maine Correctional Center
37 becomes eligible for a hearing by the board as fol-
38 lows:

1 1. Inmate reformed. When it appears to the
2 superintendent that the inmate has reformed; and

3 2. Suitable employment secured. When some suit-
4 able employment or situation has been secured for him
5 in advance.

6 If the superintendent does not recommend an
7 inmate for a parole hearing during the first year
8 after commitment, the reasons for not so doing shall
9 be reported to the Director of Corrections at the end
10 of the year and for each 6 months thereafter until
11 the inmate is recommended for a hearing by the board.

12 §5805. Women's reformatory

13 An inmate at the Women's Correctional Center
14 becomes eligible for a hearing by the board as fol-
15 lows:

16 1. Inmate reformed. When it appears to the
17 superintendent that the inmate has reformed;

18 2. Suitable employment secured. When some suit-
19 able employment or situation has been secured for her
20 in advance.

21 If the superintendent does not recommend an
22 inmate for a parole hearing during the first year
23 after commitment, the reasons for not so doing shall
24 be reported to the Director of Corrections at the end
25 of the year and for each 6 months thereafter until
26 the inmate is recommended for a hearing by the board.

27 §5806. Violations of parole

28 A probation parole officer may arrest and charge
29 a parolee with violation of parole and take him into
30 his custody in any place he may be found, detain the
31 parolee in any jail, pending the issuance of a parole
32 violation warrant, which detention shall not extend
33 beyond the next business day of the office of the
34 director. In the event a warrant is not issued in
35 that time, the parolee shall be released from arrest
36 and detention forthwith. A parolee so arrested and
37 detained shall have no right of action against the
38 probation-parole officer or any other persons because
39 of that arrest and detention.

1 When a parolee violates a condition of his parole
2 or violates the law, the director may issue a warrant
3 for his arrest. A probation-parole officer, or any
4 other law enforcement officer within the State
5 authorized to make arrests, may arrest the parolee on
6 the warrant and return him to the institution from
7 which he was paroled. At its next meeting at that
8 institution, the board shall hold a hearing. The
9 parolee is entitled to appear and be heard. If the
10 board, after hearing, finds that the parolee has vio-
11 lated his parole or the law, it shall revoke his
12 parole, set the length of time he shall serve of the
13 unexpired portion of his sentence before he can again
14 be eligible for hearing by the board, and remand him
15 to the institution from which he was released; except
16 that, when a parolee from the Maine Correctional Cen-
17 ter violates the law and is sentenced by the court to
18 the Maine State Prison, any length of time set by the
19 board to be served of the unexpired portion of his
20 correctional center sentence may be served at the
21 Maine State Prison.

22 1. Forfeits deductions. Upon revocation of
23 parole by the board, the prisoner forfeits any deduc-
24 tions for good behavior earned while on parole.

25 2. May earn deductions. While serving the unex-
26 pired portion of his sentence after parole has been
27 revoked, the prisoner may earn deductions for good
28 conduct.

29 Whenever a warrant is issued under this section
30 for the arrest of a parolee, the running of the
31 parolee's sentence shall be interrupted and shall
32 remain interrupted until the parolee is returned to
33 the institution from which he was paroled. Interrup-
34 tion of the running of his sentence shall include any
35 time served prior to such return, after conviction
36 for a crime committed while on parole.

37 In the event of the withdrawal of the warrant by
38 authority of the director, or in the event that the
39 board at the hearing on the alleged violation finds
40 that the parolee did not violate the conditions of
41 his parole, or the law, he shall be credited with the
42 time lost by the interruption of the running of his
43 sentence.

1 §5807. Sentence for crime committed by parolee

2 Any parolee who commits an offense while on
3 parole who is sentenced to the Maine State Prison
4 shall serve the 2nd sentence beginning on the date of
5 termination of the first sentence, unless the first
6 sentence is otherwise terminated by the board.

7 §5808. Discharge from parole

8 Any parolee who faithfully performs all the con-
9 ditions of parole and completes his sentence is enti-
10 tled to a certificate of discharge to be issued by
11 the warden or superintendent of the institution to
12 which he was committed.

13 §5809. Certificate of discharge

14 Whenever it appears to the board that a person on
15 parole is no longer in need of supervision, it may
16 order the superintendent or warden of the institution
17 from which he was released to issue him a certificate
18 of discharge, except that in the case of persons
19 servng a life sentence who may not be discharged
20 from parole in less than 10 years after release on
21 parole.

22 §5810. Records forwarded to State Police

23 When a person who has been convicted under Title
24 17, section 1951, 3151, 3152 or 3153 is paroled, the
25 warden or superintendent of the institution shall
26 forward to the State Police a copy of his record and
27 a statement of facts necessary for full comprehension
28 of the case. Whenever any prisoner, who has been
29 convicted of an offense under Title 17, section 1951,
30 3151, 3152 or 3153 is discharged in full execution of
31 his sentence, the Warden of the Maine State Prison
32 shall make and forward to the State Police a copy of
33 the prison record of that prisoner together with a
34 statement of any fact or facts which he may deem
35 necessary for a full comprehension of the case.

36

CHAPTER 7

37

JUVENILE DELINQUENCY PREVENTION

1 adjudicated as having committed juvenile crimes;

2 B. Providing technical assistance and additional
3 financial resources to assist communities to
4 establish and provide necessary preventive and
5 rehabilitative services for juveniles;

6 C. Coordinating its efforts with those of other
7 state and local agencies in order to effectively
8 use all existing resources to the maximum extent
9 possible;

10 D. Working with other public and voluntary agen-
11 cies as resources for the purchase of care and
12 services; and

13 E. Stimulating the creation of voluntary ser-
14 vices.

15 2. Planning. The department shall prepare, and
16 submit to the Governor, Legislature and Judicial
17 Department, an annual plan for identifying, evalu-
18 ating and meeting the service needs for prevention of
19 juvenile crime and rehabilitation of juveniles adju-
20 dicated as having committed juvenile crimes.

21 A. The plan shall include plans for shelter and
22 detention services to be developed with the
23 advice of the Department of Human Services,
24 Department of Educational and Cultural Services,
25 representatives of the District Court Judges and
26 Superior Court Justices, representatives of the
27 Maine Criminal Justice Planning and Assistance
28 Agency and the State Court Administrator for
29 juveniles:

30 (1) Referred to intake workers;

31 (2) Pending court action; and

32 (3) Following adjudication.

33 B. The plan shall include projected numbers of
34 juveniles to be served by type of service,
35 including diagnosis, evaluation and location;
36 recommend the content and scope of shelter ser-
37 vices; and set forth the estimated cost of ser-

1 VICES and facilities which are recommended,
2 including any alteration or remodeling of exist-
3 ing facilities.

4 3. Evaluation. The department shall evaluate
5 prevention and rehabilitation services with regard
6 to, among other things:

7 A. Compliance with all regulations for the use
8 of funds for those services; and

9 B. Quality and cost of effectiveness of those
10 services.

11 4. Appeals. The department shall provide struc-
12 ture for appeals, fair hearings and a review of
13 grievances by children and their parents, guardian or
14 legal custodian regarding provision of services for
15 which the department has been given responsibility
16 under this chapter, including, but not limited to,
17 protecting the rights of individuals to appeal from
18 denials of or exclusion from the services to which
19 they are entitled, actions that preclude the
20 individual's right of choice to specific programs, or
21 actions that force involuntary participation in a
22 service program.

23 5. Training. The department shall train person-
24 nel to perform the functions necessary to implement
25 this chapter, including, but not limited to:

26 A. Meeting the need for professional personnel
27 for juvenile services, through in-service train-
28 ing, institutes, conferences and educational
29 leave grants;

30 B. Upgrading education and competence of profes-
31 sional and other personnel and volunteers; and

32 C. Making staff and training facilities avail-
33 able for training of staff and volunteers in con-
34 tracting agencies or facilities to assure effec-
35 tive provision of purchased services.

36 6. Research and demonstration. The department
37 may conduct research and demonstration projects,
38 including, but not limited to, entering into con-

1 tracts with other agencies and making grants for
2 research, including basic research into the causes of
3 juvenile crime, evaluation of methods of service
4 delivery in use, and development of new approaches.

5 7. Wards. In regards to individual juveniles
6 for whom the department has accepted responsibility,
7 it may take necessary action for the appointment of a
8 guardian of a juvenile who does not have a parent to
9 exercise effective guardianship, and it shall:

10 A. Assure that appropriate services are made
11 available to them, either directly or by purchase
12 of those services;

13 B. Assume responsibility, to the extent that
14 parents are unable to do so, for payment for ser-
15 vices; and

16 C. Assume legal custody of children or legal
17 guardianship when vested by the court.

18 §7003. Administrative plan for juvenile crime pre-
19 vention and rehabilitation of adjudicated
20 juveniles

21 To further effect the intent of this chapter to
22 clearly specify a locus of responsibility for iden-
23 tifying, evaluating and meeting the service needs for
24 prevention of juvenile crime and rehabilitation of
25 adjudicated juveniles, the commissioner shall prepare
26 an administrative plan which delineates the division
27 of responsibilities for performing the functions of
28 the department described in this chapter.

29 1. Description of responsibilities. The plan
30 shall describe both supervisory and line responsibil-
31 ities.

32 2. Submission. The initial plan shall be sub-
33 mitted to the Governor and the Legislature in January
34 of 1979 and revised plans shall be submitted to the
35 Legislature in January of each subsequent year.

36 §7004. Transfer

1 1. Approval. The department may transfer any
2 juvenile committed to its care from one facility or
3 program to another, except that, before any juvenile
4 is transferred, he shall be examined and evaluated
5 and the evaluation shall be reviewed and approved by
6 the commissioner.

7 2. Emergency exception. When the commissioner
8 finds that the welfare and protection of a juvenile
9 or others requires the juvenile's immediate transfer
10 to another facility, he shall make the transfer prior
11 to the examination and evaluation of the juvenile.

12 3. Restrictive placements. Restrictive place-
13 ments are governed as follows.

14 A. Notwithstanding subsections 1 and 2, the
15 transfer of any juvenile from a less restrictive
16 placement to a more restrictive placement shall
17 be reviewed by the Juvenile Court that originally
18 ordered the juvenile's placement within 48 hours
19 of the transfer, excluding Saturdays, Sundays and
20 legal holidays.

21 B. In order to continue the more restrictive
22 placement, a court must find:

23 (1) That it is necessary to protect the
24 juvenile or protect the community; and

25 (2) That no other available less restric-
26 tive placement will protect the juvenile or
27 the community.

28 C. Notwithstanding paragraph A, the commissioner
29 may not place any juvenile committed to the
30 department in an adult correctional facility.

31 §7005. Agreements and contracts with public and pri-
32 vate agencies

33 1. Commissioner's power. The commissioner may
34 enter into agreements or contracts with any govern-
35 mental unit or agency or private facility or program
36 cooperating or willing to cooperate in a program to
37 carry out the purposes of this chapter and Title 15,
38 Part 6.

1 2. Nature of agreements or con-
2 tracts. Agreements or contracts entered into under
3 subsection 1 may provide, among other things, for the
4 type of work to be performed, for the rate of payment
5 for that work and for other matters relating to the
6 care and treatment of juveniles.

7 3. Custody. Placement of juveniles by the
8 department in any public or private facility or pro-
9 gram not under the jurisdiction of the department
10 does not terminate the legal custody of the depart-
11 ment.

12 4. Inspection. The department may inspect all
13 facilities used by it and may examine and consult
14 with persons in its legal custody who have been
15 placed in any such facility.

16 §7006. Administrators of facilities and programs

17 A chief administrative officer of a facility or
18 program with which the department contracts for ser-
19 vices shall:

20 1. Report. Report to the commissioner at such
21 times and on such matters as the commissioner may re-
22 quire;

23 2. Receipt of juveniles. Receive, subject to
24 limitations on physical capacity and programs, all
25 juveniles committed to the custody of the department
26 and placed in his care under the provisions of Title
27 15, Part 6, and keep them for rehabilitation, educa-
28 tion and training until discharged by law or under
29 the rules of the department or released on probation;
30 and

31 3. Evaluations. Secure a careful and thorough
32 evaluation of every juvenile placed under his care at
33 intervals no greater than 6 months, that evaluation
34 to ascertain whether the juvenile should be released,
35 whether his program should be modified or whether his
36 transfer to another facility should be recommended.

37 §7007. Rules

1 §9002. Existing rights and remedies--Article II

2 All remedies and procedures provided by this com-
3 compact shall be in addition to and not in substitution
4 for other rights, remedies and procedures, and shall
5 not be in derogation of parental rights and responsi-
6 bilities.

7 §9003. Definitions--Article III

8 For the purposes of this compact:

9 1. Court. "Court" means any court having juris-
10 isdiction over delinquent, neglected or dependent chil-
11 drren;

12 2. Delinquent juvenile. "Delinquent juvenile"
13 means any juvenile who has been adjudged delinquent
14 and who, at the time the provisions of this compact
15 are invoked, is still subject to the jurisdiction of
16 the court that has made such adjudication or to the
17 jurisdiction or supervision of an agency or institu-
18 tion pursuant to an order of such court;

19 3. Probation or parole. "Probation or parole"
20 means any kind of conditional release of juveniles
21 authorized under the laws of the state party hereto;

22 4. Residence. "Residence" or any variant
23 thereof means a place at which a home or regular
24 place of abode is maintained;

25 5. State. "State" means any state, territory or
26 possession of the United States, the District of
27 Columbia and the Commonwealth of Puerto Rico;

28 6. Minor. "Minor" means any person who has not
29 attained the age of 18 years. A person charged with
30 or convicted of a crime as an adult in a demanding
31 state, whose extradition from this State is sought by
32 the demanding state shall be subject to the provi-
33 sions of Title 15, sections 201 to 229, although the
34 person is a minor under the laws of this State; and

35 7. Adult. "Adult" means a person who has
36 attained the age of 18 years.

1 §9004. Return of runaways--Article IV

2 1. Requisition for return of juvenile. The
3 parent, guardian, person or agency entitled to legal
4 custody of a juvenile who has not been adjudged
5 delinquent, but who has run away without the consent
6 of such parent, guardian, person or agency, may peti-
7 tion the appropriate court in the demanding state for
8 the issuance of a requisition for his return. The
9 petition shall state the name and age of the juve-
10 nile, the name of the petitioner and the basis of
11 entitlement to the juvenile's custody, the circum-
12 stances of his running away, his location if known at
13 the time application is made, and such other facts as
14 may tend to show that the juvenile who has run away
15 is endangering his own welfare or the welfare of
16 others and is not an emancipated minor. The petition
17 shall be verified by affidavit, shall be executed in
18 duplicate and shall be accompanied by 2 certified
19 copies of the document or documents on which the
20 petitioner's entitlement to the juvenile's custody is
21 based, such as birth certificates, letters of guard-
22 ianship or custody decrees. Such further affidavits
23 and other documents as may be deemed proper may be
24 submitted with such petition. The judge of the court
25 to which this application is made may hold a hearing
26 thereon to determine whether for the purposes of this
27 compact the petitioner is entitled to the legal cus-
28 tody of the juvenile, whether or not it appears that
29 the juvenile has in fact run away without consent,
30 whether or not he is an emancipated minor, and
31 whether or not it is in the best interest of the
32 juvenile to compel his return to the state. If the
33 judge determines, either with or without a hearing,
34 that the juvenile should be returned, he shall
35 present to the appropriate court or to the executive
36 authority of the state where the juvenile is alleged
37 to be located a written requisition for the return of
38 such juvenile. Such requisition shall set forth the
39 name and age of the juvenile, the determination of
40 the court that the juvenile has run away without the
41 consent of a parent, guardian, person or agency enti-
42 tled to his legal custody, and that it is in the best
43 interest and for the protection of such juvenile that
44 he be returned. In the event that a proceeding for
45 the adjudication of the juvenile as a delinquent,
46 neglected or dependent juvenile is pending in the

1 court at the time when such juvenile runs away, the
2 court may issue a requisition for the return of such
3 juvenile upon its own motion, regardless of the con-
4 sent of the parent, guardian, person or agency enti-
5 tled to legal custody, reciting therein the nature
6 and circumstances of the pending proceeding. The
7 requisition shall in every case be executed in dupli-
8 cate and shall be signed by the judge. One copy of
9 the requisition shall be filed with the compact
10 administrator of the demanding state, there to remain
11 on file subject to the law governing records of such
12 court. Upon the receipt of a requisition demanding
13 the return of a juvenile who has run away, the court
14 or the executive authority to whom the requisition is
15 addressed shall issue an order to any peace officer
16 or other appropriate person directing him to take
17 into custody and detain such juvenile. Such deten-
18 tion order must substantially recite the facts neces-
19 sary to the validity of its issuance hereunder. No
20 juvenile detained upon such order shall be delivered
21 over to the officer whom the court demanding him
22 shall have appointed to receive him, unless he shall
23 first be taken forthwith before a judge of a court in
24 the state, who shall inform him of the demand made
25 for his return, and who may appoint counsel or
26 guardian ad litem for him. If the judge of such
27 court shall find that the requisition is in order, he
28 shall deliver such juvenile over to the officer whom
29 the court demanding him shall have appointed to
30 receive him. The judge, however, may fix a reason-
31 able time to be allowed for the purpose of testing
32 the legality of the proceeding.

33 Upon reasonable information that a person is a juve-
34 nile who has run away from another state party to
35 this compact without the consent of a parent,
36 guardian, person or agency entitled to his legal cus-
37 tody, such juvenile may be taken into custody without
38 a requisition and brought forthwith before a judge of
39 the appropriate court who may appoint counsel or
40 guardian ad litem for such juvenile and who shall
41 determine after a hearing whether sufficient cause
42 exists to hold the person, subject to the order of
43 the court, for his own protection and welfare, for
44 such a time not exceeding 90 days as will enable his
45 return to another state party to this compact pur-
46 suant to a requisition for his return from a court of

1 that state. If, at the time when a state seeks the
2 return of a juvenile who has run away, there is pend-
3 ing in the state wherein he is found any criminal
4 charge, or any proceeding to have him adjudicated a
5 delinquent juvenile for an act committed in such
6 state, or if he is suspected of having committed
7 within such state a criminal offense or an act of
8 juvenile delinquency, he shall not be returned with-
9 out the consent of such state until discharged from
10 prosecution or other form of proceeding, imprison-
11 ment, detention or supervision for such offense or
12 juvenile delinquency. The duly accredited officers
13 of any state party to this compact, upon the estab-
14 lishment of their authority and the identity of the
15 juvenile being returned, shall be permitted to trans-
16 port such juvenile through any and all states party
17 to this compact, without interference. Upon his
18 return to the state from which he ran away, the juve-
19 nile shall be subject to such further proceedings as
20 may be appropriate under the laws of that state.

21 2. Transportation costs. The state to which a
22 juvenile is returned under this Article shall be
23 responsible for payment of the transportation costs
24 of such return.

25 3. Juvenile defined. "Juvenile," as used in
26 this Article, means any person who is a minor under
27 the law of the state of residence of the parent,
28 guardian, person or agency entitled to the legal cus-
29 tody of such minor.

30 §9005. Return of escapees and absconders--Article V

31 1. Requisition for return of delinquent juve-
32 nile. The appropriate person or authority from whose
33 probation or parole supervision a delinquent juvenile
34 has absconded or from whose institutional custody he
35 has escaped shall present to the appropriate court or
36 to the executive authority of the state where the
37 delinquent juvenile is alleged to be located a writ-
38 ten requisition for the return of such delinquent
39 juvenile. Such requisition shall state the name and
40 age of the delinquent juvenile, the particulars of
41 his adjudication as a delinquent juvenile, the cir-
42 cumstances of the breach of the terms of his proba-
43 tion or parole or of his escape from an institution

1 or agency vested with his legal custody or super-
2 vision and the location of such delinquent juvenile,
3 if known, at the time the requisition is made. The
4 requisition shall be verified by affidavit, shall be
5 executed in duplicate, and shall be accompanied by 2
6 certified copies of the judgment, formal adjudica-
7 tion, or order of commitment which subjects such
8 delinquent juvenile to probation or parole or to the
9 legal custody of the institution or agency concerned.
10 Such further affidavits and other documents as may be
11 deemed proper may be submitted with such requisition.
12 One copy of the requisition shall be filed with the
13 compact administrator of the demanding state, there
14 to remain on file subject to the law governing
15 records of the appropriate court. Upon the receipt
16 of a requisition demanding the return of a delinquent
17 juvenile who has absconded or escaped, the court or
18 the executive authority to whom the requisition is
19 addressed shall issue an order to any peace officer
20 or other appropriate person directing him to take
21 into custody and detain such delinquent juvenile.
22 Such detention order must substantially recite the
23 facts necessary to the validity of its issuance here-
24 under. No delinquent juvenile detained upon such
25 order shall be delivered over to the officer whom the
26 appropriate person or authority demanding him shall
27 have appointed to receive him, unless he shall first
28 be taken forthwith before a judge of an appropriate
29 court in the state, who shall inform him of the
30 demand made for his return and who may appoint coun-
31 sel or guardian ad litem for him. If the judge of
32 such court shall find that the requisition is in
33 order, he shall deliver such delinquent juvenile over
34 to the officer whom the appropriate person or author-
35 ity demanding him shall have appointed to receive
36 him. The judge may fix a reasonable time to be
37 allowed for the purpose of testing the legality of
38 the proceeding.

39 Upon reasonable information that a person is a delin-
40 quent juvenile who has absconded while on probation
41 or parole, or escaped from an institution or agency
42 vested with his legal custody or supervision in any
43 state party to this compact, such person may be taken
44 into custody in any other state party to this compact
45 without a requisition. In such event, he must be
46 taken forthwith before a judge of the appropriate

1 court, who may appoint counsel or guardian ad litem
2 for such person and who shall determine, after a
3 hearing, whether sufficient cause exists to hold the
4 person subject to the order of the court for such a
5 time, not exceeding 90 days, as will enable his
6 detention under a detention order issued on a requi-
7 sition pursuant to this Article. If, at the time
8 when a state seeks the return of a delinquent juve-
9 nilite who has either absconded while on probation or
10 parole or escaped from an institution or agency
11 vested with his legal custody or supervision, there
12 is pending in the state wherein he is detained any
13 criminal charge or any proceeding to have him adjudi-
14 cated a delinquent juvenile for an act committed in
15 such state, or if he is suspected of having committed
16 within such state a criminal offense or an act of
17 juvenile delinquency, he shall not be returned with-
18 out the consent of such state until discharged from
19 prosecution or other form of proceeding, imprison-
20 ment, detention or supervision for such offense or
21 juvenile delinquency. The duly accredited officers
22 of any state party to this compact, upon the estab-
23 lishment of their authority and the identity of the
24 delinquent juvenile being returned, shall be permit-
25 ted to transport such delinquent juvenile through any
26 and all states party to this compact, without inter-
27 ference. Upon his return to the state from which he
28 escaped or absconded, the delinquent juvenile shall
29 be subject to such further proceedings as may be
30 appropriate under the laws of that state.

31 2. Transportation costs. The state to which a
32 delinquent juvenile is returned under this Article
33 shall be responsible for payment of the transporta-
34 tion costs of such return.

35 §9006. Voluntary return procedure--Article VI

36 Any delinquent juvenile who has absconded while
37 on probation or parole, or escaped from an institu-
38 tion or agency vested with his legal custody or
39 supervision in any state party to this compact, and
40 any juvenile who has run away from any state party to
41 this compact, who is taken into custody without a
42 requisition in another state party to this compact
43 under Article IV, subsection 1, or Article V, subsec-
44 tion 1, may consent to his immediate return to the

1 state from which he absconded, escaped or run away.
2 Such consent shall be given by the juvenile or delin-
3 quent juvenile and his counsel or guardian ad litem,
4 if any, by executing or subscribing a writing, in the
5 presence of a judge of the appropriate court, which
6 states that the juvenile or delinquent juvenile and
7 his counsel or guardian ad litem, if any, consent to
8 his return to the demanding state. Before such con-
9 sent shall be executed or subscribed, the judge, in
10 the presence of counsel or guardian ad litem, if any,
11 shall inform the juvenile or delinquent juvenile of
12 his rights under this compact. When the consent has
13 been duly executed, it shall be forwarded to and
14 filed with the compact administrator of the state in
15 which the court is located and the judge shall direct
16 the officer having the juvenile or delinquent juve-
17 nile in custody to deliver him to the duly accredited
18 officer or officers of the state demanding his
19 return, and shall cause to be delivered to such offi-
20 cer or officers a copy of the consent. The court
21 may, upon the request of the state to which the juve-
22 nile or delinquent juvenile is being returned, order
23 him to return unaccompanied to such state and shall
24 provide him with a copy of such court order; in such
25 event, a copy of the consent shall be forwarded to
26 the compact administrator of the state to which said
27 juvenile or delinquent juvenile is ordered to return.

28 §9006-A. Rendition amendment--Article VI-A

29 All provisions and procedures of Articles V and
30 VI of the Uniform Interstate Compact on Juveniles
31 shall be construed to apply to any juvenile charged
32 with being a delinquent by reason of a violation of
33 any criminal law. Any juvenile, charged with being a
34 delinquent by reason of violating any criminal law,
35 shall be returned to the requesting state upon a
36 requisition to the state where the juvenile may be
37 found. A petition in such case shall be filed in a
38 court of competent jurisdiction in the requesting
39 state where the violation of criminal law is alleged
40 to have been committed. The petition may be filed
41 regardless of whether the juvenile left the state
42 before or after the filing of the petition. The
43 requisition described in Article V of the compact
44 shall be forwarded by the judge of the court in which
45 the petition has been filed.

1 This provision shall apply regardless of whether
2 the requesting state has also adopted it.

3 §9007. Cooperative supervision of probationers and
4 parolees--Article VII

5 1. Permission for delinquent juvenile to reside
6 in receiving state. The duly constituted judicial
7 and administrative authorities of a state party to
8 this compact, herein called "sending state," may
9 permit any delinquent juvenile within such state,
10 placed on probation or parole, to reside in any other
11 state party to this compact, herein called "receiving
12 state," while on probation or parole, and the receiv-
13 ing state shall accept such delinquent juvenile, if
14 the parent, guardian or person entitled to the legal
15 custody of such delinquent juvenile is residing or
16 undertakes to reside within the receiving state.
17 Before granting such permission, opportunity shall be
18 given to the receiving state to make such investiga-
19 tions as it deems necessary. The authorities of the
20 sending state shall send to the authorities of the
21 receiving state copies of pertinent court orders,
22 social case studies and all other available informa-
23 tion which may be of value to and assist the receiv-
24 ing state in supervising a probationer or parolee
25 under this compact. A receiving state, in its dis-
26 cretion, may agree to accept supervision of a proba-
27 tioner or parolee in cases where the parent, guardian
28 or person entitled to the legal custody of the delin-
29 quent juvenile is not a resident of the receiving
30 state, and if so accepted the sending state may
31 transfer supervision accordingly.

32 2. Duties of receiving state. Each receiving
33 state will assume the duties of visitation and of
34 supervision over any such delinquent juvenile and in
35 the exercise of those duties will be governed by the
36 same standards of visitation and supervision that
37 prevail for its own delinquent juveniles released on
38 probation or parole.

39 3. Returning delinquent juvenile. After consul-
40 tation between the appropriate authorities of the
41 sending state and of the receiving state as to the
42 desirability and necessity of returning such a delin-
43 quent juvenile, the duly accredited officers of a

1 sending state may enter a receiving state and there
2 apprehend and retake any such delinquent juvenile on
3 probation or parole. For that purpose, no formal-
4 ities will be required, other than establishing the
5 authority of the officer and the identity of the
6 delinquent juvenile to be retaken and returned. The
7 decision of the sending state to retake a delinquent
8 juvenile on probation or parole shall be conclusive
9 upon and not reviewable within the receiving state,
10 but if, at the time the sending state seeks to retake
11 a delinquent juvenile on probation or parole, there
12 is pending against him within the receiving state any
13 criminal charge or any proceeding to have him adjudi-
14 cated a delinquent juvenile for any act committed in
15 such state, or if he is suspected of having committed
16 within such state a criminal offense or an act of
17 juvenile delinquency, he shall not be returned with-
18 out the consent of the receiving state until dis-
19 charged from prosecution or other form of proceeding,
20 imprisonment, detention or supervision for such
21 offense or juvenile delinquency. The duly accredited
22 officers of the sending state shall be permitted to
23 transport delinquent juveniles being so returned
24 through any and all states party to this compact,
25 without interference.

26 4. Transportation costs. The sending state
27 shall be responsible under this Article for paying
28 the costs of transporting any delinquent juvenile to
29 the receiving state or of returning any delinquent
30 juvenile to the sending state.

31 §9008. Responsibility for costs--Article VIII

32 1. Internal relationships not affected. Article
33 IV, subsection 2, Article V, subsection 2, and Arti-
34 cle VII, subsection 4 of this compact shall not be
35 construed to alter or affect any internal relation-
36 ship among the departments, agencies and officers of
37 and in the government of a party state, or between a
38 party state and its subdivisions, as to the payment
39 of costs, or responsibilities therefor.

40 2. Asserting rights for costs. Nothing in this
41 compact shall be construed to prevent any party state
42 or subdivision thereof from asserting any right
43 against any person, agency or other entity in regard

1 to costs for which such party state or subdivision
2 thereof may be responsible pursuant to Article IV,
3 subsection 2, Article V, subsection 2, or Article
4 VII, subsection 4 of this compact.

5 §9009. Detention practices--Article IX

6 To every extent possible, it shall be the policy
7 of states party to this compact that no juvenile or
8 delinquent juvenile shall be placed or detained in
9 any prison, jail or lockup nor be detained or trans-
10 ported in association with criminal, vicious or dis-
11 solute persons.

12 §9010. Supplementary agreements--Article X

13 The duly constituted administrative authorities
14 of a state party to this compact may enter into
15 supplementary agreements with any other state or
16 states party hereto for the cooperative care, treat-
17 ment and rehabilitation of delinquent juveniles when-
18 ever they shall find that such agreements will
19 improve the facilities or programs available for such
20 care, treatment and rehabilitation. Such care,
21 treatment and rehabilitation may be provided in an
22 institution located within any state entering into
23 such supplementary agreement. Such supplementary
24 agreements shall:

25 1. Rates. Provide the rates to be paid for the
26 care, treatment and custody of such delinquent juve-
27 nils, taking into consideration the character of
28 facilities, services and subsistence furnished;

29 2. Court hearing. Provide that the delinquent
30 juvenile shall be given a court hearing prior to his
31 being sent to another state for care, treatment and
32 custody;

33 3. Receiving state agent of sending
34 state. Provide that the state receiving such a
35 delinquent juvenile in one of its institutions shall
36 act solely as agent for the state sending such delin-
37 quent juvenile;

38 4. Sending state to retain jurisdic-
39 tion. Provide that the sending state shall at all

1 times retain jurisdiction over a delinquent juvenile
2 sent to an institution in another state;

3 5. Inspection. Provide for reasonable inspec-
4 tion of such institutions by the sending state;

5 6. Consent of parent, guardian or custo-
6 dian. Provide that the consent of the parent,
7 guardian, person or agency entitled to the legal cus-
8 tody of said delinquent juvenile shall be secured
9 prior to his being sent to another state; and

10 7. Other matters and details. Make provision
11 for such other matters and details as shall be neces-
12 sary to protect the rights and equities of such
13 delinquent juveniles and of the cooperating states.

14 §9011. Acceptance of federal and other aid--Article
15 XI

16 Any state party to this compact may accept any
17 and all donations, gifts and grants of money, equip-
18 ment and services from the federal or any local gov-
19 ernment, or any agency thereof and from any person,
20 firm or corporation, for any of the purposes and
21 functions of this compact, and may receive and util-
22 ize the same, subject to the terms, conditions and
23 regulations governing such donations, gifts and
24 grants.

25 §9012. Compact administrators--Article XII

26 The governor of each state party to this compact
27 shall designate an officer who, acting jointly with
28 like officers of other party states, shall promulgate
29 rules and regulations to carry out more effectively
30 the terms and provisions of this compact.

31 §9013. Execution of compact--Article XIII

32 This compact shall become operative immediately
33 upon its execution by any state as between it and any
34 other state or states so executing. When executed,
35 it shall have the full force and effect of law within
36 such state, the form of execution to be in accordance
37 with the laws of the executing state.

1 §9014. Renunciation--Article XIV

2 This compact shall continue in force and remain
3 binding upon each executing state until renounced by
4 it. Renunciation of this compact shall be by the
5 same authority which executed it, by sending 6
6 months' notice in writing of its intention to with-
7 draw from the compact to the other states party
8 hereto. The duties and obligations of a renouncing
9 state under Article VII shall continue as to parolees
10 and probationers residing therein at the time of
11 withdrawal until retaken or finally discharged.
12 Supplementary agreements entered into under Article X
13 shall be subject to renunciation as provided by such
14 supplementary agreements, and shall not be subject to
15 the 6 months' renunciation notice of the present
16 Article.

17 §9015. Severability--Article XV

18 The provisions of this compact shall be severable
19 and if any phrase, clause, sentence or provision of
20 this compact is declared to be contrary to the con-
21 stitution of any participating state or of the United
22 States or the applicability thereof to any govern-
23 ment, agency, person or circumstances is held
24 invalid, the validity of the remainder of this com-
25 compact and the applicability thereof to any government,
26 agency, person or circumstance shall not be affected
27 thereby. If this compact shall be held contrary to
28 the constitution of any state participating therein,
29 the compact shall remain in full force and effect as
30 to the remaining states and in full force and effect
31 as to the state affected as to all severable matters.

32 §9016. Action by Governor

33 The Governor of this State is authorized and
34 directed to execute a compact on behalf of the State
35 with any of the states of the United States legally
36 joining therein in the form substantially as provided
37 in this chapter.

38 SUBCHAPTER II

39 NEW ENGLAND INTERSTATE CORRECTIONS COMPACT

1 §9201. Purpose and policy--Article I

2 The party states, desiring by common action to
3 fully utilize and improve their institutional facili-
4 ties and provide adequate programs for the confin-
5 ement, treatment and rehabilitation of various types
6 of offenders, declare that it is the policy of each
7 of the party states to provide such facilities and
8 programs on a basis of cooperation with one another,
9 thereby serving the best interests of such offenders
10 and of society and effecting economies in capital
11 expenditures and operational costs. The purpose of
12 this compact is to provide for the mutual development
13 and execution of such programs of cooperation for the
14 confinement, treatment and rehabilitation of offend-
15 ers with the most economical use of human and mate-
16 rial resources.

17 §9202. Definitions--Article II

18 As used in this compact, unless the context
19 otherwise indicates, the following terms have the
20 following meanings.

21 1. Inmate. "Inmate" means a male or female
22 offender who is committed, under sentence to or con-
23 finned in a penal or correctional institution.

24 2. Institution. "Institution" means any penal
25 or correctional facility, including, but not limited
26 to, a facility for the mentally ill or mentally
27 defective, in which inmates, as defined in subsection
28 1, may lawfully be confined.

29 3. Receiving state. "Receiving state" means a
30 state party to this compact to which an inmate is
31 sent for confinement other than a state in which con-
32 vicition or court commitment was had.

33 4. Sending state. "Sending state" means a state
34 party to this compact in which conviction or court
35 commitment was had.

36 5. State. "State" means a state of the United
37 States, located in New England, to wit, Maine, New
38 Hampshire, Vermont, Massachusetts, Connecticut and
39 Rhode Island.

1 §9203. Contracts--Article III

2 Each party state may make one or more contracts
3 with any one or more of the other party states for
4 the confinement of inmates on behalf of a sending
5 state in institutions situated within receiving
6 states. Any such contract shall provide for:

7 1. Duration. Its duration;

8 2. Payments. Payments to be made to the receiv-
9 ing state by the sending state for inmate mainte-
10 nance, extraordinary medical and dental expenses, and
11 any participation in or receipt by inmates of reha-
12 ilitative or correctional services' facilities, pro-
13 grams or treatment not reasonably included as part of
14 normal maintenance;

15 3. Employment. Participation in programs of
16 inmate employment, if any; the disposition or credit-
17 ing of any payments received by inmates on account
18 thereof; and the crediting of proceeds from or dis-
19 posal of any products resulting therefrom;

20 4. Inmate delivery. Delivery and retaking of
21 inmates; and

22 5. Other matters. Such other matters as may be
23 necessary and appropriate to fix the obligations,
24 responsibilities and rights of the sending and
25 receiving states.

26 Subject to legislative approval by the states
27 concerned and prior to the construction or completion
28 of construction of any institution or addition
29 thereto by a party state, any other party state or
30 states may contract therewith for the enlargement of
31 the planned capacity of the institution or addition
32 thereto, or for the inclusion therein of particular
33 equipment or structures, and for the reservation of a
34 specific percentum of the capacity of the institution
35 to be kept available for use by inmates of the
36 sending state or states so contracting. Any sending
37 state so contracting may, to the extent that moneys
38 are legally available therefor, pay to the receiving
39 state a reasonable sum as consideration for such
40 enlargement of capacity, or provision of equipment or

1 structures, and reservation of capacity. Such pay-
2 ment may be in a lump sum or in installments as pro-
3 vided in the contract.

4 The terms and provisions of this compact shall be
5 a part of any contract entered into by the authority
6 of or pursuant thereto, and nothing in any such con-
7 tract shall be inconsistent therewith.

8 §9204. Procedures and rights--Article IV

9 Whenever the duly constituted authorities in a
10 state party to this compact, and which has entered
11 into a contract pursuant to Article III, shall decide
12 that confinement in, or transfer of an inmate to, an
13 institution within the territory of another party
14 state is necessary or desirable in order to provide
15 adequate quarters and care or an appropriate program
16 of rehabilitation or treatment, said officials may
17 direct that the confinement be within an institution
18 within the territory of said other party state, the
19 receiving state to act in that regard solely as agent
20 for the sending state.

21 The appropriate officials of any state party to
22 this compact shall have access, at all reasonable
23 times, to any institution in which it has a contrac-
24 tual right to confine inmates for the purpose of
25 inspecting the facilities thereof and visiting such
26 of its inmates as may be confined in the institution.

27 Inmates confined in an institution pursuant to
28 the terms of this compact shall at all times be sub-
29 ject to the jurisdiction of the sending state and may
30 at any time be removed therefrom for transfer to a
31 prison or other institution within the sending state,
32 for transfer to another institution in which the
33 sending state may have a contractual or other right
34 to confine inmates, for release on probation or
35 parole, for discharge, or for any other purpose per-
36 mitted by the laws of the sending state; provided
37 that the sending state shall continue to be obligated
38 to such payments as may be required pursuant to the
39 terms of any contract entered into under the terms of
40 Article III.

1 Each receiving state shall provide regular
2 reports to each sending state on the inmates of that
3 sending state in institutions pursuant to this com-
4 compact, including a conduct record of each inmate, and
5 certify said record to the official designated by the
6 sending state, in order that each inmate may have
7 official review of his or her record in determining
8 and altering the disposition of the inmate in accor-
9 dance with the law which may obtain in the sending
10 state and in order that the same may be a source of
11 information for the sending state.

12 All inmates who may be confined in an institution
13 pursuant to this compact shall be treated in a
14 reasonable and humane manner and shall be treated
15 equally with such similar inmates of the receiving
16 state as may be confined in the same institution.
17 The fact of confinement in a receiving state shall
18 not deprive any inmate so confined of any legal
19 rights which the inmate would have had if confined in
20 an appropriate institution of the sending state.

21 Any hearing or hearings to which an inmate con-
22 fined pursuant to this compact may be entitled by the
23 laws of the sending state may be had before the
24 appropriate authorities of the sending state, or of
25 the receiving state if authorized by the sending
26 state. The receiving state shall provide adequate
27 facilities for such hearings as may be conducted by
28 the appropriate officials of a sending state. In the
29 event such hearing or hearings are had before offi-
30 cial of the receiving state, the governing law shall
31 be that of the sending state and a record of the
32 hearing or hearings as prescribed by the sending
33 state shall be made. Said record together with any
34 recommendations of the hearing officials shall be
35 transmitted forthwith to the official or officials
36 before whom the hearing would have been had if it had
37 taken place in the sending state. In any and all
38 proceedings had pursuant to this paragraph, the offi-
39 cial of the receiving state shall act solely as
40 agents of the sending state and no final determina-
41 tion shall be made in any matter except by the appro-
42 priate officials of the sending state.

43 Any inmate confined pursuant to this compact
44 shall be released within the territory of the sending

1 state, unless the inmate and the sending and receiv-
2 ing states shall agree upon release in some other
3 place. The sending state shall bear the cost of such
4 return to its territory.

5 Any inmate confined pursuant to the terms of this
6 compact shall have any and all rights to participate
7 in and derive any benefits or incur or be relieved of
8 any obligations or have such obligations modified or
9 his status changed on account of any action or pro-
10 ceeding in which he could have participated if con-
11 fined in any appropriate institution of the sending
12 state located within such state.

13 The parent, guardian, trustee or other person or
14 persons entitled under the laws of the sending state
15 to act for, advise or otherwise function with respect
16 to any inmate shall not be deprived of or restricted
17 in his exercise of any power in respect of any inmate
18 confined pursuant to the terms of this compact.

19 §9205. Acts not reviewable in receiving state;
20 extradition--Article V

21 Any decision of the sending state in respect of
22 any matter over which it retains jurisdiction pur-
23 suant to this compact shall be conclusive upon and
24 not reviewable within the receiving state, but if, at
25 the time the sending state seeks to remove an inmate
26 from an institution in the receiving state, there is
27 pending against the inmate within such state any
28 criminal charge or if the inmate is formally accused
29 of having committed within such state a criminal
30 offense, the inmate shall not be returned without the
31 consent of the receiving state until discharged from
32 prosecution or other form of proceeding, imprisonment
33 or detention for such offense. The duly accredited
34 officers of the sending state shall be permitted to
35 transport inmates pursuant to this compact through
36 any and all states party to this compact without
37 interference.

38 Any inmate who escapes from an institution in
39 which he is confined pursuant to this compact shall
40 be deemed a fugitive from the sending state and from
41 the state in which the institution is situated. In
42 the case of an escape to a jurisdiction other than

1 the sending or receiving state, the responsibility
2 for institution of extradition or rendition proceed-
3 ings shall be that of the sending state, but nothing
4 contained herein shall be construed to prevent or
5 affect the activities of officers and agencies of any
6 jurisdiction directed toward the apprehension and
7 return of an escapee.

8 §9206. Federal aid--Article VI

9 Any state party to this compact may accept fed-
10 eral aid for use in connection with any institution
11 or program, the use of which is or may be affected by
12 this compact or any contract pursuant hereto and any
13 inmate in a receiving state pursuant to this compact
14 may participate in any such federally aided program
15 or activity for which the sending and receiving
16 states have made contractual provision, provided
17 that, if such program or activity is not part of the
18 customary correctional regimen, the express consent
19 of the appropriate official of the sending state
20 shall be required therefor.

21 §9207. Entry into force--Article VII

22 This compact shall enter into force and become
23 effective and binding upon the states so acting when
24 it has been enacted into law by any 2 states from
25 among the states of New England. Thereafter, this
26 compact shall enter into force and become effective
27 and binding as to any other of said states upon simi-
28 lar action by such state.

29 §9208. Withdrawal and termination--Article VIII

30 This compact shall continue in force and remain
31 binding upon a party state until it shall have
32 enacted a statute repealing the same and providing
33 for the sending of formal written notice of with-
34 drawal from the compact to the appropriate officials
35 of all other party states. An actual withdrawal
36 shall not take effect until one year after the
37 notices provided in said statute have been sent.
38 Such withdrawal shall not relieve the withdrawing
39 state from its obligations assumed hereunder prior to
40 the effective date of withdrawal. Before the effec-
41 tive date of withdrawal, a withdrawing state shall

1 remove to its territory, at its own expense, such
2 inmates as it may have confined pursuant to this com-
3 compact.

4 §9209. Other arrangements unaffected--Article IX

5 Nothing contained in this compact shall be con-
6 strued to abrogate nor impair any agreement or other
7 arrangement which a party state may have with a
8 nonparty state for the confinement, rehabilitation or
9 treatment of inmates nor to repeal any other laws of
10 a party state authorizing the making of cooperative
11 institutional arrangements.

12 §9210. Construction and severability--Article X

13 The provisions of this compact shall be liberally
14 construed and shall be severable. If any phrase,
15 clause, sentence or provision of this compact is
16 declared to be contrary to the constitution of any
17 participating state or of the United States or the
18 applicability thereof to any government, agency,
19 person or circumstance is held invalid, the validity
20 of the remainder of this compact and the applicabil-
21 ity thereof to any government, agency, person or cir-
22 cumstance shall not be affected thereby. If this
23 compact shall be held contrary to the constitution of
24 any state participating therein, the compact shall
25 remain in full force and effect as to the remaining
26 states and in full force and effect as to the state
27 affected as to all severable matters.

28 §9221. Ratification

29 The New England Interstate Corrections Compact is
30 enacted into law and entered into by this State with
31 any other of the states mentioned in Article II
32 legally joining therein in the form substantially as
33 provided in this subchapter.

34 §9222. Title

35 This subchapter may be cited as the "New England
36 Interstate Corrections Compact."

37 §9223. Powers

1 4. Sending state. "Sending state" means a state
2 party to this compact in which conviction or court
3 commitment was had; and

4 5. State. "State" means a state of the United
5 States, the United States of America, a territory or
6 possession of the United States, the District of
7 Columbia or the Commonwealth of Puerto Rico.

8 §9403. Contracts--Article III

9 Each party state may make one or more contracts
10 with any one or more of the other party states for
11 the confinement of inmates on behalf of a sending
12 state in institutions situated within receiving
13 states.

14 1. Contract provisions. Any such contract shall
15 provide for:

16 A. Its duration;

17 B. Payments to be made to the receiving state by
18 the sending state for inmate maintenance,
19 extraordinary medical and dental expenses, and
20 any participation in or receipt by inmates of
21 rehabilitative or correctional services, facili-
22 ties, programs or treatment not reasonably
23 included as part of normal maintenance;

24 C. Participation in programs of inmate employ-
25 ment, if any; the disposition or crediting of any
26 payments received by inmates on account thereof;
27 and the crediting of proceeds from or disposal of
28 any products resulting therefrom;

29 D. Delivery and retaking of inmates; and

30 E. Such other matters as may be necessary and
31 appropriate to fix the obligations, responsibili-
32 ties and rights of the sending and receiving
33 states.

34 The terms and provisions of this compact shall be a
35 part of any contract entered into by the authority of
36 or pursuant thereto, and nothing in any such contract
37 shall be inconsistent therewith.

1 §9404. Procedures and rights--Article IV

2 Whenever the duly constituted authorities in a
3 state party to this compact, and which has entered
4 into a contract pursuant to Article III, shall decide
5 that confinement in, or transfer of an inmate to, an
6 institution within the territory of another party
7 state is necessary or desirable in order to provide
8 adequate quarters and care or an appropriate program
9 of rehabilitation or treatment, the officials may
10 direct that the confinement be within an institution
11 within the territory of the other party state, the
12 receiving state to act in that regard solely as agent
13 for the sending state.

14 The appropriate officials of any state party to
15 this compact shall have access, at all reasonable
16 times, to any institution in which it has a contrac-
17 tual right to confine inmates for the purpose of
18 inspecting the facilities thereof and visiting such
19 of its inmates as may be confined in the institution.

20 Inmates confined in an institution pursuant to
21 the terms of this compact shall at all times be sub-
22 ject to the jurisdiction of the sending state and may
23 at any time be removed therefrom for transfer to a
24 prison or other institution within the sending state,
25 for transfer to another institution in which the
26 sending state may have a contractual or other right
27 to confine inmates, for release on probation or
28 parole, for discharge, or for any other purpose per-
29 mitted by the laws of the sending state; provided
30 that the sending state shall continue to be obligated
31 to such payments as may be required pursuant to the
32 terms of any contract entered into under the terms of
33 Article III.

34 Each receiving state shall provide regular
35 reports to each sending state on the inmates of that
36 sending state in institutions pursuant to this com-
37 compact, including a conduct record of each inmate, and
38 certify the record to the official designated by the
39 sending state, in order that each inmate may have
40 official review of his or her record in determining
41 and altering the disposition of the inmate in accor-
42 dance with the law which may obtain in the sending
43 state and in order that the same may be a source of
44 information for the sending state.

1 All inmates who may be confined in an institution
2 pursuant to the provisions of this compact shall be
3 treated in a reasonable and humane manner and shall
4 be treated equally with such similar inmates of the
5 receiving state as may be confined in the same insti-
6 tution. The fact of confinement in a receiving state
7 shall not deprive any inmate so confined of any legal
8 rights which the inmate would have had if confined in
9 an appropriate institution of the sending state.

10 Any hearing or hearings to which an inmate con-
11 fined pursuant to this compact may be entitled by the
12 laws of the sending state may be had before the
13 appropriate authorities of the sending state, or of
14 the receiving state if authorized by the sending
15 state. The receiving state shall provide adequate
16 facilities for such hearings as may be conducted by
17 the appropriate officials of a sending state. In the
18 event such hearing or hearings are had before offi-
19 cial of the receiving state, the governing law shall
20 be that of the sending state and a record of the
21 hearing or hearings as prescribed by the sending
22 state shall be made. The record, together with any
23 recommendations of the hearing officials, shall be
24 transmitted forthwith to the official or officials
25 before whom the hearing would have been had if it had
26 taken place in the sending state. In any and all
27 proceedings had pursuant to the provisions of this
28 section, the officials of the receiving state shall
29 act solely as agents of the sending state and no
30 final determination shall be made in any matter
31 except by the appropriate officials of the sending
32 state.

33 Any inmate confined pursuant to this compact
34 shall be released within the territory of the sending
35 state, unless the inmate and the sending and receiv-
36 ing states shall agree upon release in some other
37 place. The sending state shall bear the cost of such
38 return to its territory.

39 Any inmate confined pursuant to the terms of this
40 compact shall have any and all rights to participate
41 in and derive any benefits or incur or be relieved of
42 any obligations or have such obligations modified or
43 his status changed on account of any action or pro-
44 ceeding in which he could have participated if con-

1 fined in any appropriate institution of the sending
2 state located within such state.

3 The parent, guardian, trustee or other person or
4 persons entitled under the laws of the sending state
5 to act for, advise or otherwise function with respect
6 to any inmate shall not be deprived of or restricted
7 in his exercise of any power in respect of any inmate
8 confined pursuant to the terms of this compact.

9 §9405. Acts not reviewable in receiving state;
10 extradition--Article V

11 Any decision of the sending state in respect of
12 any matter over which it retains jurisdiction pur-
13 suant to this compact shall be conclusive upon and
14 not reviewable within the receiving state, but if, at
15 the time the sending state seeks to remove an inmate
16 from an institution in the receiving state, there is
17 pending against the inmate within such state any
18 criminal charge or if the inmate is formally accused
19 of having committed within such state a criminal
20 offense, the inmate shall not be returned without the
21 consent of the receiving state until discharged from
22 prosecution or other form of proceeding, imprisonment
23 or detention for such offense. The duly accredited
24 officers of the sending state shall be permitted to
25 transport inmates pursuant to this compact through
26 any and all states party to this compact without
27 interference.

28 An inmate who escapes from an institution in
29 which he is confined pursuant to this compact shall
30 be deemed a fugitive from the sending state and from
31 the state in which the institution is situated. In
32 the case of an escape to a jurisdiction other than
33 the sending or receiving state, the responsibility
34 for institution of extradition or rendition proceed-
35 ings shall be that of the sending state, but nothing
36 contained herein shall be construed to prevent nor
37 affect the activities of officers and agencies of any
38 jurisdiction directed toward the apprehension and
39 return of an escapee.

40 §9406. Federal aid--Article VI

1 Any state party to this compact may accept fed-
2 eral aid for use in connection with any institution
3 or program, the use of which is or may be affected by
4 this compact or any contract pursuant hereto and any
5 inmate in a receiving state pursuant to this compact
6 may participate in any such federally aided program
7 or activity for which the sending and receiving
8 states have made contractual provisions; provided
9 that, if such program or activity is not part of the
10 customary correctional regimen, the express consent
11 of the appropriate official of the sending state
12 shall be required therefor.

13 §9407. Entry into force--Article VII

14 This compact shall enter into force and become
15 effective and binding upon the states so acting when
16 it has been enacted into law by any 2 states. There-
17 after, this compact shall enter into force and become
18 effective and binding as to any other of said states
19 upon similar action by such state.

20 §9408. Withdrawal and termination--Article VIII

21 This compact shall continue in force and remain
22 binding upon a party state until it shall have
23 enacted a statute repealing the same and providing
24 for the sending of formal written notice of with-
25 drawal from the compact to the appropriate officials
26 of all other party states. An actual withdrawal
27 shall not take effect until one year after the
28 notices provided in said statute have been sent.
29 Such withdrawal shall not relieve the withdrawing
30 state from its obligations assumed hereunder prior to
31 the effective date of withdrawal. Before the effec-
32 tive date of withdrawal, a withdrawing state shall
33 remove to its territory, at its own expense, such
34 inmates as it may have confined pursuant to the
35 provisions of this compact.

36 §9409. Other arrangements unaffected--Article IX

37 Nothing contained in this compact shall be con-
38 strued to abrogate nor impair any agreement or other
39 arrangement which a party state may have with a
40 nonparty state for the confinement, rehabilitation or
41 treatment of inmates nor to repeal any other laws of

1 a party state authorizing the making of cooperative
2 institutional arrangements.

3 §9410. Construction and severability--Article X

4 The provisions of this compact shall be liberally
5 construed and shall be severable. If any phrase,
6 clause, sentence or provision of this compact is
7 declared to be contrary to the constitution of any
8 participating state or of the United States or the
9 applicability thereof to any government, agency,
10 person or circumstance is held invalid, the validity
11 of the remainder of this compact and the applicabil-
12 ity thereof to any government, agency, person or cir-
13 cumstance shall not be affected thereby. If this
14 compact shall be held contrary to the constitution of
15 any state participating therein, the compact shall
16 remain in full force and effect as to the remaining
17 states and in full force and effect as to the state
18 affected as to all severable matters.

19 §9421. Ratification

20 The Interstate Corrections Compact is hereby
21 enacted into law and entered into by this State with
22 any other states legally joining therein.

23 §9422. Title

24 This subchapter may be cited as the "Interstate
25 Corrections Compact."

26 §9423. Powers

27 The Commissioner of Corrections, subject to the
28 limitations provided under section 9424, is hereby
29 authorized and directed to do all things necessary or
30 incidental to the carrying out of the compact in
31 every particular.

32 §9424. Limitations

33 The commissioner shall carry out the provisions
34 of this compact in accordance with the following.

35 1. Juveniles excluded. For purposes of this
36 compact, no juvenile may be considered an inmate, as
37 defined in section 9402.

1 2. Contracts. Any contracts made with one of
2 the other party states for the confinement of inmates
3 in Maine may provide for cash payments for the costs
4 of the confinement whenever the total days for
5 inmates placed in Maine by that state exceeds by 200
6 the number of days for inmates placed by Maine in
7 that state. Otherwise, all contracts shall provide
8 for an accrual of days earned by the respective
9 states rather than cash payments.

10 3. Inmates. The commissioner may accept an
11 inmate for confinement in Maine if, in the opinion of
12 the commissioner, the inmate has demonstrated ties to
13 this State which would justify the confinement, or
14 the inmate's confinement in this State is in the best
15 interests of the inmate or the State of Maine.

16 4. Transportation. The commissioner may permit
17 any inmate who may be confined in another state under
18 the provisions of the compact to pay the costs of
19 transportation to the receiving state.

20 5. Facilities. The commissioner may not accept
21 any inmate under the provisions of the compact when
22 the confinement of that inmate would cause immedi-
23 ately, or in the near future would be likely to
24 cause, a need for an increase in correctional facili-
25 ties in this State.

26 6. Report. The commissioner shall annually,
27 prior to February 1st, present a report to the joint
28 standing committee of the Legislature having juris-
29 isdiction over health and institutional services de-
30 scribing any actions taken under the provisions of
31 the compact during the previous year.

32 SUBCHAPTER IV

33 INTERSTATE COMPACT ON DETAINERS

34 ARTICLE I

35 AGREEMENT

36 §9601. Purpose and policy--Article I

1 The party states find that charges outstanding
2 against a prisoner, detainers based on untried
3 indictments, informations or complaints, and diffi-
4 culties in securing speedy trials of persons already
5 incarcerated in other jurisdictions, produce uncer-
6 tainties which obstruct programs of prisoner treat-
7 ment and rehabilitation. Accordingly, it is the
8 policy of the party states and the purpose of this
9 agreement to encourage the expeditious and orderly
10 disposition of such charges and determination of the
11 proper status of any and all detainers based on
12 untried indictments, informations or complaints. The
13 party states also find that proceedings with refer-
14 ence to such charges and detainers, when emanating
15 from other jurisdictions, cannot properly be had in
16 the absence of cooperative procedures. It is the
17 further purpose of this agreement to provide such
18 cooperative procedures.

19 §9602. Definitions--Article II

20 As used in this agreement, unless the context
21 clearly requires otherwise, the following terms shall
22 have the following meanings.

23 1. Receiving state. "Receiving state" shall
24 mean the state in which trial is to be had on an
25 indictment, information or complaint pursuant to
26 Article III or Article IV.

27 2. Sending state. "Sending state" shall mean a
28 state in which a prisoner is incarcerated at the time
29 that he initiates a request for final disposition
30 pursuant to Article III or at the time that a request
31 for custody or availability is initiated pursuant to
32 Article IV.

33 3. State. "State" shall mean a state of the
34 United States, the United States of America, a ter-
35 ritory or possession of the United States, the Dis-
36 trict of Columbia or the Commonwealth of Puerto Rico.

37 §9603. Request for final disposition--Article III

38 1. Trial pending. Whenever a person has entered
39 upon a term of imprisonment in a penal or correc-
40 tional institution of a party state, and whenever

1 during the continuance of the term of imprisonment
2 there is pending in any other party state any untried
3 indictment, information or complaint on the basis of
4 which a detainer has been lodged against the pris-
5 oner, he shall be brought to trial within 180 days
6 after he shall have caused to be delivered to the
7 prosecuting officer and the appropriate court of the
8 prosecuting officer's jurisdiction written notice of
9 the place of his imprisonment and his request for
10 final disposition to be made of the indictment,
11 information or complaint, provided that, for good
12 cause shown in open court, the prisoner or his coun-
13 sel being present, the court having jurisdiction of
14 the matter may grant any necessary or reasonable con-
15 tinuance. The request of the prisoner shall be ac-
16 companied by a certificate of the appropriate offi-
17 cial having custody of the prisoner, stating the term
18 of commitment under which the prisoner is being held,
19 the time already served, the time remaining to be
20 served on the sentence, the amount of good time
21 earned, the time of parole eligibility of the pris-
22 oner and any decisions of the state parole agency
23 relating to the prisoner.

24 2. Request for final disposition. The written
25 notice and request for final disposition referred to
26 in subsection 1 shall be given or sent by the pris-
27 oner to the warden, Commissioner of Corrections or
28 other official having custody of him, who shall
29 promptly forward it together with the certificate to
30 the appropriate prosecuting official and court by
31 registered or certified mail, return receipt
32 requested.

33 3. -Notification. The warden, Commissioner of
34 Corrections or other official having custody of the
35 prisoner shall promptly inform him of the source and
36 contents of any detainer lodged against him and shall
37 also inform him of his right to make a request for
38 final disposition of the indictment, information or
39 complaint on which the detainer is based.

40 4. -Application. Any request for final disposi-
41 tion made by a prisoner pursuant to subsection 1
42 shall operate as a request for final disposition of
43 all untried indictments, informations or complaints
44 on the basis of which detainees have been lodged

1 against the prisoner from the state to whose prose-
2 cuting official the request for final disposition is
3 specifically directed. The warden, Commissioner of
4 Corrections or other official having custody of the
5 prisoner shall forthwith notify all appropriate
6 prosecuting officers and courts in the several juris-
7 dictions within the state to which the prisoner's
8 request for final disposition is being sent of the
9 proceeding being initiated by the prisoner. Any
10 notification sent pursuant to this subsection shall
11 be accompanied by copies of the prisoner's written
12 notice, request and the certificate. If trial is not
13 had on any indictment, information or complaint con-
14 templated hereby prior to the return of the prisoner
15 to the original place of imprisonment, such indict-
16 ment, information or complaint shall not be of any
17 further force or effect, and the court shall enter an
18 order dismissing the same with prejudice.

19 5. -Waiver of extradition. Any request for
20 final disposition made by a prisoner pursuant to sub-
21 section 1 shall also be deemed to be a waiver of
22 extradition with respect to any charge or proceeding
23 contemplated thereby or included therein by reason of
24 subsection 1 and a waiver of extradition to the
25 receiving state to serve any sentence there imposed
26 upon him, after completion of his term of imprison-
27 ment in the sending state. The request for final
28 disposition shall also constitute a consent by the
29 prisoner to the production of his body in any court
30 where his presence may be required in order to effec-
31 tuate the purposes of this agreement and a further
32 consent voluntarily to be returned to the original
33 place of imprisonment in accordance with this agree-
34 ment. Nothing in this subsection shall prevent the
35 imposition of a concurrent sentence if otherwise per-
36 mitted by law.

37 6. -Escape. Escape from custody by the prisoner
38 subsequent to his execution of the request for final
39 disposition referred to in subsection 1 shall void
40 the request.

41 §9604. Temporary custody--Article IV

42 1. Request. The appropriate officer of the
43 jurisdiction in which an untried indictment, informa-

1 tion or complaint is pending shall be entitled to
2 have a prisoner against whom he has lodged a detainer
3 and who is serving a term of imprisonment in any
4 party state made available in accordance with Article
5 V, subsection 1, upon presentation of a written
6 request for temporary custody or availability to the
7 appropriate authorities of the state in which the
8 prisoner is incarcerated, provided that the court
9 having jurisdiction of such indictment, information
10 or complaint shall have duly approved, recorded and
11 transmitted the request, and provided further that
12 there shall be a period of 30 days after receipt by
13 the appropriate authorities before the request be
14 honored, within which period the governor of the
15 sending state may disapprove the request for tempo-
16 rary custody or availability, either upon his own
17 motion or upon motion of the prisoner.

18 2. Certificate. Upon receipt of the officer's
19 written request as provided in subsection 1, the
20 appropriate authorities having the prisoner in cus-
21 tody shall furnish the officer with a certificate
22 stating the term of commitment under which the pris-
23 oner is being held, the time already served, the time
24 remaining to be served on the sentence, the amount of
25 good time earned, the time of parole eligibility of
26 the prisoner and any decisions of the state parole
27 agency relating to the prisoner. Said authorities
28 simultaneously shall furnish all other officers and
29 appropriate courts in the receiving state who have
30 lodged detainers against the prisoner with similar
31 certificates and with notices informing them of the
32 request for custody or availability and of the
33 reasons therefor.

34 3. Time of trial. In respect of any proceeding
35 made possible by this Article, trial shall be com-
36 menced within 120 days of the arrival of the prisoner
37 in the receiving state, but, for good cause shown in
38 open court, the prisoner or his counsel being
39 present, the court having jurisdiction of the matter
40 may grant any necessary or reasonable continuance.

41 4. Legality of delivery. Nothing contained in
42 this Article shall be construed to deprive any pris-
43 oner of any right which he may have to contest the
44 legality of his delivery as provided in subsection 1,

1 but such delivery may not be opposed or denied on the
2 ground that the executive authority of the sending
3 state has not affirmatively consented to or ordered
4 such delivery.

5 5. Order dismissing. If trial is not had on any
6 indictment, information or complaint contemplated
7 hereby prior to the prisoner's being returned to the
8 original place of imprisonment pursuant to Article V,
9 subsection 5, such indictment, information or com-
10 plaint shall not be of any further force or effect,
11 and the court shall enter an order dismissing the
12 same with prejudice.

13 §9605. Delivery--Article V

14 1. Request. In response to a request made under
15 Article III or Article IV, the appropriate authority
16 in a sending state shall offer to deliver temporary
17 custody of such prisoner to the appropriate authority
18 in the state where such indictment, information or
19 complaint is pending against such person in order
20 that speedy and efficient prosecution may be had. If
21 the request for final disposition is made by the
22 prisoner, the offer of temporary custody shall accom-
23 pany the written notice provided for in Article III.
24 In the case of a federal prisoner, the appropriate
25 authority in the receiving state shall be entitled to
26 temporary custody as provided by this agreement or to
27 the prisoner's presence in federal custody at the
28 place for trial, whichever custodial arrangement may
29 be approved by the custodian.

30 2. Identification; copy of indictment. The
31 officer or other representative of a state accepting
32 an offer of temporary custody shall present the fol-
33 lowing upon demand:

34 A. Proper identification and evidence of his
35 authority to act for the state into whose tempo-
36 rary custody the prisoner is to be given; and

37 B. A duly certified copy of the indictment,
38 information or complaint on the basis of which
39 the detainer has been lodged and on the basis of
40 which the request for temporary custody of the
41 prisoner has been made.

1 3. Dismissed. If the appropriate authority
2 shall refuse or fail to accept temporary custody of
3 said person, or in the event that an action on the
4 indictment, information or complaint on the basis of
5 which the detainer has been lodged is not brought to
6 trial within the period provided in Article III or
7 Article IV, the appropriate court of the jurisdiction
8 where the indictment, information or complaint has
9 been pending shall enter an order dismissing the same
10 with prejudice, and any detainer based thereon shall
11 cease to be of any force or effect.

12 4. Purpose. The temporary custody referred to
13 in this agreement shall be only for the purpose of
14 permitting prosecution on the charge or charges con-
15 tained in one or more untried indictments, informa-
16 tions or complaints which form the basis of the
17 detainer or detainers or for prosecution on any other
18 charge or charges arising out of the same trans-
19 action. Except for his attendance at court and while
20 being transported to or from any place at which his
21 presence may be required, the prisoner shall be held
22 in a suitable jail or other facility regularly used
23 for persons awaiting prosecution.

24 5. Return. At the earliest practicable time
25 consonant with the purposes of this agreement, the
26 prisoner shall be returned to the sending state.

27 6. Time on sentence. During the continuance of
28 temporary custody or while the prisoner is otherwise
29 being made available for trial as required by this
30 agreement, time being served on the sentence shall
31 continue to run, but good time shall be earned by the
32 prisoner only if, and to the extent that, the law and
33 practice of the jurisdiction which imposed the sen-
34 tence may allow.

35 7. Escape. For all purposes other than that for
36 which temporary custody as provided in this agreement
37 is exercised, the prisoner shall be deemed to remain
38 in the custody of and subject to the jurisdiction of
39 the sending state and any escape from temporary cus-
40 tody may be dealt with in the same manner as an
41 escape from the original place of imprisonment or in
42 any other manner permitted by law.

1 8. Responsibility; costs. From the time that a
2 party state receives custody of a prisoner pursuant
3 to this agreement until such prisoner is returned to
4 the territory and custody of the sending state, the
5 state in which the one or more untried indictments,
6 informations or complaints are pending or in which
7 trial is being had shall be responsible for the pris-
8 oner and shall also pay all costs of transporting,
9 caring for, keeping and returning the prisoner. This
10 subsection shall govern unless the states concerned
11 shall have entered into a supplementary agreement
12 providing for a different allocation of costs and
13 responsibilities as between or among themselves.
14 Nothing in this subsection shall be construed to
15 alter or affect any internal relationship among the
16 departments, agencies and officers of and in the gov-
17 ernment of a party state, or between a party state
18 and its subdivisions, as to the payment of costs, or
19 responsibilities therefor.

20 §9606. Time periods tolled--Article VI

21 In determining the duration and expiration dates
22 of the time periods provided in Articles III and IV,
23 the running of said time periods shall be tolled
24 whenever and for as long as the prisoner is unable to
25 stand trial, as determined by the court having juris-
26 isdiction of the matter.

27 No provision of this agreement, and no remedy
28 made available by this agreement, shall apply to any
29 person who is adjudged to be mentally ill.

30 §9607. Rules and regulations--Article VII

31 Each state party to this agreement shall desig-
32 ate an officer who, acting jointly with like offi-
33 cers of other party states, shall promulgate rules
34 and regulations to carry out more effectively the
35 terms and provisions of this agreement, and who shall
36 provide, within and without the state, information
37 necessary to the effective operation of this agree-
38 ment.

39 §9608. Effective date--Article VIII

1 This agreement shall enter into full force and
2 effect as to a party state when such state has
3 enacted the same into law. A state party to this
4 agreement may withdraw herefrom by enacting a statute
5 repealing the same. However, the withdrawal of any
6 state shall not affect the status of any proceedings
7 already initiated by inmates or by state officers at
8 the time such withdrawal takes effect, nor shall it
9 affect their rights in respect thereof.

10 §9609. Construction--Article IX

11 This agreement shall be liberally construed so as
12 to effectuate its purposes. The provisions of this
13 agreement shall be severable and if any phrase,
14 clause, sentence or provision of this agreement is
15 declared to be contrary to the constitution of any
16 party state or of the United States or the applica-
17 bility thereof to any government, agency, person or
18 circumstance is held invalid, the validity of the
19 remainder of this agreement and the applicability
20 thereof to any government, agency, person or circum-
21 stance shall not be affected thereby. If this agree-
22 ment shall be held contrary to the constitution of
23 any state party hereto, the agreement shall remain in
24 full force and effect as to the remaining states and
25 in full force and effect as to the state affected as
26 to all severable matters.

27 ARTICLE II

28 PROVISIONS RELATING TO AGREEMENT

29 §9631. Designation of courts

30 The phrase "appropriate court" as used in Article
31 I, with reference to the courts of this State, shall
32 mean the District Court or the Superior Court, as
33 applicable.

34 §9632. Enforcement and cooperation by courts and
35 agencies

36 All courts, departments, agencies, officers and
37 employees of this State and its political subdivi-
38 sions shall enforce the agreement on detainees con-
39 tained within Article I and cooperate with one

1 another and with other party states in enforcing the
2 agreement and effectuating its purpose.

3 §9633. Escape

4 Any person, who escapes or attempts to escape
5 from custody while in another state pursuant to Arti-
6 cle I, shall be subject to the penalties provided in
7 Title 17-A, section 755, for escape or attempt to
8 escape from the Maine State Prison.

9 §9634. Chief administrative officer to give over the
10 person of inmate

11 The chief administrative officer of a correc-
12 tional facility in Maine shall give over the person
13 of any inmate thereof whenever so required by the
14 operation of the agreement on detainees.

15 §9635. Commissioner of Corrections to make rules and
16 regulations

17 The Commissioner of Corrections is designated as
18 the officer provided for in section 9607.

19 SUBCHAPTER V

20 UNIFORM ACT FOR OUT-OF-STATE PAROLEE

21 SUPERVISION

22 ARTICLE I

23 COMPACT

24 §9801. Conditions for residence in another
25 state--Article I

26 It shall be competent for the duly constituted
27 judicial and administrative authorities of a state
28 party to this compact, herein called "sending state,"
29 to permit any person convicted of an offense within
30 such state and placed on probation or released on
31 parole to reside in any other state party to this
32 compact, herein called "receiving state," while on
33 probation or paroled, if:

1 1. Resident. Such person is in fact a resident
2 of or has his family residing within the receiving
3 state and can obtain employment there; and

4 2. Consent. Though not a resident of the
5 receiving state and not having his family residing
6 there, the receiving state consents to such person
7 being sent there.

8 Before granting such permission, opportunity
9 shall be granted to the receiving state to investi-
10 gate the home and prospective employment of such
11 person.

12 A resident of the receiving state, within the
13 meaning of this chapter, is one who has been an actu-
14 al inhabitant of such state continuously for more
15 than one year prior to his coming to the sending
16 state and has not resided within the sending state
17 more than 6 continuous months immediately preceding
18 the commission of the offense for which he has been
19 convicted.

20 §9802. Duties of receiving state--Article II

21 Each receiving state will assume the duties of
22 visitation of and supervision over probationers or
23 parolees of any sending state and in the exercise of
24 those duties will be governed by the same standards
25 that prevail for its own probationers and parolees.

26 §9803. Retaking--Article III

27 Duly accredited officers of a sending state may
28 at all times enter a receiving state and there appreh-
29 end and retake any person on probation or parole.
30 For that purpose, no formalities will be required
31 other than establishing the authority of the officer
32 and the identity of the person to be retaken. All
33 legal requirements to obtain extradition of fugitives
34 from justice are expressly waived on the part of the
35 states party hereto as to such persons. The decision
36 of the sending state to retake a person on probation
37 or parole shall be conclusive upon and not reviewable
38 within the receiving state; provided that if at the
39 time when a state seeks to retake a probationer or
40 parolee there should be pending against him within

1 the receiving state any criminal charge, or he should
2 be suspected of having committed within such state a
3 criminal offense, he shall not be retaken without the
4 consent of the receiving state until discharged from
5 prosecution or from imprisonment for such offense.

6 §9804. Transportation of retaken persons--Article IV

7 The duly accredited officers of the sending state
8 will be permitted to transport prisoners being
9 retaken through any and all states party to this com-
10 compact without interference.

11 §9805. Rules and regulations--Article V

12 The governor of each state may designate an offi-
13 cer who, acting jointly with like officers of other
14 contracting states, if and when appointed, shall
15 promulgate such rules and regulations as may be
16 deemed necessary to more effectively carry out the
17 terms of this compact. The officer so designated by
18 the Governor shall have the authorization to appoint
19 such deputy compact administrators as he deems neces-
20 sary to carry out the mandates of this section.

21 §9806. Entry into force--Article VI

22 This compact shall become operative immediately
23 upon its execution by any state as between it and any
24 other state or states so executing. When executed,
25 it shall have the full force and effect of law within
26 such state, the form of execution to be in accordance
27 with the laws of the executing state.

28 §9807. Renunciation--Article VII

29 This compact shall continue in force and remain
30 binding upon each executing state until renounced by
31 it. The duties and obligations of a renouncing state
32 shall continue as to parolees or probationers
33 residing therein at the time of withdrawal until
34 retaken or finally discharged by the sending state.
35 Renunciation of this compact shall be by the same
36 authority which executed it, by sending 6 months'
37 notice in writing of its intention to withdraw from
38 the compact to the other states party hereto.

1 record and make recommendations regarding the dispo-
2 sition to be made of the parolee or probationer by
3 the sending state. Pending any proceeding pursuant
4 to this chapter, the appropriate officers of this
5 State may take custody of and detain the parolee or
6 probationer involved for a period not to exceed 15
7 days prior to the hearing and, if it appears to the
8 hearing officer or officers that retaking or
9 reincarceration is likely to follow, for such reason-
10 able period after the hearing or waiver as may be
11 necessary to arrange for the retaking or
12 reincarceration.

13 §9862. Persons authorized to conduct preliminary
14 hearing

15 Any hearing pursuant to this chapter may be
16 before the compact administrator under Article I or
17 his authorized designee, except that no hearing offi-
18 cer shall be the person making the allegation of
19 violation.

20 §9863. Procedure at preliminary hearing

21 With respect to any hearing pursuant to this
22 chapter, the parolee or probationer:

23 1. Notice. Shall have reasonable notice in
24 writing of the nature and content of the allegations
25 to be made, including notice that its purpose is to
26 determine whether there is probable cause to believe
27 that he has committed a violation that may lead to a
28 revocation of parole or probation;

29 2. Advise. Shall be permitted to advise with
30 any persons whose assistance he reasonably desires,
31 prior to the hearing;

32 3. Confrontation. Shall have the right to con-
33 front and examine any persons who have made allega-
34 tions against him, unless the hearing officer deter-
35 mines that such confrontation would present a sub-
36 stantial present or subsequent danger of harm to such
37 person or persons; and

38 4. Contentions. May admit, deny or explain the
39 violation alleged and may present proof, including

1 affidavits and other evidence, in support of his con-
2 tentions. A record of the proceedings shall be made
3 and preserved.

4 §9864. Reciprocal provisions

5 In any case of alleged parole or probation viola-
6 tion by a person being supervised in another state
7 pursuant to the Uniform Act for Out-of-State Parolee
8 Supervision, any appropriate judicial or administra-
9 tive officer or agency in another state is authorized
10 to hold a hearing on the alleged violation. Upon
11 receipt of the record of a parole or probation viola-
12 tion hearing held in another state pursuant to a
13 statute substantially similar to this chapter, such
14 record shall have the same standing and effect as
15 though the proceeding of which it is a record was had
16 before the appropriate officer or officers in this
17 State, and any recommendations contained in or accom-
18 panying the record shall be fully considered by the
19 appropriate officer or officers of this State in
20 making disposition of the matter.

21 Sec. 7. 34-B MRSA is enacted to read:

22 TITLE 34-B

23 MENTAL HEALTH AND MENTAL RETARDATION

24 CHAPTER 1

25 GENERAL PROVISIONS

26 SUBCHAPTER I

27 DEFINITIONS

28 §1001. Definitions

29 As used in this Title, unless the context other-
30 wise indicates, the following terms have the follow-
31 ing meanings.

32 1. Chief administrative officer. "Chief admin-
33 istrative officer" means the head of a state institu-
34 tion or the head of any other institution which pro-
35 vides services which fall under the jurisdiction of
36 the department.

1 2. Client. "Client" means a person receiving
2 services from the department, from the Bureau of
3 Mental Health, from the Bureau of Mental Retardation,
4 from any state institution or from any agency li-
5 icensed or funded to provide services falling under
6 the jurisdiction of the department.

7 3. Commissioner. "Commissioner" means the Com-
8 missioner of Mental Health and Mental Retardation or
9 his designee, except that when the term "commissioner
10 and only the commissioner" is used, the term applies
11 only to the person appointed Commissioner of Mental
12 Health and Mental Retardation and not to any desig-
13 nee.

14 4. Department. "Department" means the Depart-
15 ment of Mental Health and Mental Retardation.

16 5. Parking area. "Parking area" means land
17 maintained by the State at the state institutions
18 under the jurisdiction of the department, which may
19 be designated as parking areas by the heads of the
20 state institutions.

21 6. Public way. "Public way" means a road or
22 driveway on land maintained by the State at the state
23 institutions under the jurisdiction of the depart-
24 ment.

25 7. Resident. "Resident" means a person residing
26 in a state institution or in any other institution
27 which provides services which fall under the juris-
28 isdiction of the department.

29 8. State institution. "State institution"
30 means:

31 A. The Augusta Mental Health Institute;

32 B. The Bangor Mental Health Institute;

33 C. The Pineland Center;

34 D. The Elizabeth Levinson Center;

35 E. The Aroostook Residential Center; or

1 F. The Military and Naval Children's Home.

2 9. Written political material. "Written political
3 material" means flyers, handbills or other
4 nonperiodical publications which are subject to the
5 restrictions of Title 21, chapter 35.

6 SUBCHAPTER II

7 DEPARTMENT

8 §1201. Establishment

9 There is established a Department of Mental
10 Health and Mental Retardation.

11 1. Cabinet level. The department is a
12 cabinet-level department.

13 2. Commissioner. The department is under the
14 control and supervision of the Commissioner of Mental
15 Health and Mental Retardation.

16 §1202. Office of the commissioner

17 1. Appointment. The Governor shall appoint the
18 Commissioner of Mental Health and Mental Retardation
19 subject to review by the joint standing committee of
20 the Legislature having jurisdiction over health and
21 institutional services and to confirmation by the
22 Senate, to serve at the pleasure of the Governor.

23 2. Vacancy. Vacancies in the office of the com-
24 missioner shall be filled as follows.

25 A. Any vacancy in the office of commissioner
26 shall be filled by appointment under subsection
27 1.

28 B. If the office of the commissioner is vacant
29 or if the commissioner is absent or disabled, the
30 associate commissioner for programs shall perform
31 the duties and have the powers provided by law
32 for the commissioner.

33 C. If the offices of the commissioner and the
34 associate commissioner for programs are vacant or

1 if both officials are absent or disabled, the
2 associate commissioner for administration shall
3 perform the duties and have the powers provided
4 by law for the commissioner.

5 3. Qualifications. To qualify for appointment
6 as commissioner, a person must have training and
7 experience in human services administration or satis-
8 factory experience in the direction of work of a com-
9 parable nature.

10 §1203. Duties of the commissioner

11 In addition to other duties set out in this
12 Title, the commissioner has the following duties.

13 1. General. The commissioner shall have general
14 supervision, management and control of the research
15 and planning, grounds, buildings, property, officers,
16 employees and clients of all state institutions.

17 2. Enforcement of laws. The commissioner shall
18 enforce all laws concerning the institutions within
19 the department, unless specific law enforcement
20 duties are given by law to other persons.

21 3. Rules. Rules shall be established as fol-
22 lows.

23 A. The commissioner shall establish such rules
24 as he may determine appropriate or necessary for
25 the care and management of the property of all
26 state institutions, for the production and dis-
27 tribution of the products of the institutions,
28 for guiding the institutions in determining
29 whether to approve admissions and for the execu-
30 tion of the statutory purposes and functions of
31 the institutions.

32 B. The central principle underlying all rules
33 relating to residents of the institutions within
34 the department is that the residents shall retain
35 all rights of an ordinary citizen, except those
36 expressly or by necessary implication taken from
37 them by law.

1 4. Grievance procedures. The commissioner shall
2 establish procedures for hearing grievances of
3 clients.

4 5. Residential child care facilities. The com-
5 missioner shall approve all programs for the provi-
6 sion of mental health services to residential child
7 care facilities, as defined in Title 22, section
8 8101, subsection 4, and shall participate in licen-
9 sure of these programs in accordance with Title 22,
10 section 8104.

11 6. Sliding fee scale. The commissioner shall
12 provide and establish a sliding fee scale for the
13 provision of center-based developmental day care ser-
14 vices for preschool children with developmental dis-
15 abilities according to the following requirements.

16 A. Services provided under this subsection shall
17 be made available to all eligible preschool chil-
18 dren, regardless of their family income.

19 B. Services to eligible children of individuals
20 and families whose adjusted gross income is at or
21 below 80% of the median personal income for resi-
22 dents of this State shall be made available at no
23 cost to the individual or family.

24 C. A sliding fee scale no higher than the appli-
25 cable scale under Title 22, section 9, subsection
26 3, shall be applied to eligible children of indi-
27 viduals and families whose adjusted gross income
28 is between 80% and 115% of the median personal
29 income for residents of this State.

30 D. A sliding fee scale that is proportionately
31 related to the applicable scale under Title 22,
32 section 9, subsection 3, shall be developed and
33 applied to eligible children of individuals and
34 families whose adjusted gross income is over 115%
35 of the median personal income for residents of
36 this State.

37 E. The commissioner shall coordinate these ser-
38 vices with other state agencies in order to
39 insure that no unnecessary duplication of ser-
40 vices will occur.

1 §1204. Powers of the commissioner

2 In addition to other powers granted in this
3 Title, the commissioner has the following powers.

4 1. General powers. The commissioner may perform
5 any legal act relating to the care, custody, treat-
6 ment, relief and improvement of the residents of
7 state institutions or may purchase residential ser-
8 vices when the department does not provide the appro-
9 priate institutional services for the client.

10 2. Appointments of associate commissioners and
11 other employees. The commissioner's powers to
12 appoint associate commissioners and other employees
13 are as follows.

14 A. The commissioner may appoint, subject to the
15 Personnel Law and except as otherwise provided,
16 any employees who may be necessary.

17 B. The commissioner may appoint and set the sal-
18 aries for an associate commissioner for programs
19 and an associate commissioner for administration
20 to assist in carrying out the responsibilities of
21 the department.

22 (1) Each appointment shall be for an inde-
23 terminate term and until a successor is
24 appointed and qualified or during the pleas-
25 ure of the commissioner.

26 (2) To be eligible for appointment as
27 associate commissioner for programs, a
28 person shall have training and experience in
29 the planning and administration of human
30 services.

31 (3) To be eligible for appointment as
32 associate commissioner for administration,
33 a person shall have training and experience
34 in general management.

35 3. Delegation. The commissioner's delegation
36 powers are as follows.

1 A. The commissioner may delegate powers and
2 duties given under this Title to the associate
3 commissioners, bureau directors and chief admin-
4 istrative officers of state institutions.

5 B. The commissioner may empower the associate
6 commissioners, bureau directors and chief admin-
7 istrative officers of state institutions to fur-
8 ther delegate powers and duties delegated to them
9 by the commissioner.

10 4. Funding sources. The commissioner may apply
11 for and accept from any other agency of government,
12 person, group or corporation any funds which may be
13 available in carrying out this Title.

14 5. Lease of unused buildings. The commissioner
15 may, with the approval of the Director of Public
16 Improvements, lease unused buildings at the state
17 institutions for the purposes of providing services
18 to departmental clients.

19 A. The leases shall be for a period not to
20 exceed one year.

21 B. The commissioner shall submit a plan of the
22 proposed leases and their impact on the insti-
23 tutions and departmental clients to the joint
24 standing committee having jurisdiction over
25 health and institutional services no later than
26 January 31st of each year.

27 6. Nurse training. The commissioner may provide
28 for the training of nurses.

29 §1205. Office of Advocacy

30 1. Establishment. The Office of Advocacy is
31 established within the department to investigate the
32 claims and grievances of clients of the department
33 and to advocate for compliance by any institution,
34 other facility or agency administered by the depart-
35 ment with all laws, administrative rules and institu-
36 tional and other policies relating to the rights and
37 dignity of clients.

38 2. Chief advocate. A chief advocate shall
39 direct and coordinate the program of the office.

1 A. The chief advocate shall report only to the
2 commissioner.

3 B. The chief advocate shall, with the approval
4 of the commissioner, select other advocates
5 needed to carry out the intent of this section,
6 who shall report only to the chief advocate.

7 C. Both the chief advocate and all other advo-
8 cates shall be classified state employees.

9 3. Duties. The Office of Advocacy, through the
10 chief advocate and the other advocates, shall:

11 A. Receive or refer complaints made by clients
12 of the department;

13 B. Intercede on behalf of these clients with
14 officials of the institutions, facilities and
15 agencies administered by the department or assist
16 these clients in the initiation of grievance pro-
17 ceedings established by the commissioner under
18 section 1203, subsection 4, except that the
19 Office of Advocacy may refuse to take action on
20 any complaint which it deems to be trivial or
21 moot or for which there is clearly another remedy
22 available;

23 C. As an information source regarding the rights
24 of all clients, keep itself informed about all
25 laws, administrative rules and institutional and
26 other policies relating to the rights and dignity
27 of the clients and about relevant legal decisions
28 and other developments related to the field of
29 mental health and mental retardation, both in
30 this State and in other parts of the country; and

31 D. Make and publish reports necessary to the
32 performance of the duties described in this
33 section, except that only the chief advocate may
34 report any findings of the office to groups out-
35 side the department, such as legislative bodies,
36 advisory committees to the Governor, boards of
37 visitors, law enforcement agencies and the press.

38 4. Access to files and records. The Office of
39 Advocacy, through the chief advocate and the other

1 advocates, has access, limited only by the law, to
2 the files, records and personnel of any institution,
3 facility or agency administered by the department.

4 5. Confidentiality. Requests for action shall
5 be treated confidentially as follows.

6 A. Any client request for action by the office
7 and all written records or accounts related to
8 the request shall be confidential as to the iden-
9 tity of the client.

10 B. The records and accounts may be released only
11 as provided by law.

12 §1206. Confidentiality of information

13 1. Generally. All orders of commitment, medical
14 and administrative records, applications and reports,
15 and facts contained in them, pertaining to any client
16 shall be kept confidential and may not be disclosed
17 by any person, except that:

18 A. A client, his legal guardian, if any, or, if
19 he is a minor, his parent or legal guardian may
20 give his informed written consent to the disclo-
21 sure of information, if he has been given the
22 opportunity to review the information sought to
23 be disclosed;

24 B. Information may be disclosed if necessary to
25 carry out any of the statutory functions of the
26 department, the hospitalization provisions of
27 chapter 3, subchapter IV or the purposes of Title
28 22, section 3554, dealing with the investigatory
29 function of the Protection and Advocacy Agency of
30 the Developmentally Disabled in Maine;

31 C. Information may be disclosed if ordered by a
32 court of record, subject to any limitation in the
33 Maine Rules of Evidence, Rule 503;

34 D. Nothing in this subsection precludes disclo-
35 sure, upon proper inquiry, of information relat-
36 ing to the physical condition or mental status of
37 a client to his spouse or next of kin;

1 E. Nothing in this subsection precludes the dis-
2 closure of biographical or medical information
3 concerning a client to commercial or governmental
4 insurers, or to any other corporation, associa-
5 tion or agency from which the department or a
6 licensee of the department may receive reimburse-
7 ment for the care and treatment, education,
8 training or support of the client, if the recip-
9 ient of the information uses it for no other pur-
10 pose than to determine eligibility for reimburse-
11 ment and, if eligibility exists, to make reim-
12 bursement; and

13 F. Nothing in this subsection precludes the dis-
14 closure or use of any information, including
15 recorded or transcribed diagnostic and
16 therapeutic interviews, concerning any client in
17 connection with any educational or training pro-
18 gram established between a public hospital and
19 any college, university, hospital, psychiatric or
20 counseling clinic or school of nursing, if, in
21 the disclosure or use of the information as part
22 of a course of instruction or training program,
23 the client's identity remains undisclosed.

24 2. Statistical compilations and
25 research. Confidentiality of records used for sta-
26 tistical compilations or research is governed as fol-
27 lows.

28 A. Persons engaged in statistical compilation or
29 research may have access to treatment records of
30 clients when needed for research, if:

31 (1) The access is provided by the chief
32 administrative officer of the mental health
33 facility or his designee;

34 (2) The research plan is first submitted to
35 and approved by the chief administrative
36 officer of the mental health facility, or
37 his designee, where the person engaged in
38 research or statistical compilation is to
39 have access to communications and records;
40 and

1 (3) The records are not removed from the
2 mental health facility which prepared them,
3 except that data which does not identify
4 clients or coded data may be removed from a
5 mental health facility if the key to the
6 code remains on the premises of the facil-
7 ity.

8 B. The chief administrative officer of the
9 mental health facility and the person doing the
10 research shall preserve the anonymity of the
11 client and may not disseminate data which refers
12 to the client by name, number or combination of
13 characteristics which together could lead to his
14 identification.

15 3. Use by the commissioner. Confidentiality of
16 information and records used by the commissioner for
17 administration, planning or research is governed as
18 follows.

19 A. Any facility licensed by the department under
20 section 3606 or a facility which receives funds
21 from the department or has received or is receiv-
22 ing funds under the Mental Retardation and Commu-
23 nity Mental Health Centers Construction Act of
24 1963, Public Law 88-164, as amended, shall send
25 information and records to the commissioner, if
26 requested by the commissioner pursuant to his
27 obligation to maintain the overall responsibility
28 for the care and treatment of the mentally ill.

29 B. The commissioner may collect and use the
30 information and records for administration, plan-
31 ning or research, under the following conditions.

32 (1) The use of the information is subject
33 to subsection 1, paragraph C.

34 (2) Data identifying particular clients by
35 means other than case number or code shall
36 be removed from all records and reports of
37 information before issuance from the mental
38 health facility which prepared the records
39 and reports.

1 (3) A code shall be the exclusive means of
2 identifying clients and shall be available
3 to the commissioner and only the commis-
4 sioner.

5 (4) The key to the code shall remain in the
6 possession of the issuing facility and shall
7 be available to the commissioner and only
8 the commissioner.

9 (5) Members of the department may not
10 release or disseminate to any other person,
11 agency or department of government any
12 information which refers to a client by
13 name, numbers, address, birth date or other
14 characteristics or combination of character-
15 istics which could lead to the client's
16 identification, except as otherwise required
17 by law.

18 4. Prohibited acts. Prohibited acts under this
19 section are governed as follows.

20 A. A person is guilty of unlawful disclosure of
21 information if he disseminates, releases or dis-
22 closes information in violation of this section.

23 B. Unlawful disclosure of information is a Class
24 D crime.

25 §1207. Agreements with community agencies

26 1. Definitions. As used in this section, unless
27 the context indicates otherwise, the following terms
28 have the following meanings.

29 A. "Agreement" means a legally binding document
30 between 2 parties, including documents commonly
31 referred to as accepted application, proposal,
32 prospectus, contract, grant, joint or cooperative
33 agreement, purchase of service or state aid.

34 B. "Community agency" means a person, a state
35 governmental or private nonprofit organization or
36 a firm, partnership or business corporation oper-
37 ated for profit, which operates a human service
38 program at the community level.

1 C. "Funds" means any and all general funds, ded-
2 icated funds, fees, special revenue funds, 3rd
3 party reimbursements, vendor payments or other
4 funds available for expenditure by the department
5 in support of the provision of a human service.

6 D. "Human service" means any alcoholism, chil-
7 dren's community action, corrections, criminal
8 justice, developmental disability, donated food,
9 education, elderly, food stamp, income mainte-
10 nance, health, juvenile, law enforcement, legal,
11 medical care, mental health, mental retardation,
12 poverty, public assistance, rehabilitation,
13 social, substance abuse, transportation, welfare
14 or youth service operated by a community agency
15 under an agreement financially supporting the
16 service, wholly or in part, by funds authorized
17 for expenditure by the department.

18 E. "Nonprofit organization" means any agency,
19 institution or organization which is, or is owned
20 and operated by, one or more corporations or
21 associations, no part of the net earnings of
22 which inures, or may lawfully inure, to the benef-
23 it of any private shareholder or individual and
24 which has a territory of operations that may
25 extend to a neighborhood, community, region or
26 the State.

27 2. Commissioner's powers. The commissioner may
28 disburse funds to a community agency for the purpose
29 of financially supporting a human service, only if
30 the disbursement is covered by a written agreement
31 between the department and the agency, specifying at
32 least the following:

33 A. The human service to be provided by the com-
34 munity agency;

35 B. The method of payment by the department to
36 the community agency; and

37 C. The criteria for monitoring and evaluating
38 the performance of the community agency in the
39 provision of the human service.

40 3. Commissioner's duties. The commissioner's
41 duties are as follows.

1 A. The commissioner shall promulgate rules con-
2 sistent with and necessary for the effective
3 administration of this section.

4 B. When making agreements with community agen-
5 cies for the provision of a human service, the
6 commissioner shall use agreement forms and shall
7 develop uniform procedures.

8 C. When disbursing funds pursuant to an agree-
9 ment, the commissioner shall require uniform ac-
10 counts payable forms or uniform supporting docu-
11 mentation and information.

12 D. When accounting for funds disbursed under an
13 agreement, the commissioner shall use uniform ac-
14 counting principles, policies and procedures.

15 §1208. Mental Health Advisory Council

16 1. Establishment. The Governor, with the advice
17 of the commissioner, shall establish a Mental Health
18 Advisory Council and appoint its membership.

19 2. Membership. Membership on the Mental Health
20 Advisory Council is determined as follows.

21 A. The membership of the council shall consist
22 of 30 persons, including:

23 (1) Representatives of consumers of mental
24 health services, including clients and their
25 families;

26 (2) Providers of mental health services;

27 (3) Persons who are concerned with the
28 planning, operation or use of mental health
29 services or facilities and who are repre-
30 sentatives of nongovernmental organizations
31 or groups; and

32 (4) Representatives of agencies of State
33 Government.

34 B. A majority, but no more than 60% of the mem-
35 bers of the council, shall be neither direct nor
36 indirect providers of mental health services.

1 (1) Consumers who are identified as
2 nonprovider members of community mental
3 health center boards may be considered as
4 nonproviders for the purpose of serving on
5 the council.

6 (2) The nonprovider consumer class of
7 membership shall include, where possible,
8 but not be limited to, persons who have been
9 beneficiaries of the services of a public
10 mental hospital or community mental health
11 center, representatives of patient organiza-
12 tions and representatives of patient advo-
13 cacy groups.

14 C. No less than 40% of the members of the coun-
15 cil shall be direct or indirect providers of
16 mental health services and the provider group
17 shall include persons from both governmental and
18 nongovernmental mental health service agencies.

19 D. Both provider and consumer members shall be
20 representative of the social, economic,
21 linguistic and racial groups residing in the
22 State and of the geographic areas of the State.

23 3. Term. The Governor shall appoint members of
24 the council for terms of 3 years, except that:

25 A. Of the members first appointed, 1/3 shall be
26 appointed for terms of 3 years, 1/3 shall be
27 appointed for terms of 2 years and 1/3 shall be
28 appointed for terms of one year, as designated by
29 the Governor at the time of appointment; and

30 B. Any member appointed to fill a vacancy occur-
31 ring prior to the expiration of the term for
32 which his predecessor was appointed shall be
33 appointed only for the remainder of the term.

34 4. Vacancy. Vacancies in the council are gov-
35 erned as follows.

36 A. A vacancy in the council shall be filled in
37 the same manner by which the original appointment
38 was made.

1 B. A vacancy in the council does not affect the
2 council's powers.

3 5. Chairman. The membership of the council
4 shall elect a chairman.

5 6. Meetings. The council shall meet at least
6 quarterly.

7 7. Duties. The council shall act in an advisory
8 capacity to the commissioner in the development of
9 the state mental health plan and in the appointment
10 of a Director of the Bureau of Mental Health.

11 §1209. Maine Committee on the Problems of the Men-
12 tally Retarded

13 There is established the Maine Committee on the
14 Problems of the Mentally Retarded.

15 1. Composition. The committee shall consist of
16 12 members to be appointed as follows:

17 A. One member from the House of Representatives
18 appointed by the Speaker of the House of Repre-
19 sentatives;

20 B. One member from the Senate appointed by the
21 President of the Senate;

22 C. The President of the Maine Association for
23 Retarded Citizens; and

24 D. Nine representative citizens appointed by the
25 Governor.

26 2. Chairman. The Governor shall designate the
27 chairman of the committee.

28 3. Duration of appointments. The duration of
29 appointments shall be as follows.

30 A. Gubernatorial appointments shall be for terms
31 of 3 years, plus the time period until a succes-
32 sor is appointed.

1 B. Legislative appointments shall be for the
2 legislative term of office of the person
3 appointed.

4 4. Compensation. Members of the committee shall
5 serve without pay, but shall be reimbursed for
6 expenses on the same basis as state employees.

7 5. Duties. The committee shall act in an advi-
8 sory capacity to the commissioner and to the Director
9 of the Bureau of Mental Retardation in assessing
10 present programs, planning future programs and devel-
11 oping means to meet the needs of the mentally
12 retarded in Maine.

13 §1210. State Planning and Advisory Council on Devel-
14 opmental Disabilities

15 1. Establishment. The Governor shall establish
16 a State Planning and Advisory Council on Developmen-
17 tal Disabilities.

18 2. Appointments. Appointments to the council
19 are governed as follows.

20 A. The Governor shall appoint appropriate repre-
21 sentatives to the council as are required as a
22 condition of eligibility for benefits under the
23 "Amendments to the Developmental Disabilities
24 Services and Facilities Construction Act of
25 1978," Public Law 93-288, United States Code,
26 Title 42, Section 6000 et seq.

27 B. The Governor shall ensure that there is at
28 least one representative from each of the regions
29 established by the department, except that
30 regional representatives may not be in addition
31 to those required by the United States Code,
32 Public Law 93-288.

33 3. Duties. The council shall consult with and
34 coordinate with the commissioner in carrying out the
35 purposes of the program established under the federal
36 act specified in subsection 2.

37 4. Departmental role. The department's role
38 under this section is as follows.

1 A. Except where a single state agency is other-
2 wise designated or established in accordance with
3 any other state law, the department is designated
4 to be the sole agency of the State:

5 (1) To develop jointly with the council the
6 statewide plan required by the federal act
7 specified in subsection 2; and

8 (2) To be the sole administering agency for
9 that plan, which plan is now or may later be
10 required as a condition to the eligibility
11 for benefits under the federal act specified
12 in subsection 2.

13 B. The department may receive, administer and
14 expend any funds that may be available under the
15 federal act specified in subsection 2 or from any
16 other sources, public or private, for those pur-
17 poses.

18 SUBCHAPTER III

19 INSTITUTIONS GENERALLY

20 ARTICLE I

21 ADMINISTRATIVE PROVISIONS

22 §1401. Chief administrative officers

23 1. Appointment. The commissioner may appoint
24 chief administrative officers of state institutions
25 as necessary for the proper performance of the func-
26 tions of the department.

27 A. To be eligible for appointment as a chief
28 administrative officer of a state institution, a
29 person shall be experienced in the management of
30 the particular type of institution to which he is
31 to be assigned.

32 B. Chief administrative officers of state insti-
33 tutions shall report directly to the commis-
34 sioner.

1 2. Acting chief administrative officer.
2 Notwithstanding any other provision of law, the
3 commissioner may delegate any employee of the depart-
4 ment to serve as the acting chief administrative
5 officer of any state institution, if the office of
6 the chief administrative officer of any state insti-
7 tution is vacant.

8 A. The acting chief administrative officer shall
9 serve for a period not to exceed 180 days.

10 B. Service as the acting chief administrative
11 officer of a state institution is considered a
12 temporary additional duty for the person so dele-
13 gated.

14 §1402. Bureaus for community service

15 1. Commissioner's duty. In every state institu-
16 tion to which a mentally ill or mentally retarded
17 person may be committed, the commissioner shall
18 organize and administer under his direction a bureau
19 for community service in the district served by the
20 institution.

21 2. Bureau's duties. Each bureau for community
22 service shall:

23 A. Supervise clients who have left the institu-
24 tion with a view of their safe care at home,
25 suitable employment and self-support under good
26 working and living conditions, and with a view to
27 prevention of their relapse and return to public
28 dependency;

29 B. Provide for informing and advising any indi-
30 gent person, his relatives or friends and the
31 representatives of any charitable agency as to:

32 (1) The mental condition of the indigent
33 person;

34 (2) The prevention and treatment of the
35 condition;

36 (3) The available institutions or other
37 means of caring for the afflicted person;
38 and

1 (4) Any other matter relative to the wel-
2 fare of the person; and

3 C. Acquire and disseminate knowledge of mental
4 disease, mental retardation and allied conditions
5 with a view to promoting a better understanding
6 and the most enlightened public sentiment and
7 policy in these matters, and in this work the
8 bureau may cooperate with local authorities,
9 schools and social agencies.

10 §1403. Boards of visitors

11 1. Appointment. The Governor shall appoint a
12 board of 5 visitors for each state institution under
13 the department and for the Governor Baxter School for
14 the Deaf within the Department of Educational and
15 Cultural Services.

16 A. The term of the visitors is for one year.

17 B. Members of boards of visitors are eligible
18 for reappointment at the expiration of their
19 terms.

20 C. No member of the Legislature may serve on any
21 board of visitors.

22 D. Members of boards of visitors are not enti-
23 tled to compensation.

24 2. Powers. Each board of visitors may inspect
25 the institution to which it is assigned and may make
26 recommendations on the management of the institution
27 to the commissioner.

28 3. Duties. Boards of visitors have the follow-
29 ing duties.

30 A. Boards of visitors shall send copies of all
31 recommendations to the members of the joint
32 standing committee of the Legislature having
33 jurisdiction over health and institutional ser-
34 vices.

35 B. Each board of visitors shall appear before
36 the joint standing committee of the Legislature

1 having jurisdiction over health and institutional
2 services upon request.

3 §1404. Legal actions

4 1. Contract actions. Actions founded on any
5 contract made with the State Purchasing Agent, or
6 with any official of the department under the author-
7 ity granted by the State Purchasing Agent, on behalf
8 of any of the state institutions may be brought by
9 the official making the contract or his successor in
10 office.

11 2. Actions for injuries to property. Actions
12 for injuries to the real or personal property of the
13 State, used by any state institution and under the
14 management of the chief administrative officer of the
15 institution, may be prosecuted in the name of the
16 officer or his successor in office.

17 §1405. Emergencies

18 When emergency situations are certified by the
19 chief administrative officer of a state institution
20 to exist at the institution, the commissioner may,
21 with the approval of the Governor, assign departmen-
22 tal personnel as may be necessary to assist in con-
23 trolling the emergency situation.

24 1. Temporary assignment. The assignment of per-
25 sonnel shall be only for the period during which the
26 emergency exists.

27 2. Compensation. Any personnel transferred are
28 entitled to receive compensation as required by the
29 Personnel Law, rules and contract terms.

30 §1406. Improper conduct of institutional officers

31 The commissioner may inquire into any improper
32 conduct imputed to state institutional officers in
33 relation to the concerns of their institutions, and
34 for that purpose may:

35 1. Subpoenas. Issue subpoenas for witnesses and
36 compel their attendance and the production of papers
37 and writings by punishment for contempt in case of
38 willful failure, neglect or refusal;

1 2. Examination of witnesses. Examine witnesses
2 under oath; and

3 3. Adjudication. Adjudicate cases of alleged
4 improper conduct in a manner similar to and with
5 similar effect as cases of arbitration.

6 §1407. Appointment of physician

7 In every state institution to which a mentally
8 ill or mentally retarded person may be committed, the
9 commissioner shall appoint a physician experienced in
10 the care and treatment of such persons and the neces-
11 sary assistants to the physician.

12 §1408. Cooperation with state departments

13 Whenever it is deemed advisable, the chief admin-
14 istrative officer of any institution for the mentally
15 ill or mentally retarded may cooperate with state
16 departments to examine upon request and recommend
17 suitable treatment and supervision for:

18 1. Mental or nervous disorder. Persons thought
19 to be afflicted with a mental or nervous disorder;

20 2. School children. School children who are
21 nervous, psychopathic, retarded, defective or
22 incorrigible; and

23 3. Juvenile Court. Children brought before any
24 Juvenile Court.

25 §1409. Payment for care and treatment of residents

26 1. Definitions. As used in this section, unless
27 the context otherwise indicates, the following terms
28 have the following meanings.

29 A. "Care and treatment" includes all goods and
30 services provided, or caused to be provided, to a
31 resident by the State.

32 B. "Liable person" means a person liable for the
33 care and treatment of a resident under subsection
34 3.

1 2. Charges. Charges under this section are gov-
2 erned as follows.

3 A. The commissioner shall establish charges for
4 the care and treatment of residents at any state
5 institution.

6 B. Charges made under this section are a debt of
7 the resident, or any person legally liable for
8 the resident's care and treatment under this
9 section, and are recoverable in any court of com-
10 petent jurisdiction in a civil action brought in
11 the name of the State.

12 3. Liabile persons. Each resident, his spouse,
13 his adult child and his parent are jointly and sever-
14 ally liable for the care and treatment of the resi-
15 dent, whether the resident was committed or otherwise
16 legally admitted, from the date of the resident's
17 admission to a state institution, except that:

18 A. A parent is not liable for a child resident's
19 care and treatment, unless the child resident was
20 wholly or partially dependent for support upon
21 the parent at the time of admission;

22 B. A child is not liable for a parent resident's
23 care and treatment, if:

24 (1) The parent resident willfully failed to
25 support the child prior to the child's 18th
26 birthday; and

27 (2) The child provides the department with
28 clear and convincing evidence substantiating
29 such a claim; and

30 C. The department may not charge any parent for
31 the care and treatment of a child resident beyond
32 the child's 18th birthday, or beyond 6 months
33 from the date of the child's admission, whichever
34 occurs later.

35 4. Financial statement forms. Financial state-
36 ment forms are governed as follows.

37 A. The commissioner shall prescribe financial
38 statement forms which shall be completed by:

- 1 (1) The resident;
2 (2) Any person liable for the resident's
3 care and treatment under this section; or
4 (3) Any fiduciary acting on behalf of the
5 resident or person liable for the resident.

6 B. The form in each case shall be witnessed.

7 5. Determination of ability to pay. After a
8 resident is admitted into any state institution, the
9 department shall:

10 A. Investigate to determine what property, real
11 and personal, the resident has, and, in determin-
12 ing ability to pay, the department shall consider
13 all income, debts, expenses, obligations and the
14 number and condition of dependents; and

15 B. Investigate to determine whether there exist
16 any persons liable under subsection 3 for the
17 payment of charges for the resident's care and
18 treatment.

19 (1) The department shall ascertain the
20 financial condition of the persons, if any,
21 and shall determine whether each person is
22 financially able to pay the charges.

23 (2) In determining the person's ability to
24 pay, the department shall consider all
25 income, debts, expenses, obligations and the
26 number and condition of dependents.

27 6. Obtaining information. The obtaining of
28 information under this section is governed as fol-
29 lows.

30 A. Every agency and department of the State
31 shall render all reasonable assistance to the
32 department in obtaining all information necessary
33 for the proper implementation of the purposes of
34 this section.

35 B. To carry out the purposes of this section,
36 the commissioner may administer oaths, take

1 testimony, subpoena and compel the attendance of
2 witnesses, and subpoena and compel the production
3 of books, papers, records and documents deemed
4 material or pertinent in connection with the com-
5 missioner's duty of securing payments for care
6 and treatment as provided in this section.

7 (1) Any person failing to obey a subpoena
8 may, upon petition of the commissioner to
9 any Justice of the Superior Court, be
10 ordered by the justice to appear and show
11 cause for his disobedience of the subpoena.

12 (2) The justice, after hearing, may order
13 that the subpoena be obeyed or, if it is
14 made to appear to the justice that the sub-
15 poena was for any reason inappropriately
16 issued, may dismiss the petition.

17 C. Upon request of the commissioner, banking
18 organizations, insurance companies, brokers or
19 fiduciaries shall furnish to the commissioner
20 full information concerning the earnings of,
21 income of, funds deposited to the credit of or
22 funds owing to any resident, or any person liable
23 under subsection 3 for the resident.

24 (1) The information shall be provided in
25 writing and shall be duly certified.

26 (2) The certified statement is admissible
27 in evidence in any action or proceeding to
28 compel payment for the care and treatment of
29 the resident.

30 (3) The certified statement is prima facie
31 evidence of the facts stated in the state-
32 ment.

33 7. Inability to pay. When it is determined that
34 any resident or liable person is unable to pay all or
35 part of the charges for care and treatment, the com-
36 missioner may cancel, suspend or reduce charges in
37 accordance with the resident's or liable person's
38 ability to pay.

1 8. Postponement of billing. The commissioner
2 may enter into an agreement with any resident or lia-
3 ble person to postpone billing for care and treatment
4 for any period of time.

5 9. Benefit payments. The chief administrative
6 officer of any state institution may receive as payee
7 any benefits from social security, veterans' adminis-
8 tration, railroad retirement or any other like bene-
9 fits paid on behalf of any resident.

10 A. The chief administrative officer shall apply
11 the benefits toward the care and treatment of the
12 resident in accordance with charges made by the
13 department.

14 B. Any surplus from the payments shall be held
15 in a personal account at the hospital in the name
16 of the resident and shall be available for the
17 resident's personal needs.

18 10. Claims against estates. The State has a
19 claim against the estate of any resident, and the
20 estate of any liable person, for any amount due to
21 the State at the date of death of the resident or the
22 liable person, including any claim arising under an
23 agreement entered into under this section, enforce-
24 able in the Probate Court.

25 A. The state's claim has priority over all unse-
26 cured claims against the estate, except:

27 (1) Administrative expenses, including pro-
28 bate fees and taxes;

29 (2) Expenses of the last sickness; and

30 (3) Funeral expenses, not exceeding \$400,
31 exclusive of the clergymen's honorarium and
32 cemetery expenses.

33 B. The Attorney General shall collect any claim
34 which the State may have against the estate.

35 C. The State may not enforce a claim against any
36 real estate while it is occupied as a home by the
37 surviving spouse of the resident or liable person

1 and while the surviving spouse remains unmarried.

2 11. Reimbursement of providers. Notwithstanding
3 any other law, if part of the care and treatment of a
4 resident under this section is provided by a party
5 other than the State, the commissioner shall pay to
6 the other party, from the fee collected by the
7 department for the care and treatment of the resi-
8 dent, the portion of those costs borne by the other
9 party in the same ratio as the fee collected to the
10 total charge made, except that:

11 A. This subsection may not be construed as a
12 limitation on compensation for providers of resi-
13 dent care and treatment; and

14 B. This subsection may not be construed as a
15 limitation on contractual arrangements between
16 the providers and the State.

17 12. Prohibited acts. A person is guilty of con-
18 tempt if he fails to obey a subpoena when ordered to
19 do so by a Justice of the Superior Court under sub-
20 section 6, upon application by the commissioner to
21 the Superior Court for an order of contempt.

22 §1410. Posting of political material

23 The chief administrative officer of each state
24 institution shall provide in at least one accessible
25 area in each institution an appropriate space for the
26 posting of written political material sent for that
27 purpose to the chief administrative officer by candi-
28 dates for state or federal office.

29 1. One item limit. Not more than one item of
30 written political material may be posted in one place
31 on behalf of any one candidate.

32 2. Removal. Written political material shall be
33 removed after the elections for which it is intended
34 for use.

35 3. Voting place. If there is a voting place
36 within the institution, the posting place may not be
37 located within 250 feet of the entrance to the voting
38 place.

1 4. Violation. The posting of written political
2 material under this section is not a violation of
3 Title 21, section 1575-A or section 1579, subsection
4 7.

5 §1411. Public ways and parking areas

6 1. Rules. The chief administrative officers of
7 state institutions may promulgate and enforce rules,
8 subject to the approval of the commissioner, govern-
9 ing the use of public ways and parking areas main-
10 tained by the State at the state institutions.

11 A. The rules shall be promulgated in accordance
12 with the Maine Administrative Procedure Act,
13 Title 5, chapter 375.

14 B. The Secretary of State shall forward a copy
15 of the rules, attested under the Great Seal of
16 the State, to the District Court in the area of
17 jurisdiction.

18 2. Special police officers. The chief adminis-
19 trative officers of state institutions may appoint
20 and employ, subject to the Personnel Law, special
21 police officers for the purpose of enforcing rules
22 promulgated under subsection 1.

23 A. The special police officers shall:

24 (1) Patrol all the public ways and parking
25 areas subject to this section;

26 (2) Enforce rules promulgated under this
27 section; and

28 (3) Arrest and prosecute violators of the
29 rules.

30 B. The State Police, sheriffs, deputy sheriffs,
31 police officers and constables who have jurisdic-
32 tion over the areas in which the institutions are
33 located shall, insofar as possible, cooperate
34 with the special police officers in the enforce-
35 ment of the rules promulgated under subsection 1.

1 3. Court procedure. The District Court in the
2 areas in which the institutions are located has
3 jurisdiction in all proceedings brought under this
4 section.

5 A. The District Court shall take judicial notice
6 of all rules promulgated under subsection 1.

7 B. In any prosecution for a violation of the
8 rules, the complaint may allege the offense as in
9 prosecutions under a general statute and need not
10 recite the rule.

11 4. Prohibited acts. Prohibited acts under this
12 section are governed as follows.

13 A. A person is guilty of a public way or parking
14 violation if he violates any rule promulgated
15 pursuant to this section.

16 B. Upon conviction of a public way or parking
17 violation, a person shall pay a fine as follows:

18 (1) For the first offense in any calendar
19 year, a fine of \$1;

20 (2) For the 2nd offense in any calendar
21 year, a fine of \$2; and

22 (3) For each offense in excess of 2 in any
23 calendar year, a fine of \$5.

24 C. Notwithstanding any other law, the fines and
25 costs of court paid under this section shall
26 inure to the municipality in which the proceed-
27 ings take place.

28 D. Offenses not covered by the rules promulgated
29 under subsection 1 shall be dealt with as other-
30 wise provided by law.

31 §1412. Military and Naval Children's Home

32 1. Departmental control. The department shall
33 have charge of the affairs of the Military and Naval
34 Children's Home.

1 2. Chief administrative officer. The chief
2 administrative officer of the Military and Naval
3 Children's Home is called the superintendent.

4 3. Purpose. The purpose of the Military and
5 Naval Children's Home is the shelter and care of
6 children of this State who are in need of shelter and
7 care for one or more of the following reasons:

8 A. Lack of appropriate alternative shelter and
9 care;

10 B. Potential or actual abuse and neglect; or

11 C. Family crisis and upheaval.

12 4. Veteran's preference. Preference in admis-
13 sion to the Military and Naval Children's Home shall
14 be given to the children of veterans of Maine who
15 have served in the various wars in which the United
16 States has been engaged.

17 5. Training programs. Any child in residence at
18 the Military and Naval Children's Home, who at the
19 expiration of his minority is a participant in an
20 educational or vocational training program, the
21 interruption or cessation of which will be caused by
22 discharge from the home, may, with the approval of
23 the superintendent, voluntarily elect to remain in
24 residence at the home until completion of all or part
25 of the educational or vocational training program.

26 §1413. Residential facility for children

27 1. Stevens School. The department has control
28 over the facility formerly known as the Stevens
29 School, located at Hallowell.

30 2. Commissioner's power. The commissioner,
31 after consulting with the Commissioner of Human Ser-
32 vices, the Commissioner of Educational and Cultural
33 Services and other public and private agencies,
34 including community mental health centers, and with
35 the approval of the Governor, may make any arrange-
36 ments he deems necessary, with funds available to the
37 department, for the establishment and maintenance of
38 a residential facility, located at the site of the

1 facility formerly known as the Stevens School, pro-
2 viding a broad range of educational, psychological
3 and other related services to children with severe
4 emotional, mental and behavioral disturbances.

5 3. Budget report. Before January 15th of each
6 year after a facility has been established under sub-
7 section 2, the commissioner shall send a budget
8 report for the facility to the Legislature and the
9 report shall include for the current, past and next
10 year:

11 A. The actual and estimated amount of all reve-
12 nuces available to the facility, by sources;

13 B. The actual and estimated amounts of expendi-
14 tures, shown by object of the expenditure and by
15 program;

16 C. A list of programs, the objectives of each
17 program and a description and evaluation of ac-
18 tivities to attain the objectives, including a
19 statement of the number of clients served;

20 D. The name and address of any contractor or
21 subcontractor or, for contracts not yet entered
22 into, a description of the nature of the contrac-
23 tor's or subcontractor's business and the ser-
24 vices to be provided by each, if the names and
25 addresses are not known;

26 E. A description of the terms of any contract,
27 including a description of services to be pro-
28 vided, indicating when they are to be performed
29 and to whom the final product or services have
30 been or will be provided; and

31 F. A listing of the total amount to be paid
32 under any contract and the times and conditions
33 of payment.

34 ARTICLE II

35 CLIENTS GENERALLY

36 §1430. Rights

1 Any resident of a state institution has a right
2 to nutritious food in adequate quantities, adequate
3 professional medical care, an acceptable level of
4 sanitation, ventilation and light, a reasonable
5 amount of space per person in any sleeping area, a
6 reasonable opportunity for physical exercise and
7 recreational activities, protection against any
8 physical or psychological abuse and a reasonably
9 secure area for the maintenance of permitted personal
10 effects.

11 §1431. Indefinite convalescent status

12 1. Definitions. As used in this section, unless
13 the context otherwise indicates, the following terms
14 have the following meanings.

15 A. "Living conditions" includes, but is not
16 limited to, the physical conditions of a residen-
17 tial facility, the individual treatment plan pro-
18 vided for each outpatient client and the programs
19 for treatment available to and appropriate for
20 each outpatient client.

21 B. "Residential facility" means a boarding home,
22 nursing home, foster home, group home or halfway
23 house licensed by the Department of Human Ser-
24 vices or used by the Department of Mental Health
25 and Mental Retardation.

26 2. Requirements. The chief administrative offi-
27 cer of any state institution, or a person designated
28 by him, may place any person who has been hospital-
29 ized as mentally ill or mentally retarded, except
30 residents described in chapter 3, subchapter IV,
31 Article II, on indefinite convalescence status, if
32 the officer or his designee determines that the resi-
33 dential facility in which the person will be residing
34 is at least equivalent in the quality of living con-
35 ditions to the state institution in which the person
36 is hospitalized.

37 3. Standards. The commissioner shall establish
38 standards for assessing whether or not living condi-
39 tions in residential facilities are equivalent to the
40 existing living conditions in state institutions.

1 §1432. Administration of medication

2 The administration of medication in state insti-
3 tutions shall be in accordance with rules established
4 by the State Board of Nursing.

5 1. Maine Administrative Procedure Act. The
6 State Board of Nursing shall establish rules in ac-
7 cordance with the Maine Administrative Procedure Act,
8 Title 5, chapter 375.

9 2. Considerations. In establishing rules for
10 each type of state institution, the State Board of
11 Nursing shall consider, among other factors:

12 A. The general health of the persons likely to
13 receive medication;

14 B. The number of persons served by the institu-
15 tion; and

16 C. The number of persons employed at the insti-
17 tution.

18 §1433. Aliens

19 1. Notification of immigration officer. When a
20 person is admitted or committed to a state, county,
21 city or private institution which is supported wholly
22 or in part by public funds, the chief administrative
23 officer of the institution shall inquire at once into
24 the nationality of the person and, if it appears that
25 the person is an alien, the chief administrative
26 officer shall notify immediately the United States
27 immigration officer, in charge of the district in
28 which the institution is located, of:

29 A. The date of and the reason for the alien's
30 admission or commitment;

31 B. The length of time for which the alien is
32 admitted or committed;

33 C. The country of which the alien is a citizen;
34 and

35 D. The date on which and the port at which the
36 alien last entered the United States.

1 2. Copy of record to immigration officer. Upon
2 the official request of the United States immigration
3 officer in charge of the territory or district in
4 which is located any court committing an alien to a
5 state, county, city or private institution which is
6 supported wholly or in part by public funds, the
7 clerk of the court shall furnish without charge a
8 certified copy of any record pertaining to the
9 alien's case.

10 §1434. Resident's abandoned property

11 Any property abandoned or unclaimed by a resident
12 of a state institution shall be disposed of according
13 to Title 33, chapter 27.

14 §1435. Unnatural death of resident

15 When the death of any resident in a state insti-
16 tution is not clearly the result of natural causes,
17 an examination and inquest shall be held as in other
18 cases, and the commissioner or the chief administra-
19 tive officer of the institution shall cause a medical
20 examiner to be immediately notified for that purpose.

21 CHAPTER 3

22 MENTAL HEALTH

23 SUBCHAPTER I

24 BUREAU OF MENTAL HEALTH

25 §3001. Establishment

26 There is established, within the Department of
27 Mental Health and Mental Retardation, the Bureau of
28 Mental Health, which is responsible for the direction
29 of the mental health programs in the state insti-
30 tutions and for the promotion and guidance of mental
31 health programs within the several communities of the
32 State.

33 §3002. Director

1 1. Appointment. The commissioner shall, with
2 the advice of the Mental Health Advisory Council,
3 appoint and set the salary for the Director of the
4 Bureau of Mental Health.

5 A. Notwithstanding any other provision of law,
6 the commissioner may delegate any employee of the
7 department to serve, for a period not to exceed
8 180 days, as the acting director, if the office
9 of the director is vacant.

10 B. Service as the acting director is considered
11 a temporary additional duty for the person so
12 delegated.

13 2. Qualifications. To be eligible for appoint-
14 ment as director, a person shall have training and
15 experience in mental health program administration or
16 satisfactory experience in the direction of work of a
17 comparable nature.

18 3. Term. The appointment of the director shall
19 be for an indeterminate term and until a successor is
20 appointed and qualified or during the pleasure of the
21 commissioner.

22 4. Duties. In addition to other duties set out
23 in this Title, the director shall:

24 A. Report directly to the commissioner; and

25 B. Carry out the purpose of the bureau.

26 §3003. Rules

27 1. Promulgation. The director shall promulgate
28 rules, subject to the Maine Administrative Procedure
29 Act, Title 5, chapter 375, for the enhancement and
30 protection of the rights of clients receiving ser-
31 vices from the department, from any hospital pursuant
32 to subchapter IV or from any program or facility ad-
33 ministered or licensed by the department under
34 section 3606.

35 2. Requirements. The rules shall include, but
36 are not limited to:

- 1 A. Establishment of the right to provision of
2 treatment and related services in the least re-
3 strictive appropriate setting;
- 4 B. Establishment of the right to an
5 individualized treatment or service plan, to be
6 developed with the participation of the client;
- 7 C. Standards for informed consent to treatment
8 and guidelines for exceptions to informed consent
9 as permitted under applicable law or in emergency
10 situations;
- 11 D. Standards for participation in experimenta-
12 tion and research;
- 13 E. Standards pertaining to the use of seclusion
14 and restraint;
- 15 F. Establishment of the right to appropriate
16 privacy and to a humane treatment environment;
- 17 G. Establishment of the right to confidentiality
18 of records and procedures pertaining to a
19 person's right to access to his mental health
20 care records;
- 21 H. Establishment of the right to receive visi-
22 tors and to communicate by telephone and mail;
- 23 I. Procedures to ensure that clients are noti-
24 fied of their rights;
- 25 J. The right to assistance in protecting a right
26 or advocacy service in the exercise or protection
27 of a right; and
- 28 K. Provisions for a fair, timely and impartial
29 grievance procedure for the purpose of ensuring
30 appropriate administrative resolution of griev-
31 ances with respect to infringement of rights.
- 32 3. Public hearing. The director shall hold a
33 public hearing before adopting these rules and shall
34 give notice of the public hearing pursuant to the
35 Maine Administrative Procedure Act, Title 5, section
36 8053.

1 A. The commissioner and the advisory committee
2 shall give due consideration to the appointee's
3 qualifications and experience in administration
4 and to his qualifications and experience in
5 health matters.

6 B. The appointments are at the pleasure of the
7 commissioner.

8 4. Duties. The superintendent shall:

9 A. Have general superintendence of the state
10 mental health institute and grounds under the
11 direction of the commissioner; and

12 B. Receive all persons legally sent to the state
13 mental health institute who are in need of spe-
14 cial care and treatment, if accommodations
15 permit, subject to the rules of the department.

16 SUBCHAPTER III

17 COMMUNITY MENTAL HEALTH SERVICES

18 §3601. Definition

19 As used in the subchapter, unless the context
20 otherwise indicates, "mental health services" means
21 out-patient counselling, other psychological, psychi-
22 atric, diagnostic or therapeutic services and other
23 allied services.

24 §3602. Purpose

25 The purpose of this subchapter is to expand com-
26 munity mental health services, encourage participa-
27 tion in a program of community mental health services
28 by persons in local communities, obtain better under-
29 standing of the need for those services and secure
30 aid for programs of community mental health services
31 by state aid and local financial support.

32 §3603. Commissioner's duties

33 The commissioner shall promulgate rules relating
34 to the administration of the services authorized by
35 this subchapter and to licensing under this subchap-
36 ter.

1 §3604. Commissioner's powers

2 1. Provision of services. The commissioner may
3 provide mental health services throughout the State
4 and for that purpose may cooperate with other state
5 agencies, municipalities, persons, unincorporated
6 associations and nonstock corporations.

7 2. Funding sources. The commissioner may
8 receive and use for the purpose of this subchapter
9 money appropriated by the State, grants by the Fed-
10 eral Government, gifts from individuals and gifts
11 from any other sources.

12 3. Grants. The commissioner may make grants of
13 funds to any state or local governmental unit, or
14 branch of a governmental unit, or to a person, unin-
15 corporated association or nonstock corporation to be
16 used in the conduct of its mental health services if:

17 A. The entity or person applies for the funds;
18 and

19 B. The programs administered by the entity or
20 person provide for adequate standards of profes-
21 sional services.

22 §3605. Governmental agencies

23 Any state department, municipality or other gov-
24 ernmental unit, or any branch or composite of a state
25 department, municipality or other governmental unit
26 may, through its authorized representative or govern-
27 ing body approved by the commissioner, adopt and con-
28 duct a program of mental health services established
29 or approved by the commissioner.

30 §3606. Licenses

31 The commissioner may, in accordance with the
32 rules of the department, issue a license to any
33 person, firm, association or corporation to operate,
34 conduct or maintain a facility for the provision of
35 mental health services.

36 1. Term. The term of the license is for one
37 year.

1 2. Fee. The annual fee for the license is \$25.

2 3. Temporary and conditional licenses. If a
3 licensee, upon inspection by the department, fails to
4 meet any requirement imposed by this section or by
5 rules promulgated under this section, the commis-
6 sioner may:

7 A. Upon payment of a fee of \$10, issue a tempo-
8 rary license for a specified period, not to
9 exceed 90 days, during which time the licensee
10 shall make corrections specified by the depart-
11 ment to bring the licensee into compliance with
12 this section and rules promulgated under this
13 section;

14 B. Upon payment of a fee of \$10, issue a condi-
15 tional license setting forth conditions and, if
16 the conditions are not met by the licensee to the
17 satisfaction of the department, the commissioner
18 shall immediately void the conditional license
19 by:

20 (1) Personally serving written notice on
21 the conditional licensee; or

22 (2) If the licensee cannot be reached for
23 personal service, leaving notice at the li-
24 censed premises; or

25 C. Refuse to issue any temporary or conditional
26 license.

27 4. New application for regular license. The
28 commissioner may consider a new application for a
29 regular license if:

30 A. The conditions imposed by the commissioner at
31 the time of issuance of the temporary or condi-
32 tional license have been met; and

33 B. Satisfactory evidence of this fact has been
34 given to the department.

35 5. Suspension or revocation. Suspension or
36 revocation of licenses under this section is governed
37 as follows.

1 A. A license issued under this section may be
2 suspended or revoked for just cause.

3 B. When the commissioner believes a license
4 should be suspended or revoked, he shall file a
5 complaint with the Administrative Court under the
6 Maine Administrative Procedure Act, Title 5,
7 chapter 375.

8 6. Refusal to issue license. A person aggrieved
9 by the refusal of the commissioner to issue a license
10 may file a complaint with the Administrative Court,
11 under the Maine Administrative Procedure Act, Title
12 5, chapter 375.

13 7. Prohibited acts. Prohibited acts under this
14 section are governed as follows.

15 A. Any person, firm, association or corporation,
16 except an individual or corporate professional
17 practice of one or more psychologists or psychia-
18 trists, is guilty of unlicensed operation of a
19 mental health service facility, if he or it oper-
20 ates, conducts or maintains such a facility with-
21 out a license from the commissioner.

22 B. Notwithstanding Title 17-A, section 4-A,
23 unlicensed operation of a mental health service
24 facility is punishable by a fine of not more than
25 \$500 or by imprisonment for not more than 60
26 days.

27 SUBCHAPTER IV

28 HOSPITALIZATION

29 ARTICLE I

30 GENERAL PROVISIONS

31 §3801. Definitions

32 As used in this subchapter, unless the context
33 otherwise indicates, the following terms have the
34 following meanings.

35 1. Hospital. "Hospital" means:

1 A. A state mental health institute; or

2 B. A nonstate mental health institution.

3 2. Licensed physician. "Licensed physician"
4 means a person licensed under the laws of the State
5 to practice medicine or osteopathy or a medical offi-
6 cer of the Federal Government while in this State in
7 the performance of his official duties.

8 3. Licensed psychologist. "Licensed psychol-
9 ogist" means a person licensed under the laws of the
10 State as a psychologist and who practices clinical
11 psychology.

12 4. Likelihood of serious harm. "Likelihood of
13 serious harm" means:

14 A. A substantial risk of physical harm to the
15 person himself as manifested by evidence of
16 recent threats of, or attempts at, suicide or
17 serious bodily harm to himself and, after consid-
18 eration of less restrictive treatment settings
19 and modalities, a determination that community
20 resources for his care and treatment are unavail-
21 able;

22 B. A substantial risk of physical harm to other
23 persons as manifested by recent evidence of homici-
24 dal or other violent behavior or recent evi-
25 dence that others are placed in reasonable fear
26 of violent behavior and serious physical harm to
27 them and, after consideration of less restrictive
28 treatment settings and modalities, a determina-
29 tion that community resources for his care and
30 treatment are unavailable; or

31 C. A reasonable certainty that severe physical
32 or mental impairment or injury will result to the
33 person alleged to be mentally ill as manifested
34 by recent evidence of his actions or behavior
35 which demonstrate his inability to avoid or pro-
36 tect himself from such impairment or injury, and,
37 after consideration of less restrictive treatment
38 settings and modalities, a determination that
39 suitable community resources for his care are
40 unavailable.

1 5. Mentally ill person. "Mentally ill person"
2 means a person having a psychiatric or other disease
3 which substantially impairs his mental health,
4 including persons suffering from the effects of the
5 use of drugs, narcotics, hallucinogens or intoxi-
6 cants, including alcohol, but not including mentally
7 retarded or sociopathic persons.

8 6. Nonstate mental health institution.
9 "Nonstate mental health institution" means a public
10 institution, a private institution or a mental health
11 center, which is administered by an entity other than
12 the State and which is equipped to provide inpatient
13 care and treatment for the mentally ill.

14 7. Patient. "Patient" means a person under
15 observation, care or treatment in a hospital or resi-
16 dential care facility pursuant to this subchapter.

17 8. Residential care facility. "Residential care
18 facility" means a licensed or approved boarding care,
19 nursing care or foster care facility which supplies
20 supportive residential care to individuals due to
21 their mental illness.

22 9. State mental health institute. "State mental
23 health institute" means the Augusta Mental Health
24 Institute or the Bangor Mental Health Institute.

25 §3802. Commissioner's powers

26 The commissioner may:

27 1. Rules. Promulgate such rules, not incon-
28 sistent with this subchapter, as he may find to be
29 reasonably necessary for proper and efficient hospi-
30 talization of the mentally ill;

31 2. Investigation. Investigate, by personal
32 visit, complaints made by any patient or by any
33 person on behalf of a patient;

34 3. Visitation. Visit each hospital or residen-
35 tial care facility regularly to review the commitment
36 procedures of all new patients admitted between
37 visits;

1 4. Reports. Require reports from the chief
2 administrative officer of any hospital or residential
3 care facility relating to the admission, examination,
4 diagnosis, release or discharge of any patient; and

5 5. Forms. Prescribe the form of applications,
6 records, reports and medical certificates provided
7 for under this subchapter and prescribe the informa-
8 tion required to be contained in them.

9 §3803. Patient's rights

10 A patient in a hospital or residential care
11 facility under this subchapter has the following
12 rights.

13 1. Civil rights. Every patient is entitled to
14 exercise all civil rights, including, but not limited
15 to, the right to civil service status, the right to
16 vote, rights relating to the granting, renewal, for-
17 feiture or denial of a license, permit, privilege or
18 benefit pursuant to any law, the right to enter into
19 contractual relationships and the right to manage his
20 property, unless:

21 A. The chief administrative officer of the
22 hospital or residential care facility determines
23 that it is necessary for the medical welfare of
24 the patient to impose restrictions on the exer-
25 cise of these rights and, if restrictions are
26 imposed, the restrictions and the reasons for
27 them shall be made a part of the clinical record
28 of the patient;

29 B. A patient has been adjudicated incompetent
30 and has not been restored to legal capacity; or

31 C. The exercise of these rights is specifically
32 restricted by other statute or rule, but not
33 solely because of the fact of admission to a
34 hospital or residential care facility.

35 2. Humane care and treatment. Every patient is
36 entitled to humane care and treatment and, to the
37 extent that facilities, equipment and personnel are
38 available, to medical care and treatment in accor-
39 dance with the highest standards accepted in medical
40 practice.

1 3. Restraints and seclusion. Restraint, includ-
2 ing any mechanical means of restricting movement, and
3 seclusion, including isolation by means of doors
4 which cannot be opened by the patient, may not be
5 used on a patient, unless the chief administrative
6 officer of the hospital or residential care facility
7 or his designee determines that either is required by
8 the medical needs of the patient.

9 A. The chief administrative officer of the
10 hospital or facility shall record and make avail-
11 able for inspection every use of mechanical
12 restraint or seclusion and the reasons for its
13 use.

14 B. The limitation of the use of seclusion in
15 this section does not apply to maximum security
16 installations.

17 4. Communication. Patient communication rights
18 are as follows.

19 A. Every patient is entitled to communicate by
20 sealed envelopes with the department, a clergy-
21 man, his attorney and the court which ordered his
22 hospitalization, if any.

23 B. Every patient is entitled to communicate by
24 mail in accordance with the rules of the hospi-
25 tal.

26 5. Visitors. Every patient is entitled to
27 receive visitors unless definitely contraindicated by
28 his medical condition, except that he may be visited
29 by his clergyman or his attorney at any reasonable
30 time.

31 6. Sterilization. A patient may not be steril-
32 ized except in accordance with chapter 7.

33 §3804. Habeas corpus

34 Any person detained pursuant to this subchapter
35 is entitled to the writ of habeas corpus, upon proper
36 petition by himself or by a friend to any justice
37 generally empowered to issue the writ of habeas cor-
38 pus in the county in which the person is detained.

1 §3805. Prohibited acts

2 1. Unwarranted hospitalization. A person is
3 guilty of causing unwarranted hospitalization, if he
4 willfully causes the unwarranted hospitalization of
5 any person under this Title.

6 2. Denial of rights. A person is guilty of
7 causing a denial of rights if he willfully causes the
8 denial to any person of any of the rights accorded to
9 him by this Title.

10 3. Penalty. Causing unwarranted hospitalization
11 or causing a denial of rights is a Class C crime.

12 ARTICLE II

13 VOLUNTARY HOSPITALIZATION

14 §3831. Admission

15 Any person desiring admission to a hospital for
16 the mentally ill for care and treatment of a mental
17 illness may be admitted without making a formal
18 application under the following conditions.

19 1. Availability of accommodations. Except in
20 cases of medical emergency, voluntary admission is
21 subject to the availability of suitable accommoda-
22 tions.

23 2. Standard hospital information. Standard
24 hospital information may be elicited from the person
25 if, after examination, the chief administrative offi-
26 cer of the hospital deems the person suitable for
27 admission, care and treatment.

28 3. Persons under 18 years of age. Any person
29 under 18 years of age must have the consent of his
30 parent or guardian.

31 4. State mental health institute. Any person
32 under 18 years of age must have the consent of the
33 commissioner for admission to a state mental health
34 institute.

35 §3832. Freedom to leave

1 1. Patient's right. A patient admitted under
2 section 3831 is free to leave the hospital at any
3 time after admission, except that admission of the
4 person under section 3863 is not precluded, if at any
5 time such an admission is considered necessary in the
6 interest of the person and of the community.

7 2. Notice. The chief administrative officer of
8 the hospital shall cause every patient admitted under
9 section 3831 to be informed, at the time of admis-
10 sion, of:

11 A. His status as an informally admitted patient;
12 and

13 B. His freedom to leave the hospital at any time
14 under this section.

15 ARTICLE III

16 INVOLUNTARY HOSPITALIZATION

17 §3861. Reception of involuntary patients

18 1. Nonstate mental health institution. The
19 chief administrative officer of a nonstate mental
20 health institution may receive for observation, diag-
21 nosis, care and treatment in the institution any
22 person whose admission is applied for under any of
23 the procedures in this subchapter.

24 2. State mental health institute. The chief
25 administrative officer of a state mental health
26 institute:

27 A. May receive for observation, diagnosis, care
28 and treatment in the hospital any person whose
29 admission is applied for under section 3831 or
30 3863; and

31 B. Shall receive for observation, diagnosis,
32 care and treatment in the hospital any person
33 whose admission is applied for under section 3864
34 or is ordered by a court.

35 §3862. Protective custody

1 1. Law enforcement officer's power. If a law
2 enforcement officer has reasonable grounds to
3 believe, based upon his personal observation, that a
4 person may be mentally ill and that due to his condi-
5 tion he presents a threat of imminent and substantial
6 physical harm to himself or to other persons, he:

7 A. May take the person into protective custody;
8 and

9 B. If the officer does take the person into pro-
10 fective custody, shall deliver the person forth-
11 with for examination by an available licensed
12 physician or licensed psychologist, as provided
13 in section 3863.

14 2. Certificate not executed. If a certificate
15 relating to the person's likelihood of serious harm
16 is not executed by the examiner under section 3863,
17 the officer shall:

18 A. Release the person from protective custody
19 and, with his permission, return him forthwith to
20 his place of residence, if within the territorial
21 jurisdiction of the officer;

22 B. Release the person from protective custody
23 and, with his permission, return him forthwith to
24 the place where he was taken into protective cus-
25 tody; or

26 C. If the person is also under arrest for a
27 violation of law, retain him in custody until he
28 is released in accordance with the law.

29 3. Certificate executed. If the certificate is
30 executed by the examiner under section 3863, the
31 officer shall undertake forthwith to secure the
32 endorsement of a judicial officer under section 3863
33 and may detain the person for a reasonable period of
34 time, not to exceed 18 hours pending that endorse-
35 ment.

36 4. Transportation costs. The costs of trans-
37 portation under this section shall be paid in the
38 manner provided under section 3863.

1 §3863. Emergency procedure

2 A person may be admitted to a mental hospital on
3 an emergency basis according to the following proced-
4 ures.

5 1. Application. Any health officer, law
6 enforcement officer or other person may make a writ-
7 ten application to admit a person to a mental hospi-
8 tal, subject to the prohibitions and penalties of
9 section 3805, stating:

10 A. His belief that the person is mentally ill
11 and, because of his illness, poses a likelihood
12 of serious harm; and

13 B. The grounds for this belief.

14 2. Certifying examination. The written applica-
15 tion shall be accompanied by a dated certificate,
16 signed by a licensed physician or a licensed psychol-
17 ogist who practices clinical psychology, stating:

18 A. He has examined the person on the date of the
19 certificate, which date may not be more than 3
20 days before the date of admission to the hospi-
21 tal; and

22 B. He is of the opinion that the person is men-
23 tally ill and, because of his illness, poses a
24 likelihood of serious harm.

25 3. Judicial review. The application and accom-
26 panying certificate shall be reviewed by a Justice of
27 the Superior Court, Judge of the District Court,
28 Judge of Probate or a complaint justice.

29 A. If the judge or justice finds the application
30 and accompanying certificate to be regular and in
31 accordance with the law, he shall endorse them.

32 B. No person may be held against his will in the
33 hospital under this section, whether informally
34 admitted under section 3831 or sought to be
35 involuntarily admitted under this section, unless
36 the application and certificate have been
37 endorsed by a judge or justice, except that a

1 person for whom an examiner has executed the cer-
2 tificate under subsection 2 may be detained in a
3 hospital for a reasonable period of time, not to
4 exceed 18 hours, pending endorsement by a judge
5 or justice, if:

6 (1) For persons informally admitted under
7 section 3831, the chief administrative offi-
8 cer of the hospital undertakes to secure the
9 endorsement forthwith upon execution of the
10 certificate by the examiner; and

11 (2) For persons sought to be involuntarily
12 admitted under this section, the person or
13 persons transporting him to the hospital
14 undertake to secure the endorsement forth-
15 with upon execution of the certificate by
16 the examiner.

17 4. Custody and transportation. Custody and
18 transportation under this section are governed as
19 follows.

20 A. Upon endorsement of the application and cer-
21 tificate by the judge or justice, any health
22 officer, law enforcement officer or other person
23 designated by the judge or justice may take the
24 person into custody and transport him to the
25 hospital designated in the application.

26 B. The county in which the person is found is
27 responsible for any expenses of transportation
28 under this section, including return from the
29 hospital if admission is declined.

30 5. Continuation of hospitalization. If the
31 chief administrative officer of the hospital recom-
32 mends further hospitalization of the person, he shall
33 determine the suitability of admission, care and
34 treatment of the patient as an informally admitted
35 patient, as described in section 3831.

36 A. If the chief administrative officer of the
37 hospital determines that admission of the person
38 as an informally admitted patient is suitable, he
39 shall admit the person on this basis, if the
40 person so desires.

1 B. If the chief administrative officer of the
2 hospital determines that admission of the person
3 as an informally admitted patient is not suit-
4 able, or if the person declines admission as an
5 informally admitted patient, the chief adminis-
6 trative officer of the hospital may file an
7 application for the issuance of an order for
8 hospitalization under section 3864.

9 (1) The application shall be made to the
10 District Court having territorial jurisdic-
11 tion over the hospital.

12 (2) The application shall be filed within 5
13 days from the admission of the patient under
14 this section, excluding the day of admission
15 and any Saturday, Sunday or legal holiday.

16 C. If neither readmission nor application to the
17 District Court is effected under this subsection,
18 the chief administrative officer of the hospital
19 shall discharge the person forthwith.

20 6. Notice. Upon admission of a person under
21 this section, and after consultation with the person,
22 the chief administrative officer of the hospital
23 shall mail notice of the fact of admission to:

24 A. His legal guardian, if known;

25 B. His spouse;

26 C. His parent;

27 D. His adult child; or

28 E. One of next of kin or a friend, if none of
29 the listed persons exists.

30 7. Post-admission examination. Every patient
31 admitted to a hospital shall be examined as soon as
32 practicable after his admission.

33 A. The chief administrative officer of the
34 hospital shall arrange for examination by a staff
35 physician or clinical psychologist of every
36 patient hospitalized under this section.

1 B. The examiner may not be the certifying exam-
2 iner under this section or under section 3864.

3 C. If the post-admission examination is not held
4 within 24 hours after the time of admission, or
5 if a staff physician or clinical psychologist
6 fails or refuses after the examination to certify
7 that, in his opinion, the person is mentally ill
8 and due to his mental illness poses a likelihood
9 of serious harm, the person shall be immediately
10 discharged.

11 §3864. Judicial procedure and commitment

12 1. Application. An application to the District
13 Court to admit a person to a mental hospital, filed
14 under section 3863, subsection 5, paragraph B, shall
15 be accompanied by:

16 A. The emergency application under section 3863,
17 subsection 1;

18 B. The accompanying certificate of the physician
19 or psychologist under section 3863, subsection 2;
20 and

21 C. The certificate of the physician or psychol-
22 ogist under section 3863, subsection 7, that:

23 (1) He has examined the patient; and

24 (2) It is his opinion that the patient is a
25 mentally ill person and, because of his ill-
26 ness, poses a likelihood of serious harm.

27 2. Detention pending judicial determina-
28 tion. Notwithstanding any other provisions of this
29 subchapter, no person, with respect to whom proceed-
30 ings for judicial hospitalization have been com-
31 menced, may be released or discharged during the
32 pendency of the proceedings, unless:

33 A. The District Court orders release or dis-
34 charge upon the application of the patient, his
35 legal guardian, parent, spouse or next of kin;

1 B. The District Court orders release or dis-
2 charge upon the report of the chief administra-
3 tive officer of the hospital that the person may
4 be discharged with safety; or

5 C. A court orders release or discharge upon a
6 writ of habeas corpus under section 3804.

7 3. Notice of receipt of application. The giving
8 of notice of receipt of application under this
9 section is governed as follows.

10 A. Upon receipt by the District Court of the
11 application and accompanying documents specified
12 in subsection 1, the court shall cause written
13 notice of the application:

14 (1) To be given personally or by mail to
15 the person within a reasonable time before
16 the hearing, but not less than 3 days before
17 the hearing; and

18 (2) To be mailed to the person's legal
19 guardian, if known, and to his spouse, his
20 parent or one of his adult children or, if
21 none of these persons exist or if none of
22 them can be located, to one of his next of
23 kin or a friend.

24 B. A docket entry is sufficient evidence that
25 notice under this subsection has been given.

26 4. Examination. Examinations under this section
27 are governed as follows.

28 A. Upon receipt by the District Court of the
29 application and the accompanying documents speci-
30 fied in subsection 1, the court shall forthwith
31 cause the person to be examined by 2 examiners.

32 (1) Each examiner must be either a licensed
33 physician or a licensed psychologist who
34 practices clinical psychology.

35 (2) One of the examiners shall be a physi-
36 cian or psychologist chosen by the person or
37 by his counsel, if the chosen physician or

1 psychologist is reasonably available.

2 (3) Neither examiner appointed by the court
3 may be the certifying examiner under section
4 3863, subsection 2 or 7.

5 B. The examination shall be held at the hospital
6 or at any other suitable place not likely to have
7 a harmful effect on the mental health of the
8 person.

9 C. If the report of the examiners is to the
10 effect that the person is not mentally ill or
11 does not pose a likelihood of serious harm, the
12 application shall be ordered discharged forth-
13 with.

14 D. If the report of the examiners is to the
15 effect that the person is mentally ill or poses a
16 likelihood of serious harm, the hearing shall be
17 held on the date, or on the continued date, which
18 the court has set for the hearing.

19 5. Hearing. Hearings under this section are
20 governed as follows.

21 A. The District Court shall hold a hearing on
22 the application not later than 15 days from the
23 date of the application.

24 (1) On a motion by any party, the hearing
25 may be continued for cause for a period not
26 to exceed 10 additional days.

27 (2) If the hearing is not held within the
28 time specified, or within the specified con-
29 tinuance period, the court shall dismiss the
30 application and order the person discharged
31 forthwith.

32 (3) In computing the time periods set forth
33 in this paragraph, the District Court Civil
34 Rules shall apply.

35 B. The hearing shall be conducted in as informal
36 a manner as may be consistent with orderly proce-
37 dure and in a physical setting not likely to have

1 harmful effect on the mental health of the
2 person.

3 C. The court shall receive all relevant and
4 material evidence which may be offered in accord-
5 dance with accepted rules of evidence and accept-
6 ed judicial dispositions.

7 (1) The person, the applicant and all other
8 persons to whom notice is required to be
9 sent shall be afforded an opportunity to
10 appear at the hearing to testify and to
11 present and cross-examine witnesses.

12 (2) The court may, in its discretion,
13 receive the testimony of any other person
14 and may subpoena any witness.

15 D. The person shall be afforded an opportunity
16 to be represented by counsel, and, if neither the
17 person nor others provide counsel, the court
18 shall appoint counsel for the person.

19 E. In addition to proving that the patient is a
20 mentally ill individual, the applicant shall
21 show:

22 (1) By evidence of the patient's actions
23 and behavior, that the patient poses a
24 likelihood of serious harm; and

25 (2) That, after full consideration of less
26 restrictive treatment settings and
27 modalities, inpatient hospitalization is the
28 best available means for the treatment of
29 the person.

30 F. In each case, the applicant shall submit to
31 the court, at the time of the hearing, testimony
32 indicating the individual treatment plan to be
33 followed by the hospital staff, if the person is
34 committed under this section, and shall bear any
35 expense for witnesses for this purpose.

36 G. A stenographic or electronic record shall be
37 made of the proceedings in all judicial hospi-
38 talization hearings.

1 (1) The record and all notes, exhibits and
2 other evidence shall be confidential.

3 (2) The record and all notes, exhibits and
4 other evidence shall be retained as part of
5 the District Court records for a period of 2
6 years from the date of the hearing.

7 H. The hearing shall be confidential and no
8 report of the proceedings may be released to the
9 public or press, except by permission of the
10 person or his counsel and with approval of the
11 presiding District Court Judge, except that the
12 court may order a public hearing on the request
13 of the person or his counsel.

14 6. Court findings. Procedures dealing with the
15 District Court's findings under this section are as
16 follows.

17 A. The District Court shall so state in the
18 record, if it finds upon completion of the hear-
19 ing and consideration of the record:

20 (1) Clear and convincing evidence that the
21 person is mentally ill and that his recent
22 actions and behavior demonstrate that his
23 illness poses a likelihood of serious harm;

24 (2) That inpatient hospitalization is the
25 best available means for treatment of the
26 patient; and

27 (3) That it is satisfied with the indi-
28 vidual treatment plan offered by the hospi-
29 tal.

30 B. If the District Court makes the findings de-
31 scribed in paragraph A, subparagraphs 1 and 2,
32 but is not satisfied with the individual treat-
33 ment plan as offered, it may continue the case
34 for not longer than 10 days, pending reconsidera-
35 tion and resubmission of an individual treatment
36 plan by the hospital.

37 7. Commitment. Upon making the findings de-
38 scribed in subsection 6, the court may order commit-

1 ment to a mental hospital for a period not to exceed
2 4 months in the first instance and not to exceed one
3 year after the first and all subsequent hearings.

4 A. The court may issue an order of commitment
5 immediately after the completion of the hearing,
6 or it may take the matter under advisement and
7 issue an order within 24 hours of the hearing.

8 B. If the court does not issue an order of com-
9 mitment within 24 hours of the completion of the
10 hearing, it shall dismiss the application and
11 order the patient discharged forthwith.

12 8. Continued involuntary hospitalization. If
13 the chief administrative officer of the hospital
14 determines that continued involuntary hospitalization
15 is necessary for a person who has been ordered by the
16 District Court to be committed, he shall, not later
17 than 30 days prior to the expiration of a period of
18 commitment ordered by the court, make application in
19 accordance with this section to the District Court
20 which has territorial jurisdiction over the hospital
21 for a hearing to be held under this section.

22 9. Transportation. Unless otherwise directed by
23 the court, the sheriff of the county in which the
24 District Court has jurisdiction and in which the
25 hearing takes place shall provide transportation to
26 any hospital to which the court has committed the
27 person.

28 10. Expenses. With the exception of expenses
29 incurred by the applicant pursuant to subsection 5,
30 paragraph F, the District Court shall be responsible
31 for any expenses incurred under this section, includ-
32 ing fees of appointed counsel, witness and notice
33 fees and expenses of transportation for the person.

34 11. Appeals. A person ordered by the District
35 Court to be committed to a hospital may appeal from
36 that order to the Superior Court.

37 A. The appeal is on questions of law only.

38 B. Any findings of fact of the District Court
39 may not be set aside unless clearly erroneous.

1 C. The order of the District Court shall remain
2 in effect pending the appeal.

3 D. The District Court Civil Rules of Procedure
4 and the Maine Rules of Civil Procedure apply to
5 the conduct of the appeals, except as otherwise
6 specified in this subsection.

7 §3865. Hospitalization by federal agency

8 If a person ordered to be hospitalized under
9 section 3864 is eligible for hospital care or treat-
10 ment by any agency of the United States, the court,
11 upon receipt of a certificate from the agency showing
12 that facilities are available and that the person is
13 eligible for care or treatment in the facilities, may
14 order him to be placed in the custody of the agency
15 for hospitalization.

16 1. Rules and rights. A person admitted under
17 this section to any hospital or institution operated
18 by any agency of the United States, within or without
19 the State, is subject to the rules of the agency, but
20 retains all rights to release and periodic court
21 review granted by this subchapter.

22 2. Powers of chief administrative officer. The
23 chief administrative officer of any hospital or
24 institution operated by a federal agency in which the
25 person is hospitalized has, with respect to the
26 person, the same powers as the chief administrative
27 officer of hospitals or the commissioner within this
28 State with respect to detention, custody, transfer,
29 conditional release or discharge of patients.

30 3. Court jurisdiction. Every order of hospi-
31 talization issued under this section is conditioned
32 on the retention of jurisdiction in the courts of
33 this State to, at any time:

34 A. Inquire into the mental condition of a person
35 hospitalized; and

36 B. Determine the necessity for continuance of
37 his hospitalization.

38 §3866. Members of the Armed Forces

1 1. Admission to hospital. Any member of the
2 Armed Forces of the United States who was a resident
3 of the State at the time of his induction into the
4 service and who is determined by a federal board of
5 medical officers to have a mental disease not incur-
6 red in line of duty shall be received, at the discre-
7 tion of the commissioner and without formal commit-
8 ment, at either of the state hospitals for the men-
9 tally ill, upon delivery at the hospital designated
10 by the commissioner of:

11 A. The member of the Armed Forces; and

12 B. The findings of the board of medical officers
13 that he is mentally ill.

14 2. Status. After delivery of the member of the
15 Armed Forces at the hospital designated by the com-
16 missioner, his status shall be the same as if he had
17 been committed to the hospital under section 3864.

18 §3867. Transfer from out-of-state institutions

19 1. Commissioner's authority. The commissioner
20 may, upon request of a competent authority of the
21 District of Columbia or of a state which is not a
22 member of the Interstate Compact on Mental Health,
23 authorize the transfer of a mentally ill patient
24 directly to a state mental health institute in Maine,
25 if:

26 A. The patient has resided in this State for a
27 consecutive period of one year during the 3-year
28 period immediately preceding commitment in the
29 other state or the District of Columbia;

30 B. The patient is currently confined in a recog-
31 nized institution for the care of the mentally
32 ill as the result of proceedings considered legal
33 by that state or by the District of Columbia;

34 C. A duly certified copy of the original commit-
35 ment proceedings and a copy of the patient's case
36 history is supplied;

37 D. The commissioner, after investigation, deems
38 the transfer justifiable; and

1 E. All expenses of the transfer are borne by the
2 agency requesting it.

3 2. Receipt of patient. When the commissioner
4 has authorized a transfer under this section, the
5 superintendent of the state mental health institute
6 designated by the commissioner shall receive the
7 patient as having been regularly committed to the
8 mental health institute under section 3864.

9 §3868. Transfer to other institutions

10 1. To other hospitals. The commissioner may
11 transfer, or authorize the transfer of, a patient
12 from one hospital to another, either inside or out-
13 side the State, if the commissioner determines that
14 it would be consistent with the medical needs of the
15 patient to do so.

16 A. Whenever a patient is transferred, the com-
17 missioner shall give written notice of the trans-
18 fer to the patient's legal guardian, his parents
19 or spouse or, if none of these persons exists or
20 can be located, to his next of kin or friend.

21 B. In making all such transfers, the commis-
22 sioner shall give due consideration to the rela-
23 tionship of the patient to his family, legal
24 guardian or friends, in order to maintain rela-
25 tionships and encourage visits beneficial to the
26 patient.

27 2. To federal agency. Upon receipt of a certif-
28 icate of an agency of the United States that facili-
29 ties are available for the care or treatment of any
30 involuntarily hospitalized person and that the person
31 is eligible for care and treatment in a hospital or
32 institution of the agency, the chief administrative
33 officer of the hospital may cause his transfer to the
34 agency of the United States for hospitalization.

35 A. Upon making such a transfer, the chief admin-
36 istrator of the hospital shall notify the court
37 which ordered hospitalization and the persons
38 specified in subsection 1, paragraph A.

1 B. No person may be transferred to an agency of
2 the United States if he is confined pursuant to
3 conviction of any felony or misdemeanor or if he
4 has been acquitted of the charge solely on the
5 ground of mental illness, unless before the
6 transfer the court originally ordering confine-
7 ment of the person enters an order for transfer
8 after appropriate motion and hearing.

9 C. Any person transferred under this section to
10 an agency of the United States is deemed to be
11 hospitalized by the agency pursuant to the orig-
12 inal order of hospitalization.

13 §3869. Return from unauthorized absence

14 If any patient committed under section 3864
15 leaves the grounds of the hospital without authoriza-
16 tion of the chief administrative officer of the
17 hospital or his designee, or refuses to return to the
18 hospital from a community pass when requested to do
19 so by the chief administrative officer or his designee,
20 law enforcement personnel of the State or of any
21 of its subdivisions may, upon request of the chief
22 administrative officer or his designee, assist in the
23 return of the patient to the hospital.

24 §3870. Convalescent status

25 1. Authority. The chief administrative officer
26 of a state mental health institute may release an
27 improved patient on convalescent status when he
28 believes that the release is in the best interest of
29 the patient.

30 A. Release on convalescent status may include
31 provisions for continuing responsibility to and
32 by the state mental health institute, including a
33 plan of treatment on an outpatient or nonhospital
34 basis.

35 B. Before release on convalescent status under
36 this section, the chief administrative officer of
37 a state mental health institute shall make a good
38 faith attempt to notify, by telephone, personal
39 communication or letter, of the intent to release
40 the patient on convalescent status and of the
41 plan of treatment, if any:

1 (1) The parent or guardian of a minor
2 patient;

3 (2) The legal guardian of an adult incompe-
4 tent patient, if any is known; or

5 (3) The spouse or adult next of kin of an
6 adult competent patient, if any is known,
7 unless the patient requests in writing that
8 the notice not be given.

9 C. The state mental health institute is not lia-
10 ble when good faith attempts to notify parents,
11 spouse or guardian have failed.

12 2. Reexamination. Before a patient has spent a
13 year on convalescent status, and at least once a year
14 thereafter, the chief administrative officer of the
15 state mental health institute shall reexamine the
16 facts relating to the hospitalization of the patient
17 on convalescent status.

18 3. Discharge. Discharge from convalescent
19 status is governed as follows.

20 A. If the chief administrative officer of the
21 state mental health institute determines that, in
22 view of the condition of the patient, convales-
23 cent status is no longer necessary, he shall dis-
24 charge the patient and make a report of the dis-
25 charge to the commissioner.

26 B. The chief administrative officer shall termi-
27 nate the convalescent status of voluntary
28 patients within 10 days after the day he receives
29 from the patient a request for discharge from
30 convalescent status.

31 4. Rehospitalization. Rehospitalization of
32 patients under this section is governed as follows.

33 A. If, prior to discharge, there is reason to
34 believe that it is in the best interest of an
35 involuntarily committed patient on convalescent
36 status to be rehospitalized, the commissioner or
37 the chief administrative officer of the state
38 mental health institute may issue an order for

1 the immediate rehospitalization of the patient.

2 B. If the order is not complied with, and if the
3 order is endorsed by a District Court Judge or
4 complaint justice in the county in which the
5 patient has his legal residence or is present,
6 any health officer or police officer may take the
7 patient into custody and transport him to:

8 (1) The state mental health institute, if
9 the order is issued by the chief administra-
10 tive officer of the state mental health
11 institute; or

12 (2) A hospital designated by the commis-
13 sioner, if the order is issued by the com-
14 missioner.

15 5. Notice of change of status. Notice of the
16 change of convalescent status of patients is governed
17 as follows.

18 A. If the convalescent status of a patient in a
19 state mental health institute is to be changed,
20 either because of a decision of the chief admin-
21 istrative officer of the state mental health
22 institute or because of a request made by a
23 voluntary patient, the chief administrative offi-
24 cer of the state mental health institute shall
25 immediately make a good faith attempt to notify,
26 by telephone, personal communication or letter,
27 of the contemplated change:

28 (1) The parent or guardian of a minor
29 patient;

30 (2) The legal guardian of an adult incompe-
31 tent patient, if any is known; or

32 (3) The spouse or adult next of kin of an
33 adult competent patient, unless the patient
34 requests in writing that the notice not be
35 given.

36 B. If the change in convalescent status is due
37 to the request of a voluntary patient, the chief
38 administrative officer of the state mental health

1 institute shall give the required notice within
2 10 days after the day he receives the request.

3 C. The state mental health institute is not lia-
4 ble when good faith attempts to notify parents,
5 spouse or guardian have failed.

6 §3871. Discharge

7 1. Examination. The chief administrative offi-
8 cer of a state mental health institute shall, as
9 often as practicable, but no less often than every 12
10 months, examine or cause to be examined every patient
11 to determine his mental status and need for continu-
12 ing hospitalization.

13 2. Conditions for discharge. The chief adminis-
14 trative officer of a state mental health institute
15 shall discharge, or cause to be discharged, any
16 patient when:

17 A. Conditions justifying hospitalization no
18 longer obtain;

19 B. The patient is transferred to another hospi-
20 tal for treatment for his mental or physical con-
21 ditions;

22 C. The patient is absent from the state mental
23 health institute unlawfully for a period of 90
24 days;

25 D. Notice is received that the patient has been
26 admitted to another hospital, inside or outside
27 the State, for treatment for his mental or physi-
28 cal condition; or

29 E. Although lawfully absent from the state
30 mental health institute, the patient is admitted
31 to another hospital inside or outside the State
32 for treatment of his mental or physical condi-
33 tion, except that, if the patient is directly
34 admitted to another hospital and it is the opin-
35 ion of the chief administrative officer of the
36 state mental health institute that the patient
37 will directly reenter the state mental health
38 institute within the foreseeable future, the
39 patient need not be discharged.

1 3. Discharge against medical advice. The chief
2 administrative officer of a state mental health
3 institute may discharge, or cause to be discharged,
4 any patient even though the patient is mentally ill
5 and appropriately hospitalized in the state mental
6 health institute, if:

7 A. The patient and either the legal guardian,
8 spouse or next of kin of the patient request his
9 discharge; and

10 B. In the opinion of the chief administrative
11 officer of the hospital, the patient does not
12 pose a likelihood of serious harm due to his
13 mental illness.

14 4. Reports. The chief administrative officer of
15 a state mental health institute shall send a report
16 of the discharge of any patient to the commissioner.

17 5. Notice. Notice of discharge is governed as
18 follows.

19 A. When a patient is discharged under this
20 section, the chief administrative officer of the
21 state mental health institute shall immediately
22 make a good faith attempt to notify, by tele-
23 phone, personal communication or letter, that the
24 discharge has or will take place:

25 (1) The parent or guardian of a minor
26 patient;

27 (2) The legal guardian of an adult incompe-
28 tent patient, if any is known; or

29 (3) The spouse or adult next of kin of an
30 adult competent patient, if any is known,
31 unless the patient requests in writing that
32 the notice not be given or unless the
33 patient was transferred from or will be
34 returned to a state correctional facility.

35 B. The state mental health institute is not lia-
36 ble when good faith attempts to notify parents,
37 spouse or guardian have failed.

1 and his property and serving the necessities or
2 amenities of life are at issue;

3 F. Evaluation of the need for services; and

4 G. Mobilization of appropriate existing services
5 on the person's behalf.

6 5. Region. "Region" means any of the regions
7 established by the bureau.

8 6. Supportive services. "Supportive services"
9 means services to make it possible for an incapaci-
10 tated person to become rehabilitated or
11 self-sufficient to the maximum extent possible
12 including, but not limited to:

13 A. Counseling;

14 B. Transportation;

15 C. Assistance in obtaining adequate housing;

16 D. Medical and psychiatric care; and

17 E. Nutritional services.

18 7. Ward. "Ward" means a person for whom the
19 bureau has been duly appointed guardian under Title
20 18-A, Article V, Part 6.

21 §5002. Policy

22 1. Services. It is the policy of the State to
23 provide education, training and habilitative services
24 to mentally retarded persons who need those services,
25 except that nothing in this chapter may replace or
26 limit the right of any mentally retarded person to
27 treatment by spiritual means alone, through prayer,
28 if that treatment is requested by the person or by
29 his next of kin or legal guardian.

30 2. Setting. It is the policy of the State that
31 the setting for the services described in subsection
32 1 shall, consistent with adequate care and treatment:

33 A. Impose the fewest possible restrictions on
34 the liberty of mentally retarded persons; and

1 B. Be as close as possible to the patterns and
2 norms of the mainstream of society.

3 §5003. System of care for mentally retarded clients

4 1. System of care. The Legislature declares
5 that the system of care, through which the State pro-
6 vides services to and programs for mentally retarded
7 persons, shall be designed not only to protect the
8 integrity of the legal and human rights of these per-
9 sons, but also to meet the needs of these persons.

10 2. Responsibilities of the department. To
11 facilitate the development of a system which meets
12 the needs of mentally retarded persons, the commis-
13 sioner, through the bureau, shall:

14 A. Provide a mechanism for the identification,
15 evaluation, treatment and reassessment of and the
16 provision of services to mentally retarded per-
17 sons, including an habilitation program for every
18 client served by the bureau;

19 B. Divert mentally retarded persons from insti-
20 tutional care, whenever professional diagnosis
21 and evaluation, the personal preference of the
22 client or his legal guardian, and the availabil-
23 ity of appropriate services indicate that these
24 persons should be placed in community environ-
25 ments and programs;

26 C. Provide programs, so far as resources permit,
27 for the proper habilitation and treatment of men-
28 tally retarded persons, which shall include, but
29 need not be limited to, comprehensive medical
30 care, education, recreation, physical therapy,
31 training, social services and habilitation and
32 rehabilitation services suited to the needs of
33 the individual regardless of age, degree of
34 retardation, handicapping condition or ability to
35 pay;

36 D. Work toward effectuating the normalization
37 principle through the establishment of community
38 services for the mentally retarded person as a
39 viable and practical alternative to institutional
40 care at each stage of individual life develop-

1 ment, but, if care in an institutional facility
2 becomes necessary, it should be in the least re-
3 strictive setting, consistent with the proper
4 care of the mentally retarded person;

5 E. Eliminate its own duplicative and unnecessary
6 administrative procedures and practices in the
7 system of care for mentally retarded persons,
8 encourage other departments to do the same, and
9 clearly define areas of responsibility in order
10 to economically utilize present resources;

11 F. Strive toward having a sufficient number of
12 personnel who are qualified and experienced to
13 provide treatment which is beneficial to the men-
14 tally retarded clients; and

15 G. Encourage other departments to provide to
16 mentally retarded persons those services which
17 are required by law, and in particular:

18 (1) The commissioner shall work actively to
19 ensure that mentally retarded clients, as
20 provided for in Title 20, chapter 404, shall
21 receive educational and training services
22 beginning at age 6 years regardless of the
23 degree of retardation, or accompanying dis-
24 abilities or handicaps;

25 (2) The commissioner shall advise the
26 Department of Human Services about standards
27 and policies pertaining to administration,
28 staff, quality of care, quality of treat-
29 ment, health and safety of clients, rights
30 of clients, community relations and licens-
31 ing procedures and other areas which affect
32 mentally retarded persons residing in facil-
33 ities licensed by the Department of Human
34 Services; and

35 (3) The commissioner shall inform the joint
36 standing committee of the Legislature having
37 jurisdiction over health and institutional
38 services about areas where increased cooper-
39 ation by other departments is necessary in
40 order to improve the delivery of services to
41 mentally retarded persons.

1 3. Plan. The commissioner through the bureau,
2 shall prepare a plan, subject to the following provi-
3 sions.

4 A. The plan shall indicate the most effective
5 and efficient manner in which to implement ser-
6 vices and programs for mentally retarded persons,
7 while safeguarding and respecting the legal and
8 human rights of these persons.

9 B. The plan shall be prepared once every 2 years
10 and shall be submitted to the joint standing com-
11 mittee of the Legislature having jurisdiction
12 over health and institutional services by no
13 later than January 15th of every odd-numbered
14 year.

15 C. The committee shall study the plan and make
16 recommendations to the Legislature with respect
17 to funding improvements in programs and services
18 to mentally retarded persons.

19 SUBCHAPTER II

20 BUREAU OF MENTAL RETARDATION

21 §5201. Establishment

22 There is established, within the Department of
23 Mental Health and Mental Retardation, the Bureau of
24 Mental Retardation, which is responsible for:

25 1. Institutional programs. The supervision of
26 mental retardation programs in the institutions of
27 the department;

28 2. Statewide system. The planning, promotion,
29 coordination and development of a complete and inte-
30 grated statewide system of mental retardation ser-
31 vices;

32 3. Liaison. Serving as liaison, coordinator and
33 consultant to the several state departments in order
34 to develop the statewide system of mental retardation
35 services;

1 4. Community-based services. Ensuring that men-
2 tally retarded persons residing in community residen-
3 tial facilities, including nursing homes, boarding
4 homes, foster homes, group homes or halfway houses
5 licensed by the Department of Human Services are pro-
6 vided with, insofar as possible, residential accommo-
7 datations and access to habilitation services appropri-
8 ate to their needs; and

9 5. Protective and supportive ser-
10 vices. Providing protective and supportive services,
11 in accordance with section 5203, to incapacitated
12 persons who, with some assistance, are capable of
13 living and functioning in society.

14 §5202. Director

15 1. Appointment. The commissioner shall, with
16 the consent of the Maine Committee on Problems of the
17 Mentally Retarded, appoint and set the salary for,
18 subject to the approval of the Governor, the Director
19 of the Bureau of Mental Retardation.

20 A. Notwithstanding any other provision of law,
21 the commissioner may delegate any employee of the
22 department to serve, for a period not to exceed
23 180 days, as the acting director, if the office
24 of the director is vacant.

25 B. Service as the acting director is considered
26 a temporary additional duty for the person so
27 delegated.

28 2. Qualifications. To be eligible for appoint-
29 ment as director, a person must have training and
30 experience in mental retardation program administra-
31 tion or satisfactory experience in the direction of
32 work of a comparable nature.

33 3. Term. The director shall serve at the pleas-
34 ure of the commissioner.

35 4. Duties. In addition to other duties set out
36 in this Title, the director shall:

37 A. Report directly to the commissioner; and

1 B. Carry out the purposes of the bureau.

2 §5203. Protective and supportive services

3 1. Bureau authority. The bureau may provide
4 protective or supportive services in response to com-
5 plaints concerning, and requests for assistance from
6 or on behalf of, all incapacitated persons, under the
7 following conditions.

8 A. Except for seeking the appointment of a
9 guardian, protective or supportive services may
10 be initiated only:

11 (1) With the acquiescence of the incapacitated
12 person; and

13 (2) After consultation, insofar as possible,
14 with the family or the guardian of
15 the incapacitated persons.

16 B. The role of the bureau shall be primarily
17 that of supervision and coordination.

18 2. Payment for services. Payment for services
19 under this section is governed as follows.

20 A. The bureau may pay for protective and sup-
21 portive services to incapacitated persons from
22 its own resources, by mobilizing available commu-
23 nity resources or by purchase of services from
24 voluntary or state agencies.

25 B. To the extent that assets are available to
26 incapacitated persons or wards, the cost of ser-
27 vices shall be borne by the estate of persons
28 receiving the services.

29 C. The department, through the bureau and its
30 other agents, may receive as payee any benefits
31 from social security, veterans administration,
32 railroad retirement or any other like benefits
33 paid on behalf of any incapacitated person, and
34 shall apply those benefits toward the care and
35 treatment of the incapacitated person.

36 3. Rules. Promulgation, amendment and appeal of
37 rules under this section are governed as follows.

1 A. The bureau shall promulgate, and may amend or
2 repeal, rules governing the administration of
3 this section, in accordance with the Maine Admin-
4 istrative Procedure Act, Title 5, chapter 375.

5 B. The bureau shall, in accordance with the
6 Maine Administrative Procedure Act, Title 5,
7 chapter 375, hold a public hearing before promul-
8 gating, amending or repealing the rules, and give
9 notice of the public hearing.

10 SUBCHAPTER III

11 SERVICES FOR MENTALLY RETARDED PERSONS

12 ARTICLE I

13 STATE-OPERATED FACILITIES

14 FOR MENTALLY RETARDED PERSONS

15 §5401. Maintenance of facilities

16 The department shall maintain the following 3
17 residential facilities for the care and treatment of
18 mentally retarded persons:

19 1. Pineland Center;

20 2. Aroostook Residential Center; and

21 3. Elizabeth Levinson Center.

22 §5402. Pineland Center

23 1. Establishment. There is established the
24 Pineland Center at New Gloucester in Cumberland
25 County, which:

26 A. Shall be maintained for the training, educa-
27 tion, treatment and care of persons who are men-
28 tally retarded; and

29 B. May be maintained for the training, educa-
30 tion, treatment and care of persons between the
31 ages of 3 and 16 who are mentally ill.

1 2. Applicable laws. The provisions of Article
2 III shall, in all relevant aspects, apply to the men-
3 tally ill persons described in subsection 1, para-
4 graph B.

5 3. Superintendent. The chief administrative
6 officer of the Pineland Center is called the superin-
7 tendent.

8 A. The commissioner shall, with the advice of
9 the Maine Committee on Problems of the Mentally
10 Retarded, appoint and set the salary for the
11 superintendent.

12 B. The appointment is for an indefinite term and
13 until his successor is appointed and qualified,
14 or during the pleasure of the commissioner.

15 C. In making the appointment, the commissioner
16 and the committee shall give due consideration to
17 the appointee's qualifications and experience in
18 mental retardation matters.

19 D. In order to qualify for appointment as super-
20 intendent, a person shall have sufficient train-
21 ing and experience to deal with the problems of
22 mentally retarded persons, and shall be either a
23 psychiatrist, hospital administrator, psychol-
24 ogist or a person with a master's degree in edu-
25 cation, social work, public administration,
26 public health or rehabilitation.

27 4. Duties of the superintendent. The superin-
28 tendent shall:

29 A. Be responsible for the training, education,
30 treatment and care of all persons received into
31 Pineland Center;

32 B. Be responsible for the discharge of all such
33 persons, except those placed in Pineland Center
34 under Title 15, section 101 or 103; and

35 C. Have direct supervision, management and con-
36 trol of the grounds, buildings, property, offices
37 and employees of Pineland Center, subject to the
38 approval of the commissioner.

1 §5403. Aroostook Residential Center

2 1. Establishment. There is established the
3 Aroostook Residential Center at Presque Isle in
4 Aroostook County, which:

5 A. Shall be maintained for the training, educa-
6 tion, treatment and care of mentally retarded
7 persons; and

8 B. May provide living accommodations for men-
9 tally retarded persons in order that they may
10 attend educational and training programs.

11 2. Director. The chief administrative officer
12 of the Aroostook Residential Center is called the
13 director.

14 A. The commissioner shall, with the advice of
15 the Maine Committee on Problems of the Mentally
16 Retarded, appoint and set the salary for the
17 director.

18 B. The appointment is for an indefinite term and
19 until his successor is appointed and qualified,
20 or during the pleasure of the commissioner.

21 C. In order to qualify for appointment as the
22 director, a person shall have sufficient educa-
23 tion and experience to administer a facility pro-
24 viding services to the mentally retarded.

25 3. Duties of the director. The director shall:

26 A. Be responsible for the training, education,
27 treatment and care of all persons received into
28 or receiving services from the Aroostook Residen-
29 tial Center;

30 B. Be responsible for the discharge of all per-
31 sons received into the Aroostook Residential Cen-
32 ter; and

33 C. Have direct supervision, management and con-
34 trol of the grounds, buildings, property, offi-
35 cers and employees of the Aroostook Residential
36 Center, subject to the approval of the commis-
37 sioner.

1 §5404. Elizabeth Levinson Center

2 1. Establishment. There is established the
3 Elizabeth Levinson Center at Bangor in Penobscot
4 County, which shall be maintained for the training,
5 education, treatment and care of persons who are men-
6 tally retarded.

7 2. Director. The chief administrative officer
8 of the Elizabeth Levinson Center is called the direc-
9 tor.

10 A. The commissioner shall, with the advice of
11 the Maine Committee on Problems of the Mentally
12 Retarded, appoint and set the salary for the
13 director.

14 B. The appointment is for an indefinite term and
15 until his successor is appointed and qualified,
16 or during the pleasure of the commissioner.

17 C. In order to qualify for appointment as the
18 director, a person shall have sufficient educa-
19 tion and experience to administer a facility pro-
20 viding services to the mentally retarded.

21 3. Duties of the director. The director shall:

22 A. Be responsible for the training, education,
23 treatment and care of all persons received into
24 or receiving services from the Elizabeth Levinson
25 Center;

26 B. Be responsible for the discharge of all per-
27 sons received into the Elizabeth Levinson Center;
28 and

29 C. Have direct supervision, management and con-
30 trol of the grounds, buildings, property, offi-
31 cers and employees of the Elizabeth Levinson Cen-
32 ter, subject to the approval of the commissioner.

33 ARTICLE II

34 COMMUNITY-BASED SERVICES

35 §5431. Purpose

1 The purpose of this Article is to assist in the
2 establishment and expansion of community-based mental
3 retardation programs for mentally retarded persons
4 residing in the community and residing in privately
5 operated residential care facilities.

6 §5432. Commissioner's duties

7 The commissioner shall:

8 1. Community participation. Encourage persons
9 in local communities to participate in the provision
10 of supportive services for mentally retarded persons,
11 so that persons in the community may have a better
12 understanding of the need for those services;

13 2. Financial assistance. When offering assis-
14 tance to community-based programs, follow the proce-
15 dures set forth in this Article; and

16 3. Rules. Through the Director of the Bureau of
17 Mental Retardation, promulgate rules relating to the
18 administration of the services authorized by this
19 Article.

20 §5433. Commissioner's powers

21 The commissioner may:

22 1. Financial aid. Allocate money for the devel-
23 opment of group homes, capital construction, purchase
24 of buildings, supportive services and for other ac-
25 tivities, but only those applicants for funds whose
26 programs provide for adequate standards of profes-
27 sional service qualify for funds from the department;

28 2. Services and programs. Provide and help
29 finance mental retardation services and programs
30 throughout the State for mentally retarded persons
31 residing in the community and residing in privately
32 operated residential care facilities;

33 3. Cooperation. Cooperate with other state
34 agencies, municipalities, other governmental units,
35 unincorporated associations and nonstock corporations
36 in order to provide and help finance services and
37 programs for mentally retarded persons; and

1 4. Available funds. Receive and use for the
2 purpose of this Article money appropriated by the
3 State, grants by the Federal Government, gifts from
4 individuals and money from any other sources.

5 §5434. Municipalities and other governmental units

6 1. Authorization. A municipality or other gov-
7 ernmental unit, such as a county, school district or
8 health district, through its local board of health or
9 other town or governmental agency approved by the
10 commissioner, may adopt and carry out a program of
11 mental retardation services established or approved
12 by the commissioner and appropriate money for that
13 purpose.

14 2. Joint ventures. A municipality or other gov-
15 ernmental unit may join with another municipality or
16 governmental unit to carry out such a program.

17 3. Grants. Upon application to the department
18 by a municipality or other governmental unit, the
19 commissioner may grant to the applicant money to be
20 used for carrying out its mental retardation ser-
21 vices, including any necessary capital expenditures
22 or purchase of buildings.

23 §5435. Nongovernmental units

24 1. Department grants. Upon application to the
25 department by an unincorporated association or non-
26 stock corporation organized for the improvement of
27 community health and welfare, the commissioner may
28 grant to the applicant money to be used for carrying
29 out its mental retardation services, including any
30 necessary capital expenditures or purchase of build-
31 ings.

32 2. Bureau grants. The Bureau of Mental Retarda-
33 tion may make grants to nonprofit corporations for
34 amounts which are reasonable relative to the quantity
35 and quality of services to be provided by the
36 grantee.

37 A. The bureau may request a display of effort on
38 the part of the grantee that appropriate local
39 governmental and other funding sources have been

1 sought to assist in the financing of the services
2 for which the bureau is making the grant.

3 B. The bureau shall give consideration to the
4 ability of the municipality or governmental unit
5 to support the mental retardation services, as
6 reflected by the state's evaluation of the compo-
7 nent communities.

8 C. In making grants to unincorporated associa-
9 tions or nonstock corporations, the bureau shall
10 take into account all income and resources.

11 §5436. Fees

12 1. Authority. Fees may be charged for services
13 provided directly to individuals by any program
14 authorized by the department, if the individual is
15 financially able to pay.

16 2. Use. Fees received by a municipality, gov-
17 ernmental unit, unincorporated association or non-
18 stock corporation shall be used by each entity in
19 carrying out its programs approved under this Arti-
20 cle.

21 ARTICLE III

22 PROCEDURES

23 §5461. Definitions

24 As used in this Article, unless the context
25 otherwise indicates, the following terms have the
26 following meanings.

27 1. Advocate. "Advocate" means a person:

28 A. Who is familiar with the procedures involved
29 both in admitting mentally retarded persons to a
30 facility and in providing services to those per-
31 sons; and

32 B. Who is capable of advocating solely on behalf
33 of a mentally retarded person.

1 2. Client. "Client" means a person asking the
2 department for mental retardation services or the
3 person for whom those services are asked.

4 3. Community. "Community" means the municipal-
5 ity or other area in which the client resides when
6 applying for services.

7 4. Comprehensive evaluation. "Comprehensive
8 evaluation" means a comprehensive set of evaluations
9 which:

10 A. Results in the distinguishing of mental
11 retardation from other conditions;

12 B. Determines the severity of disability result-
13 ing from mental retardation and other conditions;
14 and

15 C. Estimates the degree to which mental retarda-
16 tion and other conditions can be ameliorated.

17 5. Facility. "Facility" means a residential
18 facility operated by the department for mentally
19 retarded clients.

20 6. Habilitation. "Habilitation" means a process
21 by which a person is assisted to acquire and maintain
22 skills which:

23 A. Enable him to cope more effectively with the
24 demands of his own person and of the environment;

25 B. Raise the level of his physical, mental and
26 social efficiency; and

27 C. Upgrade his sense of well-being.

28 7. Interdisciplinary team. "Interdisciplinary
29 team" means a team of persons, including at least one
30 professional, which team is established and conducted
31 in accordance with professional standards for the
32 purpose of evaluating mentally retarded clients and
33 recommending services for these clients.

34 8. Person in need of institutional ser-
35 vices. "Person in need of institutional services"

1 means a person who, because of mental retardation and
2 other severely disabling conditions, is unable to
3 care for himself and to avoid or protect himself from
4 severe physical or psychological impairment, and who
5 needs habilitation in an institutional setting
6 designed to improve his ability to care for and pro-
7 tect himself.

8 9. Prescriptive program plan. "Prescriptive
9 program plan" means a detailed written plan, formu-
10 lated by an appropriately constituted
11 interdisciplinary team, outlining a mentally retarded
12 client's specific needs for education, training,
13 treatment and habilitation services, along with the
14 methods to be utilized in providing treatment, educa-
15 tion and habilitation to the client.

16 10. Professional. "Professional" means a person
17 who is licensed by the State to practice medicine or
18 psychology and who has had training and experience in
19 the diagnosis and treatment of mentally retarded per-
20 sons.

21 11. Service agreement. "Service agreement"
22 means a written form in which the persons designated
23 in section 5471 agree to the type of services and
24 programs for and the manner of providing services to
25 the client.

26 12. Voluntary admission. "Voluntary admission"
27 means the reception into a facility of a mentally
28 retarded client who understands the nature, purpose
29 and proposed duration of the admission and his right
30 to leave the facility and thus to terminate the
31 admission at any time, and who consents to the admis-
32 sion, or a mentally retarded client whose eligibility
33 for admission to the facility has been certified by
34 the District Court under section 5475.

35 §5462. Procedure policies

36 1. Steps. It is the policy of the State that,
37 in order to ensure that mentally retarded persons
38 receive, to the extent possible, needed services, the
39 following steps shall be taken for each person found
40 by the department to be mentally retarded and in need
41 of services:

- 1 A. An assessment of the person's needs;
2 B. The development of a prescriptive program of
3 services for the person;
4 C. A determination of the suitability and qual-
5 ity of needed services which are available to the
6 person, first in the community and 2nd in
7 state-operated facilities; and
8 D. Insofar as possible, obtaining high quality
9 and suitable services for the person.

10 2. Persons involved with procedures. It is the
11 policy of the State that:

12 A. To the extent possible, the mentally retarded
13 person and his legal guardian or next of kin be
14 involved with the steps specified in subsection
15 1; and

16 B. An advocate be available to the mentally
17 retarded person throughout the steps specified in
18 subsection 1.

19 §5463. Notice

20 The commissioner shall provide the client, if he
21 is competent, the client's next of kin or legal
22 guardian, if any exists, and the client's advocate
23 with timely written notice in advance of procedures
24 and actions to be taken with respect to the develop-
25 ment, implementation and assessment of prescriptive
26 program plans.

27 §5464. Correspondence and reports

28 The commissioner shall provide the client, if he
29 is competent, the client's next of kin or legal
30 guardian, if any exists, and the client's advocate
31 with access to copies of correspondence and reports
32 concerning the client, in accordance with section
33 1206.

34 §5465. Rules

1 1. Duty. The commissioner shall promulgate
2 rules for the effective implementation of this Arti-
3 cle.

4 2. Requirements. The rules shall include, but
5 need not be limited to, information on:

6 A. The membership, functions and procedures of
7 the interdisciplinary teams;

8 B. The procedures to be used in developing
9 prescriptive programs and service agreements;

10 C. The rights of clients while at a facility or
11 while in departmental programs; and

12 D. The rights and procedures for administrative
13 review if there is dissatisfaction with any step
14 of the process of receiving services specified in
15 this Article or if there is any grievance arising
16 during the course of voluntary admission to or
17 treatment in any facility, including provisions
18 for the development of regional committees to
19 review any grievance or dissatisfaction.

20 3. Review. The joint standing committee of the
21 Legislature having jurisdiction over health and
22 institutional services shall review all rules promul-
23 gated by the department pursuant to this Article by
24 no later than March of each year.

25 4. Public hearing and notice. The commissioner
26 shall hold at least one public hearing before promul-
27 gating these rules and notice of any public hearing
28 shall be given pursuant to the Maine Administrative
29 Procedure Act, Title 5, section 8053.

30 5. Amendment or repeal. The commissioner may
31 amend or repeal rules at any time after giving notice
32 and holding a hearing, as prescribed in subsection 4,
33 with respect to the rules amended or repealed.

34 §5466. Advocate

35 1. Entitlement. Each client who receives ser-
36 vices under sections 5467 to 5474 is entitled to
37 representation by an advocate.

1 2. List. The commissioner shall develop a list
2 of advocates, including attorneys, for each region of
3 the Bureau of Mental Retardation.

4 §5467. Application and preliminary procedures

5 1. Application. An application for mental
6 retardation services, on a form provided by the com-
7 missioner, shall be initiated at or referred to a
8 regional office of the Bureau of Mental Retardation.

9 2. Preliminary procedures. Within 5 work days
10 from the day of application, the department shall:

11 A. Observe the client in his current environ-
12 ment;

13 B. Obtain a brief family survey;

14 C. Make a preliminary assessment of the client's
15 abilities and needs and of the relevant services
16 presently available to the client; and

17 D. Ensure the client's representation by an
18 advocate throughout the process of mental retar-
19 dation services under sections 5467 to 5474,
20 unless the client refuses that representation.

21 §5468. Evaluation

22 After completing the tasks specified in section
23 5467, subsection 2, the commissioner shall forthwith
24 cause a comprehensive evaluation of the client,
25 including a consideration of physical, emotional,
26 social and cognitive factors to be conducted.

27 1. Location. The comprehensive evaluation shall
28 be conducted locally, except where resources required
29 to carry out the evaluation are not available.

30 2. Interdisciplinary team. The comprehensive
31 evaluation shall be conducted by an interdisciplinary
32 team.

33 §5469. Report

1 Within 30 days of the day of the application made
2 under section 5467, the interdisciplinary team shall
3 give a report of its findings to the department, and
4 the professional on the team shall state specifically
5 in the report whether or not the client is mentally
6 retarded.

7 1. Client not mentally retarded. If the report
8 of the interdisciplinary team concludes that the
9 client is not mentally retarded, the department shall
10 deny the application for services, care and treat-
11 ment, but shall make appropriate referrals in cases
12 where clear needs of the client exist.

13 2. Client mentally retarded. If the report of
14 the interdisciplinary team concludes that the client
15 is mentally retarded and is in need of services, the
16 department, through the interdisciplinary team, shall
17 develop and begin to implement a prescriptive program
18 plan for this client within 60 days of the day of
19 application made under section 5467.

20 3. Preschool child. If the report of the
21 interdisciplinary team concludes that a preschool
22 child, aged 0 to 5 years, is developmentally delayed
23 and is in need of infant development center services,
24 the department, through the interdisciplinary team,
25 shall develop and begin to implement a prescriptive
26 program plan for this client within 60 days of the
27 day of application made under section 5467.

28 §5470. Prescriptive program plan

29 1. Individually tailored plan. Each
30 prescriptive program plan shall be individually tai-
31 lored to the client's age, sex, condition, abilities,
32 experiences and needs.

33 2. Contents of plan. Each prescriptive program
34 plan shall:

35 A. Define training and treatment goals for the
36 client without regard to service availability;

37 B. List all available and applicable programs of
38 treatment, education and habilitation;

1 C. Weigh the advantages of each program in para-
2 graph B in terms of cost, effectiveness, conven-
3 ience and the client's needs;

4 D. Recommend the optimal course of action; and

5 E. Include plans for the active and continued
6 exploration of suitable program alternatives.

7 3. Implementation. Implementation of all parts
8 of a prescriptive program plan shall occur at the
9 earliest possible time and shall be governed by
10 section 5471, subsection 4.

11 4. Agreement. All parts of a prescriptive pro-
12 gram plan shall be agreed to, prior to implementa-
13 tion, by the client, if he is able, and by his next
14 of kin or legal guardian, if that person exists and
15 is available.

16 5. Recommendations of plan. Each prescriptive
17 program plan shall recommend that the client be
18 admitted to a facility, receive services in the com-
19 munity under the supervision of a regional office or
20 cease to receive services from the department.

21 6. Recommendation of admission. If admission to
22 a facility is recommended by an interdisciplinary
23 team, the prescriptive program plan shall include the
24 following:

25 A. A written report prepared by the
26 interdisciplinary team supporting the following
27 conclusions:

28 (1) The client is mentally retarded;

29 (2) The client requires treatment, educa-
30 tion and habilitation of an intensive
31 nature;

32 (3) The client can benefit from programs at
33 the facility; and

34 (4) Appropriate programs for treatment,
35 education and habilitation are not presently
36 available in the community or the facility

1 is the treatment setting of the client's
2 choice;

3 B. Plans for preparing the client for admission,
4 including, unless specifically contraindicated, a
5 preadmission visit to the facility; and

6 C. Plans to facilitate, at the earliest possible
7 time, the client's return to the community.

8 7. Major changes. Any major changes in a
9 client's prescriptive program plan may be made only
10 in accordance with section 5471, subsection 6.

11 §5471. Service agreements

12 1. Service agreement required. Each
13 prescriptive program plan shall be carried out pur-
14 suant to a written service agreement.

15 2. Signatures. Each service agreement shall be
16 signed and dated by at least:

17 A. The client, if he is able;

18 B. The client's legal guardian or next of kin,
19 if that person exists and is available;

20 C. A client advocate, if the client has no legal
21 guardian;

22 D. The individual program plan coordinator of
23 the interdisciplinary team which developed the
24 individual program plan for the client;

25 E. The chief administrative officer of the
26 appropriate regional office, if a client is being
27 admitted to or discharged from a facility or if a
28 client is under the supervision of the regional
29 office;

30 F. The chief administrative officer of the
31 facility or his agent, if a client is being
32 admitted to, treated in or discharged from a
33 facility; and

1 G. The chief administrative officer, or his
2 agent, of other public or private agencies or
3 groups which agree to provide services to the
4 client.

5 3. Contents. Each service agreement shall
6 include at least the following information.

7 A. It shall specify the respective responsibili-
8 ties, where applicable, of the client, the family
9 or legal guardian of the client, the regional
10 office, the facility, and each public and private
11 agency which intends to provide services to the
12 client.

13 B. It shall identify by job classification or
14 other description each individual who is respon-
15 sible for carrying out each portion of the
16 prescriptive program plan.

17 C. It shall specify the date on which the review
18 required in subsection 5 shall occur.

19 4. Implementation of prescriptive program
20 plan. Implementation of a prescriptive program plan
21 is governed as follows.

22 A. No part of a prescriptive program plan may be
23 implemented until each person required to sign
24 the service agreement under subsection 2 has
25 signed it, except that, if a client is to be
26 admitted to a facility, the service agreement
27 need not be completed until 5 days after the date
28 of admission.

29 B. Any existing prescriptive program plan is
30 considered to be in effect until all persons re-
31 quired to sign under subsection 2 have signed the
32 new service agreement.

33 C. No prescriptive program plan may be in effect
34 longer than one year and 2 weeks from the day on
35 which the last person signed the service agree-
36 ment for the plan.

37 5. Review. At least 30 days prior to the termi-
38 nation of a service agreement, an interdisciplinary

1 team shall meet to assess the present prescriptive
2 program plan and, if further services are recom-
3 ended, to prepare a new plan.

4 6. Amendment. Any major changes in a client's
5 prescriptive program plan may occur only after the
6 service agreement has been amended and signed by the
7 persons specified in subsection 2.

8 §5472. Preadmission visit

9 Any client may be detained by a facility up to 48
10 hours, if the purpose of the detention is a
11 preadmission visit solely to observe and evaluate the
12 client.

13 §5473. Voluntary admissions

14 1. Respite care. Respite care may be provided
15 to any client by a facility without full compliance
16 with the procedures for admission by judicial certi-
17 fication under section 5475, if it is recommended by
18 an interdisciplinary team and a service agreement has
19 been completed.

20 A. The purpose of the respite care is for evalu-
21 ation, diagnosis or other clearly stated and
22 broadly defined therapeutic purposes of the
23 client or his family.

24 B. Respite care may be provided, upon applica-
25 tion to the regional office of the bureau by the
26 client, legal guardian or parent, for not more
27 than 21 days at a time and not more than 60 days
28 during any 12-month period.

29 C. Continuing placement in the facility beyond
30 the time periods stated in paragraph B, if indi-
31 cated, may be accomplished only upon full compli-
32 ance with procedures described by this chapter.

33 2. Regular admission. A client may be admitted
34 for extended treatment and care if the following
35 steps have been complied with.

36 A. An application for admission has been made by
37 the client, a representative of his choice, the

1 client's legal guardian, the client's next of kin
2 or any other responsible person.

3 B. The director of a regional office or his des-
4 ignee has certified that he believes that the
5 compelling needs of the client are not being met
6 and has stated the factual basis of that belief.

7 C. An initial prescriptive program plan has been
8 developed according to section 5470.

9 D. The requirements of informed consent under
10 subsection 3 or of judicial certification under
11 section 5475 have been met.

12 3. Admission by informed consent. The client
13 may be admitted to a facility by informed consent if
14 the chief administrative officer of the facility or
15 his designee has determined that:

16 A. The client has been informed of and under-
17 stands both the nature, purpose and proposed
18 duration of the admission, and the provisions of
19 section 5480 regarding the client's right to
20 leave and the limitations on that right; and

21 B. The client voluntarily consents to the pro-
22 posed admission.

23 4. Medical admission to the Benda Hospital at
24 Pineland Center. Any mentally retarded person re-
25 quiring medical or dental treatment, including
26 post-operative care, may be admitted to the Benda
27 Hospital only if, and as long as, a signed consent to
28 admission is given and remains unrevoked by the
29 client, a parent or a legal guardian.

30 A. The consent is consent to admission only.

31 B. The consent may not be construed as a substi-
32 tute for informed consent under subsection 3.

33 §5474. Involuntary admissions

34 1. Short-term evaluation. When considered
35 necessary by the interdisciplinary team and with the
36 consent of the director, persons may be admitted to

1 the Elizabeth Levinson Center short-term evaluation
2 program for a period of 40 program days, excluding
3 weekends, without certification.

4 2. Admission by judicial certification or judi-
5 cial commitment. If the chief administrative officer
6 of a facility or his designee has determined that the
7 client is not capable of giving informed consent to
8 admission, a client may be admitted for extended care
9 and treatment only after judicial certification under
10 to section 5475 or after judicial commitment under
11 section 5476.

12 3. Emergency admission. When immediate deten-
13 tion of a person believed to be mentally retarded is
14 necessary, the person may be temporarily restrained
15 in accordance with section 5477.

16 §5475. Judicial certification procedures

17 If the chief administrative officer of a facility
18 or his designee has determined that a client is not
19 capable of giving informed consent to admission, the
20 client may be admitted for extended care and treat-
21 ment only after judicial certification pursuant to
22 the following procedures.

23 1. Petition. A petition to admit a client by
24 judicial certification may be filed in the District
25 Court with jurisdiction over the place where the
26 client is residing.

27 A. Only a chief administrative officer of a
28 regional office or facility may file the peti-
29 tion.

30 B. The petition may not be filed by the chief
31 administrative officer of a regional office until
32 he has obtained approval for the admission by the
33 chief administrative officer of the facility
34 under rules promulgated by the commissioner under
35 section 1203, subsection 3.

36 C. Any party may file a motion with the court
37 where the petition is filed alleging that a court
38 in another location would be more convenient, and
39 the court may order a change in venue if justice
40 so requires.

1 2. Prehearing duties of the court. Upon receipt
2 by the District Court of the petition, the court
3 shall:

4 A. Schedule a certification hearing to be held
5 as soon as practicable, except that if the client
6 is being detained under section 5477, subsection
7 4, the hearing shall be held no later than 15
8 days from the day the petition was filed, unless
9 the court, for cause shown, grants a continuance
10 of not more than 10 additional days;

11 B. Cause written notice of the petition and
12 hearing to be given personally or by mail to the
13 client who is the subject of the proceeding and
14 to the client's legal guardian, spouse, parent or
15 adult child, if any is known.

16 (1) If none of these persons is known or if
17 none can be located, the notice shall be
18 given to one of the client's next of kin or
19 to a next friend.

20 (2) A docket entry is sufficient evidence
21 that the notice has been given;

22 C. Unless waived by a parent or guardian, cause
23 the client who is the subject of the proceeding
24 to be examined by a professional.

25 (1) The client or his counsel may choose
26 the professional, if the professional he
27 chooses is reasonably available.

28 (2) The professional may not be the same
29 one who performed any part of the evaluation
30 required under section 5468 or who partici-
31 pated in the development of the prescriptive
32 program plan.

33 (3) Upon completion of the examination, the
34 professional shall report to the court his
35 opinion whether the client is mentally
36 retarded and therefore requires treatment,
37 stating his reasons for his opinion;

38 D. Appoint counsel for any indigent client not
39 already represented;

1 E. Furnish counsel with copies of the petition
2 and the reports of the court-appointed examiner;
3 and

4 F. Cancel the certification hearing if a parent
5 or guardian having legal custody of the person of
6 the client so requests.

7 3. Certification hearing. The certification
8 hearing shall be governed as follows.

9 A. The certification hearing shall be conducted
10 in accordance with the Maine Rules of Evidence
11 and in an informal manner consistent with orderly
12 procedure.

13 B. The certification hearing shall be confiden-
14 tial and shall be electronically or
15 stenographically recorded.

16 C. No report of the certification hearing pro-
17 ceedings may be released to the public or press,
18 except by permission of the client or his counsel
19 and with the approval of the court.

20 4. Certification. The court shall certify the
21 client's eligibility for admission only if the peti-
22 tioner proves, by clear and convincing evidence,
23 that:

24 A. The client is a person in need of institu-
25 tionalized services;

26 B. The needed services are available at the
27 facility named in the application; and

28 C. There is no less restrictive alternative to
29 the care provided by the facility, consistent
30 with the best interest of the client.

31 5. Effect of certification. The certification
32 of a client's eligibility for admission may not be
33 construed as a judicial commitment of the client, but
34 only empowers the chief administrative officer of the
35 facility to admit the client as a resident for treat-
36 ment, education or habilitation, subject to the
37 provisions for discharge of section 5480.

1 6. Period of certification. The court shall
2 order the certification to remain in effect for a
3 period of not more than 2 years from the day the cer-
4 tification order was issued.

5 7. Expenses. The District Court is responsible
6 for any expenses incurred under this section, includ-
7 ing fees of appointed counsel, witness fees and the
8 expenses resulting from a court-appointed examiner.

9 8. Appeals. A client certified under this
10 section may appeal the certification order to the
11 Superior Court.

12 A. The appeal is limited to questions of law.

13 B. Any findings of fact of the District Court
14 may not be set aside unless clearly erroneous.

15 C. The order of the District Court shall remain
16 in effect pending the appeal.

17 D. The District Court Rules of Civil Procedure
18 and the Maine Rules of Civil Procedure shall
19 apply to the conduct of the appeals, except as
20 otherwise specified in this subsection.

21 9. Exceptions. This section does not apply to
22 the Aroostook Residential Center.

23 §5476. Judicial commitment

24 Judicial commitment of clients is governed as
25 follows.

26 1. Eligibility. Any client recommended for
27 regular admission to a facility pursuant to section
28 5470 may be admitted by judicial commitment.

29 2. Procedure. The procedure for judicial com-
30 mitment to a mental retardation facility for care,
31 training and treatment shall follow the procedures
32 set forth in section 3864 for the involuntary commit-
33 ment of mentally ill persons, except that, where a
34 finding of mental illness is required, a finding of
35 mental retardation as defined by section 5001, sub-
36 section 3, shall be substituted.

1 §5477. Emergency procedures

2 1. Protective custody. If a law enforcement
3 officer has reasonable grounds to believe, based upon
4 his personal observation, that a person may be men-
5 tally retarded, that due to his condition he presents
6 a threat of imminent and substantial physical harm to
7 himself or to other persons and that an emergency
8 exists requiring immediate residential placement:

9 A. The officer may take the person into protec-
10 tive custody; and

11 B. If the officer does take the person into pro-
12 ductive custody, the officer shall deliver the
13 person forthwith, within 18 hours, for examina-
14 tion by an available licensed physician or li-
15 icensed psychologist as provided in subsection 4.

16 2. Certificate not executed. If a certificate
17 relating to the person's likelihood of serious harm
18 is not executed by the examiner under subsection 4,
19 the officer shall:

20 A. Release the person from protective custody
21 and, with his permission, return him forthwith to
22 his place of residence, if within the territorial
23 jurisdiction of the officer;

24 B. Release the person from protective custody
25 and, with his permission, return him to the place
26 where he was taken into protective custody; or

27 C. If the person is also under arrest for viola-
28 tion of law, retain him in custody until he is
29 released in accordance with the law.

30 3. Certificate executed. If the certificate is
31 executed by the examiner under subsection 4, the
32 officer shall undertake forthwith, within 18 hours,
33 to obtain the endorsement by a judicial officer under
34 subsection 4 and may detain the person for as long as
35 necessary to obtain the endorsement.

36 4. Admission. A person may be admitted to a
37 facility after the facility has received an applica-
38 tion and certificate according to the following
39 procedures.

1 A. Any health officer, law enforcement officer
2 or other person may make a written application to
3 admit a person to a facility, subject to the pro-
4 hibitions and penalties of section 3805, stating:

5 (1) His belief that the person is in need
6 of institutional services;

7 (2) That an emergency exists requiring
8 immediate placement in a facility; and

9 (3) The grounds for this belief.

10 B. The written application shall be accompanied
11 by a dated certificate, signed by a licensed
12 physician or a licensed psychologist who prac-
13 tices clinical psychology, stating:

14 (1) He has examined the person on the date
15 of the certificate, which date may not be
16 more than 3 days before the date of admis-
17 sion to the facility; and

18 (2) He is of the opinion that the person is
19 a mentally retarded person in need of insti-
20 tutional services.

21 C. The application and accompanying certificate
22 shall be reviewed by a Justice of the Superior
23 Court, a Judge of the District Court, a Judge of
24 Probate or a complaint justice.

25 (1) If the judge or justice finds the
26 application and accompanying certificate to
27 be regular and in accordance with the law,
28 he shall endorse them.

29 (2) No person may be held against his will
30 in the facility under this subsection unless
31 the application and certificate have been
32 endorsed by a judge or justice, except that
33 a person for whom an examiner has executed
34 the certificate provided for under this sub-
35 section may be detained in a facility for as
36 long as is necessary to obtain the endorse-
37 ment by a judge or justice, if the person or
38 persons transporting the person to the

1 facility undertake to secure the endorsement
2 forthwith upon execution of the certificate
3 by the examiner.

4 D. Upon endorsement by the judge or justice of
5 the application and certificate, any health offi-
6 cer, police officer or other person designated by
7 the judge or justice may take the person into
8 custody and transport him to the facility desig-
9 nated in the application.

10 E. The county in which the person is found is
11 responsible for any expenses of transportation
12 for the person under this subsection, including
13 return from the facility if admission is
14 declined.

15 F. Under this subsection, a facility may admit
16 the client for no longer than 5 days, but if a
17 petition for judicial certification is filed, the
18 facility may admit the client for an additional
19 period not to exceed 25 days from the date of
20 application.

21 §5478. Continuation of treatment in a facility

22 1. Authority to continue treatment. A client
23 who has been admitted to a facility by judicial cer-
24 tification, or who has been retained in a facility
25 pursuant to this section, may continue extended care
26 and treatment in that facility for an additional
27 period, not to exceed 2 years, only after judicial
28 certification under section 5475 or after waiver of
29 that process by the District Court as provided in
30 this section, except that waiver of the judicial cer-
31 tification process is not permitted for any mentally
32 retarded person under public guardianship.

33 2. Waiver of judicial certification. A petition
34 to waive judicial certification under section 5475
35 may be filed in District Court by the facility where
36 the client is residing. The court may waive judicial
37 certification upon a finding that:

38 A. A prescriptive program plan, as provided in
39 section 5470, has been agreed to by the superin-
40 tendent of the facility and the guardian;

1 B. The guardian has been informed of and under-
2 stands the nature, purpose and proposed duration
3 of the admission and the provisions of section
4 5480 regarding the client's right to leave and
5 the limitations on that right;

6 C. The guardian has consented to the continued
7 extended care and treatment of the client in the
8 facility; and

9 D. Continued care and treatment is necessary and
10 there is no less restrictive alternative to the
11 care and treatment provided by the facility, con-
12 sistent with the best interest of the client.

13 §5479. Post-admission responsibilities of the
14 department

15 1. Provision of care and treat-
16 ment. Post-admission care and treatment in a facil-
17 ity is governed as follows.

18 A. An initial service agreement for services to
19 be received in the facility shall be executed
20 within 5 days of admission and shall include a
21 date, within 30 days of the client's admission to
22 the facility, for a meeting of the persons who
23 signed the agreement to assess and, if necessary,
24 refine the client's prescriptive program plan.

25 B. While residing in the facility, the client
26 shall receive care, treatment and services only
27 according to the procedures set forth in this
28 section and in sections 5470 and 5471.

29 2. Preparation for discharge. Preparation for a
30 client's discharge from a facility is governed as
31 follows.

32 A. When an interdisciplinary team finds that the
33 client may be ready for discharge and determines
34 that temporary placement of the client in the
35 community is required to assist in its evaluation
36 of the client, the team may recommend that place-
37 ment and shall develop a prescriptive program
38 plan and service agreement which shall include
39 provisions to ensure that:

1 (1) The client's money is adequately man-
2 aged;

3 (2) The client has a legal representative,
4 if required;

5 (3) The client receives needed services in
6 the community; and

7 (4) The client's parent or legal guardian,
8 if available, continues to be involved with
9 the client.

10 B. The chief administrative officer of the
11 facility may release the client pursuant to such
12 a recommendation for community placement through
13 the regional office.

14 3. Role of the regional office. The role of the
15 regional office under this section is as follows.

16 A. The regional office which will have responsi-
17 bility for the client shall be included in the
18 preparation of the prescriptive program plan and
19 service agreement specified in subsection 2.

20 B. The regional office shall be responsible for
21 implementing the client's release.

22 C. The regional office, shall, along with the
23 other members of the interdisciplinary team,
24 evaluate the success of the client's
25 reintegration into the community and shall assist
26 in obtaining the client's discharge when assured
27 that the provisions of the prescriptive program
28 plan and service agreement have been met.

29 §5480. Client's right to leave facility

30 1. Client's request. Any client admitted by
31 informed consent may leave the facility at his own
32 request, subject only to section 5477, subsection 4.

33 2. Discharge. When a judicially certified
34 client is prepared for discharge, under section 5479,
35 subsection 2, he shall be discharged if the regional
36 office and the interdisciplinary team so recommend.

1 to normal as possible and making available to them
2 patterns and conditions of every day life which are
3 as close as possible to the norms and patterns of the
4 mainstream of society.

5 6. Residential facility. "Residential facility"
6 means a facility providing 24-hour residential care
7 for mentally retarded persons which is owned, oper-
8 ated, licensed or funded, in whole or in part, by the
9 department or through the Department of Human Ser-
10 vices.

11 7. Seclusion. "Seclusion" means the placement
12 of a client alone in a locked room for a period in
13 excess of one hour.

14 8. Treatment. "Treatment" means the prevention,
15 amelioration or cure of a client's physical and
16 mental disabilities or illness.

17 §5602. Purpose

18 It is the intent of the Legislature to guarantee
19 individual dignity, liberty, pursuit of happiness and
20 the protection of the civil and legal rights of men-
21 mentally retarded persons and to articulate rights of
22 mentally retarded persons, so that these rights may
23 be exercised and protected.

24 §5603. Entitlement

25 Each mentally retarded person is entitled to the
26 rights enjoyed by citizens of the State and of the
27 United States, unless some of these rights have been
28 suspended as the result of court guardianship pro-
29 ceedings.

30 §5604. Protection

31 The Legislature finds and declares that the
32 rights of mentally retarded persons can be protected
33 best under a system of care which operates according
34 to the principles of normalization and that the
35 state's system of care shall operate according to
36 these principles with the goals of:

1 1. Community-based services. Continuing the
2 development of community-based services which provide
3 reasonable alternatives to institutionalization in
4 settings that are least restrictive to the client;
5 and

6 2. Independence and productivity. Providing
7 habilitation, education and other training to men-
8 mentally retarded persons which will maximize their
9 potential to lead independent and productive lives
10 and which will afford opportunities for outward
11 mobility from institutions.

12 §5605. Rights and basic protections of mentally
13 retarded clients

14 Mentally retarded clients are entitled to the
15 following rights and basic protections.

16 1. Humane care. Clients are entitled to dig-
17 nity, privacy and humane care.

18 2. Practice of religion. Clients are entitled
19 to religious freedom and practice without any re-
20 striction or forced infringement on a client's right
21 to religious preference and practice.

22 3. Communication. Clients are entitled to pri-
23 vate communications.

24 A. Each client is entitled to receive, send and
25 mail sealed, unopened correspondence, and no
26 person who owns or is employed by a day facility
27 or a residential facility may delay, hold or cen-
28 sor any incoming or outgoing correspondence of
29 any client, or open any such correspondence with-
30 out the consent of the client or his legal
31 guardian.

32 B. Clients in residential facilities are enti-
33 tled to reasonable opportunities for telephone
34 communication.

35 C. Clients are entitled to an unrestricted right
36 to visitations during reasonable hours, except
37 that nothing in this provision may be construed
38 to permit infringement upon other clients' rights
39 to privacy.

1 4. Work. Clients engaged in work programs which
2 require compliance with state and federal wage and
3 hour laws are entitled to fair compensation for labor
4 in compliance with regulations of the United States
5 Department of Labor.

6 5. Vote. No client may be denied the right to
7 vote for reasons of mental illness, as provided in
8 the Constitution of Maine, Article II, Section 1,
9 unless under guardianship.

10 6. Personal property. Each client is entitled
11 to the possession and use of his own clothing, per-
12 sonal effects and money, except that, when necessary
13 to protect the client or others from imminent injury,
14 the chief administrator of a day facility or a resi-
15 dential facility may take temporary custody of cloth-
16 ing or personal effects which he shall immediately
17 return when the emergency ends.

18 7. Nutrition. Each client in a residential
19 facility is entitled to nutritious food in adequate
20 quantities and meals may not be withheld for disci-
21 plinary reasons.

22 8. Medical care. Each client is entitled to
23 receive prompt and appropriate medical and dental
24 treatment and care for physical and mental ailments
25 and for the prevention of any illness or disability,
26 and medical treatment shall be consistent with the
27 accepted standards of medical practice in the commu-
28 nity, unless the religion of the client so prohibits.

29 A. Medication may be administered only at the
30 written order of a physician.

31 B. Medication may not be used as punishment, for
32 the convenience of staff, as a substitute for a
33 habilitation plan or in unnecessary or excessive
34 quantities.

35 C. Daily notation of medication received by each
36 client in a residential facility shall be kept in
37 the client's records.

38 D. Periodically, but no less frequently than
39 every 6 months, the drug regimen of each client

1 in a residential facility shall be reviewed by
2 the attending physician or other appropriate mon-
3 itoring body, consistent with appropriate stan-
4 dards of medical practice.

5 E. All prescriptions shall have a termination
6 date.

7 F. Pharmacy services at each residential facil-
8 ity operated by the department shall be directed
9 or supervised by a professionally competent
10 pharmacist licensed according to the provisions
11 of Title 32, chapter 41.

12 G. Prior to instituting a plan of experimental
13 medical treatment or carrying out any surgical
14 procedure, the express and informed consent shall
15 be obtained from the client, unless the client
16 has been found to be legally incompetent, in
17 which case the guardian of the client's person
18 may consent.

19 (1) Before making a treatment or surgical
20 decision, the client shall be given informa-
21 tion, including, but not limited to, the
22 nature and consequences of the procedures,
23 the risks, benefits and purposes of the
24 procedures and the availability of alternate
25 procedures.

26 (2) The client or, if legally incompetent,
27 his guardian may withdraw his express and
28 informed consent at any time, with or with-
29 out cause, before treatment or surgery.

30 H. Notwithstanding the absence of express and
31 informed consent, emergency medical care, treat-
32 ment or surgical procedure may be provided to any
33 client who has been injured or who is suffering
34 from an acute illness, disease or condition, if,
35 within a reasonable degree of medical certainty,
36 delay in initiation of emergency medical care or
37 treatment would endanger the health of the
38 client.

39 9. Sterilization. A client may not be steril-
40 ized, except in accordance with chapter 7.

1 10. Social activity. Each client is entitled to
2 suitable opportunities for behavioral and leisure
3 time activities which include social interaction.

4 11. Physical exercise. Each client is entitled
5 to opportunities for appropriate physical exercise,
6 including the use of available indoor and outdoor
7 facilities and equipment.

8 12. Discipline. Discipline of clients is gov-
9 erned as follows.

10 A. The chief administrative officer of each
11 facility shall prepare a written statement of
12 policies and procedures for the control and dis-
13 cipline of clients, which is directed to the goal
14 of maximizing the growth and development of the
15 clients.

16 (1) Clients are entitled to participate, as
17 appropriate, in the formulation of the poli-
18 cies and procedures.

19 (2) Copies of the statement of policies and
20 procedures shall be given to each client
21 and, if the client has been adjudged incom-
22 petent, to his parent or legal guardian.

23 (3) Copies of the statement of policies and
24 procedures shall be posted in each residen-
25 tial and day facility.

26 B. Corporal punishment or any form of inhumane
27 discipline is not permitted.

28 C. Seclusion is not permitted.

29 D. The placement of a resident alone in a locked
30 room for less than an hour is permitted, but:

31 (1) Is only permitted in emergencies to
32 protect the client or others from imminent
33 injury; and

34 (2) A staff person shall visually check a
35 client so placed at 10 minute intervals
36 throughout the duration of the placement.

1 13. Behavior modification. Behavior modification
2 of clients is governed as follows.

3 A. No client may be subjected to a treatment
4 program to eliminate bizarre or unusual behavior
5 without first being examined by a physician to
6 rule out the possibility that such behaviors are
7 organically caused.

8 B. Treatment programs involving the use of nox-
9 ious or painful stimuli may be used only to cor-
10 rect behavior more harmful to the client than the
11 treatment program:

12 (1) On the recommendation of a physician or
13 psychologist; and

14 (2) With the approval, following a
15 case-by-case review, of the chief adminis-
16 trative officer of the residential facility
17 and a client advocate of the department.

18 14. Physical restraints. Clients are entitled
19 to be free from physical restraints, but physical
20 restraints may be employed only in emergencies to
21 protect the client from imminent injury to himself or
22 others.

23 A. Physical restraints may not be used as pun-
24 ishment, for the convenience of the staff or as a
25 substitute for habilitative services.

26 B. Physical restraints may impose only the least
27 possible restrictions consistent with their pur-
28 pose and shall be removed when the emergency
29 ends.

30 C. Physical restraints may not cause physical
31 injury to the client and shall be designed to
32 allow the greatest possible comfort.

33 D. Mechanical supports used in normative situa-
34 tions to achieve proper body position and balance
35 are not considered restraints, but mechanical
36 supports shall be prescriptively designed and
37 applied under the supervision of a qualified pro-
38 fessional with concern for principles of good

1 body alignment, circulation and allowance for
2 change of position.

3 E. Daily reports on the use of restraints shall
4 be made to the appropriate chief administrative
5 officer of the facility.

6 (1) The reports shall summarize all cases
7 involving the use of restraints, the type of
8 restraints used, the duration of usage and
9 the reasons for the usage.

10 (2) A monthly summary of the reports shall
11 be relayed to the Office of Advocacy.

12 15. Records. All client records shall remain
13 confidential as provided in section 1206.

14 A. The client or, if the client is incompetent,
15 his parent or legal guardian is entitled to ac-
16 cess to records upon request.

17 B. The commissioner is entitled to the records
18 of a day facility or a residential facility if
19 necessary to carry out the statutory functions of
20 his office.

21 §5606. Violations

22 1. Report and investigation. Any alleged viola-
23 tion of a client's rights shall be reported immedi-
24 ately to the Office of Advocacy of the department and
25 to the Attorney General's office.

26 A. The Office of Advocacy shall conduct an
27 investigation of each alleged violation pursuant
28 to section 1205.

29 B. The Office of Advocacy shall submit a written
30 report of the findings and results of the inves-
31 tigation to the chief administrative officer of
32 the facility in which the client's rights were
33 allegedly violated and to the commissioner within
34 2 working days after the day of the occurrence or
35 discovery of the alleged incident.

1 2. Civil liability. Any person who violates or
2 abuses any rights or privileges of clients granted by
3 this subchapter is liable for damages as determined
4 by law.

5 A. Civil damages may be awarded for negligent or
6 intentional violations of this subchapter.

7 B. Good-faith compliance with the provisions of
8 this subchapter in connection with evaluation,
9 admission, habilitation programming, education,
10 treatment or discharge of a client is a defense
11 to a civil action under this subchapter.

12 3. Prohibited acts. A person is guilty of
13 violation of the rights of a mentally retarded client
14 if he intentionally violates or abuses any rights or
15 privileges of clients granted by this subchapter.

16 A. Violation of the rights of a mentally
17 retarded client is a Class E crime.

18 B. Good-faith compliance with the provisions of
19 this subchapter in connection with evaluation,
20 admission, habilitation programming, education,
21 treatment or discharge of a client is a defense
22 to prosecution under this subchapter.

23 §5607. Notice of rights

24 The commissioner shall provide a written copy of
25 this subchapter and of section 1206 to each client
26 and, if the client has been adjudged incompetent, to
27 the parent or legal guardian of the client.

28 1. Prompt notification. Each client shall be
29 promptly informed in clear language of the legal
30 rights of mentally retarded persons.

31 2. Posting requirement. A copy of this subchap-
32 ter shall be posted in each residential and day
33 facility.

34 §5608. Client government

35 Upon request of a client, the chief administra-
36 tive officer of a residential facility shall initiate

1 and develop a program of client government to hear
2 the views and represent the interests of all clients
3 served by the facility.

4 1. Composition. The client government shall be
5 composed of residents elected by other residents and
6 staff advisors skilled in the administration of com-
7 munity organizations.

8 2. Duties. The client government shall work
9 closely with the bureau and the Office of Advocacy to
10 promote the interests and welfare of all residents in
11 the facility.

12 CHAPTER 7

13 DUE PROCESS IN STERILIZATION ACT OF 1982

14 §7001. Short title

15 This chapter may be cited as the "Due Process in
16 Sterilization Act of 1982."

17 §7002. Legislative intent

18 The Legislature finds and declares that steril-
19 ization procedures are generally irreversible and
20 represent potentially permanent and highly signifi-
21 cant consequences for the patient involved. The
22 Legislature recognizes that certain legal safeguards
23 are necessary to prevent indiscriminate and unnec-
24 essary sterilization and to assure equal access to
25 desired medical procedures for all Maine citizens.

26 §7003. Definitions

27 As used in this chapter, unless the context indi-
28 cates otherwise, the following terms have the follow-
29 ing meanings.

30 1. Disinterested expert. "Disinterested expert"
31 means an appropriately licensed or certified profes-
32 sional not associated with an institution serving the
33 person for whom sterilization is being sought and not
34 personally related to the petitioner.

1 2. Guardian. "Guardian" means the legal
2 guardian of a person as appointed by a court of com-
3 petent jurisdiction.

4 3. Informed consent. "Informed consent" means
5 consent that is:

6 A. Based upon an actual understanding by the
7 person to be sterilized of the nature of steril-
8 ization, its potentially permanent consequences,
9 all alternative methods of contraception and all
10 reasonably foreseeable risks and benefits of
11 sterilization; and

12 B. Wholly voluntary and free from express or
13 implied coercion.

14 4. Parent. "Parent" means a natural or adoptive
15 mother or father of a person.

16 5. Physician. "Physician" means any person li-
17 censed to practice medicine under Title 32, chapter
18 48, subchapter II.

19 6. Psychiatrist. "Psychiatrist" means a physi-
20 cian licensed to practice medicine under Title 32,
21 chapter 48, subchapter II, who specializes in the
22 diagnosis and treatment of mental disorders.

23 7. Psychologist. "Psychologist" means any
24 person licensed to practice psychology under Title
25 32, chapter 48, subchapter II.

26 8. Sterilization. "Sterilization" means a medi-
27 cal or surgical procedure, the purpose of which is to
28 render an individual permanently incapable of
29 procreation. Sterilization does not refer to proce-
30 dures which must be performed for distinct and urgent
31 medical reasons and which have the unavoidable
32 secondary effect of rendering the individual
33 infertile.

34 §7004. Informed consent required for sterilization

35 1. Informed consent required. Except as pro-
36 vided in this chapter, prior to initiating steriliza-
37 tion procedures on any individual, a physician shall

1 obtain and record the informed consent of that indi-
2 vidual.

3 2. Hearing required to determine ability to give
4 informed consent for sterilization. A hearing to
5 determine ability to give informed consent for
6 sterilization is required when sterilization is
7 sought for:

8 A. Persons under age 18 years and not married or
9 otherwise emancipated;

10 B. Persons presently under public or private
11 guardianship or conservatorship;

12 C. Persons residing in a state institution pro-
13 viding care, treatment or security, or otherwise
14 in state custody; or

15 D. Persons from whom a physician could not
16 obtain informed consent.

17 §7005. Sterilization authorized by court

18 1. Court order required. A District Court order
19 authorizing sterilization is required before the
20 sterilization of any person described in section
21 7004, subsection 2.

22 2. Determination prior to issuance of
23 order. Before an order may be issued, the court
24 shall determine whether the person seeking steriliza-
25 tion or for whom sterilization is sought is able to
26 give informed consent for sterilization and, if so,
27 whether he has given informed consent for steriliza-
28 tion.

29 §7006. Contents of petition for determination of
30 ability to give informed consent for steril-
31 ization

32 The petition for determination of ability to give
33 informed consent for sterilization shall be executed
34 under oath and shall set forth:

35 1. Person seeking sterilization or for whom
36 sterilization is sought. Name, age and residence of

1 the person seeking sterilization or for whom steril-
2 ization is sought;

3 2. Parent, guardian or spouse. Names and resi-
4 dences of any parents, spouse or legal guardian of
5 the person seeking sterilization or for whom steril-
6 ization is sought;

7 3. Basis of petition. A statement of the factors,
8 including any listed in section 7004, subsection 2,
9 and mental condition, when appropriate, which
10 necessitate a determination of the ability of the
11 person seeking sterilization or for whom steriliza-
12 tion is sought to give informed consent for steril-
13 ization;

14 4. Reasons for sterilization. A statement of
15 the reasons for which sterilization is sought; and

16 5. Person initiating petition. The name, ad-
17 dress, position and statement of interest of the
18 person initiating the petition or any person assist-
19 ing with a self-initiated petition.

20 §7007. Submitting petition to determine informed
21 consent; notice of hearing

22 1. Petition submission. The petition for a
23 determination of ability to give informed consent
24 shall be submitted to the District Court in the divi-
25 sion of residence of the person seeking sterilization
26 or for whom sterilization is sought.

27 2. Notice of hearing. Upon the receipt of a
28 petition to determine informed consent, the District
29 Court shall assign a time, not later than 30 days
30 thereafter, and a place for hearing the petition.
31 The court may, at its discretion, hold the hearing on
32 the petition at a place within the division other
33 than the usual courtroom if it would facilitate the
34 presence of the person seeking sterilization or for
35 whom sterilization is sought.

36 3. Service of notice. The court shall cause a
37 copy of the petition and notice of hearing to be
38 served on the person seeking sterilization or for
39 whom sterilization is sought and his legal guardian

1 or custodian, if any, at least 7 days prior to the
2 hearing date. If a legal guardian or custodian of
3 the person seeking sterilization or for whom steril-
4 ization is sought is not a resident of this State,
5 notice may be served by registered mail. If the
6 residence of a legal guardian or custodian is
7 unknown, an affidavit so stating shall be filed in
8 lieu of service.

9 §7008. Hearing upon a petition to determine informed
10 consent for sterilization

11 1. Counsel. If the person seeking sterilization
12 or for whom sterilization is sought requests counsel
13 and cannot afford counsel, the court shall appoint
14 counsel to represent that person at public expense.
15 If the person is not represented by counsel and
16 appears to the court unable to request counsel, the
17 court shall order that counsel be retained or shall
18 appoint counsel to represent the person at public
19 expense if the person cannot afford counsel. A
20 reasonable fee shall be set for appointed counsel by
21 the District Court. Counsel, or the person seeking
22 sterilization or for whom sterilization is sought,
23 may present evidence, call witnesses and cross-
24 examine witnesses who testify or present evidence at
25 any hearing on the petition.

26 2. Appointment of disinterested experts. For
27 the purpose of determining a person's ability to
28 give informed consent, the court shall appoint not
29 less than 2 disinterested experts experienced in the
30 field of developmental disabilities or mental health,
31 including at least one licensed psychologist or psy-
32 chiatrist, to examine the person, to report on that
33 examination and to testify at the hearing as to his
34 competency. Other evidence regarding the person's
35 capabilities may be introduced at the hearing by any
36 party.

37 3. Preference of person seeking sterilization or
38 for whom sterilization is sought. If the person
39 seeking sterilization or for whom sterilization is
40 sought has any preference as to a disinterested
41 expert by whom he would prefer to be examined, the
42 court shall make a reasonable effort to accommodate
43 that preference.

1 4. Person's presence at hearing. The person
2 seeking sterilization or for whom sterilization is
3 sought shall be present at any hearing regarding his
4 ability to give informed consent for sterilization,
5 unless that right is waived by the person, personally
6 or through his attorney, and that waiver is approved
7 by the court. The court shall inquire at the time of
8 the hearing as to the types and effects of any
9 medications being administered to or taken by the
10 person.

11 5. Determination that person is able to give
12 informed consent for sterilization. If the court
13 determines by clear and convincing evidence that the
14 person is able to give informed consent for steril-
15 ization and that the person does consent to steril-
16 ization, it shall issue an order so stating and per-
17 mitting the sterilization to be performed. Prior to
18 the performance of the sterilization, the physician
19 and hospital involved shall also obtain the written
20 consent of the person for sterilization.

21 If the court determines by clear and convincing evi-
22 dence that the person is able to give informed con-
23 sent for sterilization, but determines that the
24 person does not consent to sterilization, it shall
25 issue an order so stating and forbidding steriliza-
26 tion of the person, unless that person later makes a
27 different choice and only after a rehearing under
28 this section.

29 6. Determination that person is not able to give
30 informed consent for sterilization. If the court
31 determines that the person is not able to give
32 informed consent for sterilization, it shall issue an
33 order so stating and forbidding sterilization of the
34 person, unless a determination is made under section
35 7013 that sterilization is in the best interest of
36 the person.

37 §7009. Limitations

38 1. Consent not to be a condition for exercise of
39 any right, privilege or freedom. Consent to steril-
40 ization shall not be made a condition for release
41 from or confinement in any institution nor shall it
42 be made a condition for the exercise of any right,

1 privilege or freedom, nor shall it be made a condi-
2 tion for receiving any form of public assistance,
3 nor as a prerequisite for any other service. The
4 consent shall be free from express or implied induc-
5 ements or constraints.

6 2. Guarantees and limitations to be given to
7 person to be sterilized. The guarantees and limita-
8 tions provided in this section shall be communicated
9 to the person seeking sterilization or for whom
10 sterilization is sought by the court prior to issuing
11 an order under section 7008. These guarantees and
12 limitations shall also appear prominently at the top
13 of the consent document used by a physician or hospi-
14 tal to obtain written consent for sterilization.

15 §7010. Determination of the best interests of a
16 person unable to give informed consent for
17 sterilization

18 The parent, spouse, legal guardian or custodian
19 of any person found unable to give informed consent
20 for sterilization may petition the District Court, in
21 the county of residence of the person being consid-
22 ered for sterilization, to determine if sterilization
23 is in the best interest of that person. The court
24 shall have sole jurisdiction and authority to order
25 that a sterilization procedure may be performed when
26 a person is incapable of giving informed consent, as
27 determined by the hearing required in section 7008.

28 §7011. Contents of petition for consideration of
29 sterilization of a person based upon a deter-
30 mination of best interest

31 The petition for determination if sterilization
32 is in the best interest of a person shall be executed
33 under oath and shall set forth:

34 1. Person being considered for sterilization.
35 The name, age and residence of the person being con-
36 sidered for sterilization;

37 2. Parents, spouse, custodian or guardian of
38 person being considered for sterilization. The names
39 and residences of any parents, spouse or legal
40 guardian of the person being considered for steril-
41 ization;

1 3. Mental condition. The mental condition of
2 and effects of any medications being administered to
3 or taken by the person being considered for steril-
4 ization;

5 4. Reasons sterilization is sought. A state-
6 ment, in terms of the best interest of the person, of
7 the reasons for which sterilization is sought;

8 5. Petitioner. The name and relationship of the
9 petitioner to the person being considered for steril-
10 ization;

11 6. Alternatives. Less drastic alternative con-
12 traceptive methods which have been tried or the
13 reason those methods are believed to be unworkable or
14 inappropriate for the person being considered for
15 sterilization;

16 7. Physiological capability to procreate. A
17 medical statement assessing the physiological capa-
18 bility of the person to procreate;

19 8. Risk to life or health. A medical statement
20 regarding the potential risk to the life or health of
21 the person which could be caused by procreation or
22 child rearing;

23 9. Person's attitudes or desires regarding
24 sterilization. Any attitudes or desires expressed by
25 the person regarding sterilization; and

26 10. Informed consent order. The date and con-
27 tents of the order issued under section 7008 concern-
28 ing the ability to give informed consent for steril-
29 ization of the person being considered for steril-
30 ization.

31 §7012. Notice of hearing upon the petition to deter-
32 mine the best interest of a person being con-
33 sidered for sterilization

34 Upon the receipt of a petition, the court shall
35 assign a time, not later than 30 days thereafter, and
36 a place for a hearing on the petition. The court
37 may, at its discretion, hold the hearing on the peti-
38 tion at a place within the county other than the

1 usual courtroom, if it would facilitate the presence
2 of the person being considered for sterilization.
3 The court shall cause the petition and notice of the
4 hearing to be served on the person being considered
5 for sterilization and his legal guardian or custo-
6 dian at least 20 days prior to the hearing date. The
7 court shall direct that personal service be made upon
8 the person being considered for sterilization and his
9 legal guardian or custodian. If the legal guardian
10 or custodian of the person being considered for
11 sterilization is not a resident of this State, notice
12 may be served by registered mail. If the residence
13 of the guardian or custodian of the person being con-
14 sidered for sterilization is unknown, an affidavit so
15 stating shall be filed in lieu of service.

16 §7013. Hearing upon a petition to determine the best
17 interest of a person being considered for
18 sterilization

19 1. Ability to give or withhold informed consent.
20 In all instances where the issue of whether steril-
21 ization is in the best interest of a person is to be
22 considered, a prior determination, as required by
23 section 7008, that the person cannot give or withhold
24 informed consent shall be required.

25 2. Presence of person; counsel; findings. The
26 person being considered for sterilization shall be
27 physically present throughout the entire best inter-
28 est hearing, unless that right is waived by the
29 person, personally or through his attorney, and that
30 waiver is approved by the court. The person being
31 considered for sterilization shall be represented by
32 counsel and provided the right and opportunity to be
33 confronted with and to cross-examine all witnesses.
34 The right to counsel may not be waived. If the
35 person cannot afford counsel, the court shall appoint
36 an attorney, not less than 20 days before the sched-
37 uled hearing, to represent the person at public
38 expense. A reasonable fee shall be set for appointed
39 counsel by the District Court. Counsel shall repre-
40 sent the person being considered for sterilization
41 in assuring that information and evidence in opposi-
42 tion to sterilization without informed consent is
43 fully represented. All stages of the hearing shall
44 be recorded by a tape recorder or a court reporter,

1 as the court may direct. In all cases, the court
2 shall issue written findings to support its decision.

3 3. Disinterested experts; evidence. The court
4 shall hear the petition to determine whether sterilization
5 is in the best interest of the person being
6 considered for sterilization. The court shall
7 appoint not less than 3 disinterested experts with
8 experience related to the condition of the person as
9 alleged in the petition, including at least one li-
10 icensed physician and one licensed psychologist or
11 psychiatrist, to examine the person and to testify at
12 the hearing. The court shall hear and consider evi-
13 dence on the following:

14 A. All issues raised by the petition executed
15 under section 7011; and

16 B. The beneficial or detrimental psychological
17 and physiological effects of sterilization on the
18 person being considered for sterilization.

19 Any other relevant evidence concerning the mental and
20 physical condition of the person being considered for
21 sterilization may be introduced at the hearing.

22 4. Burden of proof. The burden of proof by
23 clear and convincing evidence that sterilization is
24 in the best interest of the person being considered
25 for sterilization shall rest with the party seeking
26 to establish that sterilization is the appropriate
27 course of action.

28 5. Finding that sterilization is in person's
29 best interest. The court shall find that steriliza-
30 tion is in the best interest of the person being con-
31 sidered for sterilization if it is shown by clear and
32 convincing evidence that:

33 A. Methods of contraception less drastic than
34 sterilization have proven to be unworkable or
35 inappropriate for the person; and

36 B. Sterilization is necessary to preserve the
37 physical or mental health of the person.

1 6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

15 7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

22 §7014. Confidentiality; court costs

23 1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter shall be confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through his attorney, requests that the proceedings be open to the public. Records of the court proceedings shall not be open to inspection by the public, except under section 7017, without the consent, personally or through his attorney, of the person seeking sterilization or for whom sterilization is being considered.

35 2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

39 §7015. Penalties

40 1. Violations. Anyone knowingly or willfully violating section 7009, subsection 1, is guilty of a Class D crime.

1 2. Falsification of petition; aiding or procur-
2 ing unlawful sterilization. Anyone knowingly or
3 willfully falsifying a petition under this chapter or
4 otherwise aiding or procuring the performance of a
5 sterilization without a court order in a situation
6 covered by this chapter is guilty of a Class D crime.

7 §7016. Liability

8 1. Participation in sterilization. Nothing in
9 this chapter requires any hospital or any person to
10 participate in performing any sterilization proced-
11 ure, nor may any hospital or any person be civilly
12 or criminally liable for refusing to participate in
13 performing any sterilization procedure.

14 2. Immunity. A physician, psychiatrist or psy-
15 chologist acting nonnegligently and in good faith in
16 his professional capacity under this chapter is
17 immune from any civil liability that might otherwise
18 result from his actions. In a proceeding regarding
19 immunity from liability, there shall be a rebuttable
20 presumption of good faith.

21 §7017. Sterilization procedures review committee

22 A committee shall be established whose purpose
23 shall be to review annually the authorization of
24 sterilizations under this chapter for the purpose of
25 assessing the need for any changes in the procedures
26 or standards set forth in this chapter. The commit-
27 tee shall consist of not less than 6 members, includ-
28 ing representatives of the Maine court system, the
29 medical community, a designee from the Department of
30 Mental Health and Mental Retardation, a designee from
31 the Department of Human Services, a member of the
32 joint standing committee of the Legislature having
33 jurisdiction over health and institutional services,
34 and a member of the joint standing committee of the
35 Legislature having jurisdiction over the judiciary.
36 The representatives of the 2 joint standing legis-
37 lative committees shall be appointed by the chairmen
38 of those legislative committees. Other members of
39 the review committee shall be appointed annually by
40 the Governor who shall also designate the chairman of
41 the committee.

1 4. Mental illness. "Mental illness" means
2 mental disease to such extent that a person so
3 afflicted requires care and treatment for his own
4 welfare or the welfare of others or of the community.

5 5. Patient. "Patient" means any person subject
6 to or eligible, as determined by the laws of the
7 sending state, for institutionalization or other
8 care, treatment or supervision pursuant to this com-
9 compact.

10 6. Receiving state. "Receiving state" means a
11 party state to which a patient is transported pur-
12 suant to the compact or to which it is contemplated
13 that a patient may be so sent.

14 7. Sending state. "Sending state" means a party
15 state from which a patient is transported pursuant to
16 the compact or from which it is contemplated that a
17 patient may be so sent.

18 8. State. "State" means any state, territory or
19 possession of the United States, the District of
20 Columbia and the Commonwealth of Puerto Rico.

21 §9003. Care and treatment--Article III

22 1. Eligibility. Whenever a person physically
23 present in any party state shall be in need of insti-
24 tutionalization by reason of mental illness or mental
25 deficiency, he shall be eligible for care and treat-
26 ment in an institution in that state irrespective of
27 his residence, settlement or citizenship qualifica-
28 tions.

29 2. Transfer. Subsection 1 to the contrary not-
30 withstanding, any patient may be transferred to an
31 institution in another state whenever there are fac-
32 tors based upon clinical determinations indicating
33 that the care and treatment of said patient would be
34 facilitated or improved thereby. Any such institu-
35 tionalization may be for the entire period of care
36 and treatment or for any portion or portions thereof.
37 The factors referred to in this subsection shall
38 include the patient's full record with due regard for
39 the location of the patient's family, character of
40 the illness and probable duration thereof, and such
41 other factors as shall be considered appropriate.

1 3. Duties of receiving and sending states. No
2 state shall be obliged to receive any patient pur-
3 suant to subsection 2 unless the sending state has
4 given advance notice of its intention to send the
5 patient; furnished all available medical and other
6 pertinent records concerning the patient; given the
7 qualified medical or other appropriate clinical
8 authorities of the receiving state an opportunity to
9 examine the patient if said authorities so wish; and
10 unless the receiving state shall agree to accept the
11 patient.

12 4. Priorities. In the event that the laws of
13 the receiving state establish a system of priorities
14 for the admission of patients, an interstate patient
15 under this compact shall receive the same priority as
16 a local patient and shall be taken in the same order
17 and at the same time that he would be taken if he
18 were a local patient.

19 5. Review and further transfer. Pursuant to
20 this compact, the determination as to the suitable
21 place of institutionalization for a patient may be
22 reviewed at any time and such further transfer of the
23 patient may be made as seems likely to be in the best
24 interest of the patient.

25 §9004. Aftercare--Article IV

26 1. Investigation. Whenever, pursuant to the
27 laws of the state in which a patient is physically
28 present, it shall be determined that the patient
29 should receive aftercare or supervision, such care or
30 supervision may be provided in a receiving state. If
31 the medical or other appropriate clinical authorities
32 having responsibility for the care and treatment of
33 the patient in the sending state shall have reason to
34 believe that aftercare in another state would be in
35 the best interest of the patient and would not jeop-
36 ardize the public safety, they shall request the
37 appropriate authorities in the receiving state to
38 investigate the desirability of affording the patient
39 such aftercare in said receiving state, and such
40 investigation shall be made with all reasonable
41 speed. The request for investigation shall be accom-
42 panied by complete information concerning the
43 patient's intended place of residence and the iden-

1 tity of the person in whose charge it is proposed to
2 place the patient, the complete medical history of
3 the patient, and such other documents as may be
4 pertinent.

5 2. Aftercare in receiving state. If the medical
6 or other appropriate clinical authorities having
7 responsibility for the care and treatment of the
8 patient in the sending state and the appropriate
9 authorities in the receiving state find that the best
10 interest of the patient would be served thereby, and
11 if the public safety would not be jeopardized
12 thereby, the patient may receive aftercare or super-
13 vision in the receiving state.

14 3. Standards. In supervising, treating or
15 caring for a patient on aftercare pursuant to the
16 terms of this Article, a receiving state shall employ
17 the same standards of visitation, examination, care
18 and treatment that it employs for similar local
19 patients.

20 §9005. Escape--Article V

21 Whenever a dangerous or potentially dangerous
22 patient escapes from an institution in any party
23 state, that state shall promptly notify all appropri-
24 ate authorities within and without the jurisdiction
25 of the escape in a manner reasonably calculated to
26 facilitate the speedy apprehension of the escapee.
27 Immediately upon the apprehension and identification
28 of any such dangerous or potentially dangerous
29 patient, he shall be detained in the state where
30 found, pending disposition in accordance with law.

31 §9006. Transportation of patient--Article VI

32 The duly accredited officers of any state party
33 to this compact, upon the establishment of their
34 authority and the identity of the patient, shall be
35 permitted to transport any patient being moved pur-
36 suant to this compact through any and all states
37 party to this compact, without interference.

38 §9007. Costs; reciprocal agreements--Article VII

1 1. Patient at only one institution. No person
2 shall be deemed a patient of more than one institu-
3 tion at any given time. Completion of transfer of
4 any patient to an institution in a receiving state
5 shall have the effect of making the person a patient
6 of the institution in the receiving state.

7 2. Costs. The sending state shall pay all costs
8 of and incidental to the transportation of any
9 patient pursuant to this compact, but any 2 or more
10 party states may, by making a specific agreement for
11 that purpose, arrange for a different allocation of
12 costs as among themselves.

13 3. Internal relationships not affected. No
14 provision of this compact shall be construed to alter
15 or affect any internal relationships among the
16 departments, agencies and officers of and in the gov-
17 ernment of a party state, or between a party state
18 and its subdivisions, as to the payment of costs or
19 responsibilities therefor.

20 4. Asserting rights for costs. Nothing in this
21 compact shall be construed to prevent any party state
22 or subdivision thereof from asserting any right
23 against any person, agency or other entity in regard
24 to costs for which such party state or subdivision
25 thereof may be responsible pursuant to any provision
26 of this compact.

27 5. Reciprocal agreements not invali-
28 dated. Nothing in this compact shall be construed to
29 invalidate any reciprocal agreement between a party
30 state and a nonparty state relating to institutiona-
31 lization, care or treatment of the mentally ill or
32 mentally deficient, or any statutory authority pur-
33 suant to which such agreements may be made.

34 §9008. Guardians--Article VIII

35 1. Supplemental or substitute guardian. Nothing
36 in this compact shall be construed to abridge, dimin-
37 ish or in any way impair the rights, duties and
38 responsibilities of any patient's guardian on his own
39 behalf or in respect of any patient for whom he may
40 serve, except that, where the transfer of any patient
41 to another jurisdiction makes advisable the appoint-

1 ment of a supplemental or substitute guardian, any
2 court of competent jurisdiction in the receiving
3 state may make such supplemental or substitute
4 appointment and the court which appointed the pre-
5 vious guardian shall, upon being duly advised of the
6 new appointment, and upon the satisfactory completion
7 of such accounting and other acts as such court may
8 by law require, relieve the previous guardian of
9 power and responsibility to whatever extent shall be
10 appropriate in the circumstances. In the case of any
11 patient having settlement in the sending state, the
12 court of competent jurisdiction in the sending state
13 shall have the sole discretion to relieve a guardian
14 appointed by it or continue his power and responsi-
15 bility, whichever it shall deem advisable. The court
16 in the receiving state may, in its discretion, con-
17 firm or reappoint the person or persons previously
18 serving as guardian in the sending state in lieu of
19 making a supplemental or substitute appointment.

20 2. Guardian defined. The term "guardian" as
21 used in subsection 1 shall include any guardian,
22 trustee, legal committee, conservator or other person
23 or agency however denominated who is charged by law
24 with power to act for or have responsibility for the
25 person or property of a patient.

26 §9009. Incarceration in penal or correctional
27 institution--Article IX

28 1. Application. No provision of this compact
29 except Article V shall apply to any person institu-
30 tionalized while under sentence in a penal or correc-
31 tional institution or while subject to trial on a
32 criminal charge, or whose institutionalization is due
33 to the commission of an offense for which, in the ab-
34 sence of mental illness or mental deficiency, said
35 person would be subject to incarceration in a penal
36 or correctional institution.

37 2. Policy not to jail. To every extent pos-
38 sible, it shall be the policy of states party to this
39 compact that no patient shall be placed or detained
40 in any prison, jail or lockup, but such patient
41 shall, with all expedition, be taken to a suitable
42 institutional facility for mental illness or mental
43 deficiency.

1 §9010. Compact administrators--Article X

2 1. Duties. Each party state shall appoint a
3 "compact administrator" who, on behalf of his state,
4 shall act as general coordinator of activities under
5 the compact in his state and who shall receive copies
6 of all reports, correspondence and other documents
7 relating to any patient processed under the compact
8 by his state either in the capacity of sending or
9 receiving state. The compact administrator or his
10 duly designated representative shall be the official
11 with whom other party states shall deal in any matter
12 relating to the compact or any patient processed
13 thereunder.

14 2. Rules and regulations. The compact adminis-
15 trators of the respective party states shall have
16 power to promulgate reasonable rules and regulations
17 to carry out more effectively the terms and provi-
18 sions of this compact.

19 §9011. Supplementary agreements--Article XI

20 The duly constituted administrative authorities
21 of any 2 or more party states may enter into supple-
22 mentary agreements for the provision of any service
23 or facility or for the maintenance of any institution
24 on a joint or cooperative basis whenever the states
25 concerned shall find that such agreements will
26 improve services, facilities or institutional care
27 and treatment in the fields of mental illness or
28 mental deficiency. No such supplementary agreement
29 shall be construed so as to relieve any party state
30 of any obligation which it otherwise would have under
31 other provisions of this compact.

32 §9012. Effective date of compact--Article XII

33 This compact shall enter into full force and
34 effect as to any state when enacted by it into law
35 and such state shall thereafter be a party thereto
36 with any and all states legally joining therein.

37 §9013. Withdrawal from compact--Article XIII

38 1. Procedure; effective date; effect. A state
39 party to this compact may withdraw therefrom by

1 enacting a statute repealing the same. Such with-
2 drawal shall take effect one year after notice
3 thereof has been communicated officially and in writ-
4 ing to the governors and compact administrators of
5 all other party states. The withdrawal of any state
6 shall not change the status of any patient who has
7 been sent to said state or sent out of said state
8 pursuant to the compact.

9 2. Costs and supplementary agreements. With-
10 drawal from any agreement permitted by Article VII,
11 subsection 2, as to costs or from any supplementary
12 agreement made pursuant to Article XI shall be in ac-
13 cordance with the terms of such agreement.

14 §9014. Constitutionality--Article XIV

15 This compact shall be liberally construed so as
16 to effectuate the purposes thereof. The provisions
17 of this compact shall be severable and if any phrase,
18 clause, sentence or provision of this compact is
19 declared to be contrary to the constitution of any
20 party state or of the United States or the applica-
21 bility thereof to any government, agency, person or
22 circumstance is held invalid, the validity of the
23 remainder of this compact and the applicability
24 thereof to any government, agency, person or circum-
25 stance shall not be affected thereby. If this com-
26 compact shall be held contrary to the constitution of
27 any state party thereto, the compact shall remain in
28 full force and effect as to the remaining states and
29 in full force and effect as to the state affected as
30 to all severable matters.

31 STATEMENT OF FACT

32 The purpose of this bill is to recodify the stat-
33 utes relating to corrections and mental health and
34 mental retardation.

35 0175020983