

# MAINE STATE LEGISLATURE

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L.D. 723

(Filing No. S-519)

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STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "B " to S.P. 277, L.D. 723, Bill, "An Act to Require Counties to Accept Prisoners with Sentences up to One Year in Length and to Provide Assistance to Counties in Developing Community Corrections Programs"

Amend the bill by striking out all of the title and inserting in its place the following:

'An Act to Amend County Jail Transfers and the Community Corrections Laws'

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 15 MRSA §1710, as amended by PL 1981, c. 493, §§2 and 3, is repealed and the following enacted in its place:

§1710. Transfer of persons under sentence to county jails for rehabilitative reasons

A sheriff having custody of a person sentenced to a county jail for a term of 60 days or more upon receipt from that person of a request in writing for transfer to a state correctional facility may apply in writing to the Commissioner of Corrections for the transfer of that person from the county jail to a state correctional facility, solely for the purpose of permitting that person the opportunity to participate in rehabilitative programs available at or from the state correctional facility.

If the Commissioner of Corrections gives written acceptance of the application, the sheriff may transport the person to the appropriate institution.

The attested copy of the judgment and order of commitment by which the sheriff has legally held that person before transfer must be delivered to the chief administrative officer of the correctional facility with a copy of the authorization for transfer attested by the sheriff and upon which must be noted by

2 the delivering officer the date of delivery of the person to the  
correctional facility.

4 In no case may the time of sentence to be served at the  
6 state correctional facility exceed the remaining time of the  
8 sentence originally imposed. In every other respect the person  
10 transferred must be treated as if committed to the state  
12 correctional facility originally, including prosecution in the  
14 event of escape. Before any person transferred under this  
16 section is granted furlough or permission to participate in any  
18 other rehabilitative program authorized under Title 34-A, section  
20 3035, the grant must be approved by the sheriff of the county  
22 from which the person was transferred.

24 The county responsible for the support of the person  
26 transferred under this section while that person was incarcerated  
28 in the county jail shall pay directly to the Department of  
30 Corrections upon the request of the department an amount computed  
32 at a per diem per capita rate established by the department. The  
34 county shall also reimburse the department for any costs incurred  
36 in the provision of extraordinary medical or surgical treatment  
38 to the person transferred. The payment amount provided for in  
40 this section may be adjusted upon terms mutually agreeable to the  
42 sheriff and the Commissioner of Corrections if the county jail  
44 houses any work releasee under Title 34-A, section 3035,  
46 simultaneously with any period of transfer under this section.

28 **Sec. 2. 30-A MRSA §1557, sub-§2, as enacted by PL 1987, c.**  
30 **737, Pt. A, §2 and Pt. C, §106, and amended by PL 1989, c. 6; c.**  
32 **9, §2; and c. 104, Pt. C, §§8 and 10, is repealed.**

32 **Sec. 3. 30-A MRSA §1557, sub-§4 is enacted to read:**

34 **4. Reimbursement for transferred prisoners. The county**  
36 **responsible for the support of the prisoner transferred under**  
38 **this section while the prisoner was incarcerated in the county**  
40 **jail shall pay directly to the receiving county jail or the**  
42 **Department of Corrections upon the request of the receiving**  
44 **sheriff or the department an amount computed at a per diem per**  
46 **capita rate established by the receiving county jail or the**  
48 **department. The county shall also reimburse the receiving county**  
50 **jail or the department for any costs incurred in the provision of**  
**extraordinary medical or surgical treatment to the person**  
**transferred.**

46 **Sec. 4. 30-A MRSA §1656, as enacted by PL 1987, c. 737, Pt.**  
48 **A, §2, and Pt. C, §106 and amended by PL 1989, c. 6; c. 9, §2;**  
50 **and c. 104, Pt. C, §§8 and 10, is further amended to read:**

50 **§1656. Transfer of prisoners when jail unfit or insecure**

1. **Transfer of prisoners when jail unfit or insecure.**  
Whenever complaint on oath is made to a Justice of the Superior Court that a prisoner or prisoners should be removed from a jail to another jail or to a state correctional facility because that jail is unfit for occupation or is insufficient for the secure keeping of any person charged with a crime and committed to await trial, awaiting sentencing or serving a sentence in that jail, the Justice of the Superior Court shall:

A. Schedule the time and place for a hearing on this complaint;

B. Have not less than 3 days' notice of that hearing given to the sheriff or sheriffs of the county jail or jails involved and, if transfer to a state correctional facility is anticipated, to the Commissioner of Corrections;

C. Order removal, at the expense of the sending county, of the prisoner or prisoners to a state correctional facility pending hearing, provided that the Commissioner of Corrections and the sending sheriff agree; and

D. Conduct a hearing and if the matter complained of is found true:

(1) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of the sending county, to any jail; or

(2) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of the sending county, to a state correctional facility, provided that the Justice of the Superior Court finds that the receiving institution is able to resolve the problem causing the need to transfer, the nature of the offense committed or alleged to have been committed by the prisoner is so severe that it requires sending to the receiving institution and the security of the sending facility is inadequate to handle the problem.

2. **Emergency.** In the event of an emergency, regardless of whether a complaint on oath has been made to a Justice of the Superior Court, the sheriff, with the agreement of the Commissioner of Corrections, may immediately, at the expense of the sending county, remove any prisoner from the county jail to a state correctional facility. If removal is made under this section, a complaint on oath shall must be made to a Justice of the Superior Court within 24 hours and a hearing shall must be conducted in accordance with the requirements in subsection 1, paragraph D, subparagraph (2).

3. **Transfer of prisoners when jail unfit due to casualty.**  
2 If by fire or other casualty any jail is destroyed or rendered  
unfit for use, any Justice of the Superior Court may, upon being  
4 notified by the district attorney of the county where the jail  
was or is located, issue a an order to the sheriff and the  
6 deputies and constables of that county to have all prisoners who  
might be liable to imprisonment in that county imprisoned in the  
8 jail of some adjoining county or in any other place of  
confinement. The order shall must be printed in the newspapers  
10 having general circulation in that county.

12 4. Reimbursement for transferred prisoners. The county  
responsible for the support of the person transferred under this  
14 section while incarcerated in the county jail shall pay directly  
to the receiving county jail or the Department of Corrections  
16 upon the request of the receiving sheriff or the department an  
amount computed at a per diem per capita rate established by the  
18 receiving county jail or the department. The county shall also  
reimburse the receiving county jail or the department for any  
20 costs incurred in the provision of extraordinary medical or  
surgical treatment to the person transferred.

22  
24 **Sec. 5. 34-A MRSA §1210, sub-§1, ¶A,** as enacted by PL 1985, c.  
821, §18, is repealed.

26 **Sec. 6. 34-A MRSA §1210, sub-§1, ¶B,** as enacted by PL 1985, c.  
821, §18, is amended to read:

28  
30 B. "Community corrections" means the delivery of  
correctional services for juveniles or adults in the least  
32 restrictive manner that ensures the public safety by ex-fer  
the county or for the county under contract with a public or  
34 private entity, including, but not limited to, preventive or  
diversionary correctional programs, pretrial release or  
36 conditional release programs, alternative sentencing or  
housing programs, electronic monitoring, residential  
treatment and halfway house programs, community correctional  
38 centers and temporary release programs from a facility for  
the detention or confinement of persons convicted of crime  
40 or adjudicated delinquents.

42 **Sec. 7. 34-A MRSA §1210, sub-§2,** as enacted by PL 1985, c.  
821, §18, is amended to read:

44  
46 **2. Reimbursement.** ~~The Department of Corrections~~ Except as  
provided in subsection 6-A, the department shall, under this  
section, reimburse each county quarterly for each actual day  
48 served at that county correctional facility by:

50 A. Persons convicted of a Class A, Class B or Class C crime  
sentenced after March 31, 1987, to serve a term of

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2 imprisonment pursuant to Title 17-A, section 1203,  
subsection 1, or section 1252, subsection 1; and

4 B. Persons convicted of a Class A, Class B or Class C crime  
sentenced after December 31, 1988, to serve a term of  
6 imprisonment pursuant to Title 17-A, section 1203,  
subsection 1 or section 1252, subsection 1.

8  
10 Reimbursement for periods after June 30, 1987, shall may not be  
authorized until the reimbursable costs for the operations of the  
12 jail are agreed upon by the ~~Commissioner of Corrections, or his a~~  
designee, commissioner and the county commissioners for that  
14 county. Reimbursable costs shall for the operations of the jail  
must, to the extent practicable, be mutually agreed upon prior to  
16 the actual expenditures of funds for those costs. Prior approval  
of all capital expenditures is required for reimbursement of that  
18 expense item. If the ~~Commissioner of Corrections~~ commissioner  
and the county commissioners are unable to agree upon  
20 reimbursable costs, they shall jointly select an arbitrator to  
determine those costs. The arbitrator's decision ~~shall be~~ is  
22 final and both the commissioner and the county commissioners  
~~shall be~~ are bound by his that decision.

24 **Sec. 8. 34-A MRSA §1210, sub-§2-A is enacted to read:**

26 2-A. Reimbursement for capital building expenditures. The  
commissioner shall approve reimbursement to the counties for  
28 actual capital building expenditures made after June 30, 1990, to  
the extent that the expenditures address the net increase in the  
30 jail population which results from Title 17-A, section 1203,  
subsection 1 and Title 17-A, section 1252, subsection 1. The  
32 approval process must include at least the following:

34 A. That the county commissioners notify the commissioner in  
writing of the intent to apply for reimbursement under this  
36 subsection. Notification must include the projected cost of  
the capital building project and the projected cost of that  
38 portion of the capital building project which qualifies for  
reimbursement under this subsection. Notification must be  
40 made at least 30 months before anticipated reimbursement if  
secure bed spaces are involved, or at least 6 months before  
42 if nonsecure bed spaces are involved;

44 B. That the commissioner and the county commissioners agree  
upon the basis for determining the projected prisoner  
46 population and capital building costs related to the net  
gain of prisoners resulting from Title 17-A, section 1203,  
48 subsection 1 and Title 17-A, section 1252, subsection 1. If  
the commissioner and the county commissioners are unable to  
50 agree upon reimbursable costs, they shall jointly select an  
arbitrator to determine those costs. The arbitrator's  
52 decision is final and binding upon both parties;

2           C. That the county commissioners notify the commissioner in  
4           writing of the actual final capital building costs for which  
6           reimbursement is requested. The commissioner shall review  
8           the request for reimbursement to assess conformity with the  
          basis for reimbursement agreed upon under paragraph B. If  
          there is conformity, the commissioner shall authorize  
          payment;

10           D. That any county that has received reimbursement from the  
12           State for capital building costs related to the net gain of  
14           prisoners resulting from Title 17-A, section 1203,  
16           subsection 1, and Title 17-A, section 1252, subsection 1, as  
          a portion of the per diem rate prior to July 1, 1990 is not  
          eligible for additional reimbursement for capital building  
          expenditures under this subsection; and

18           E. That a county may apply no more than one time for  
20           reimbursement of actual capital building costs of secure bed  
22           space within the perimeter of a jail facility. Subsequent  
24           applications for reimbursement from the department must, in  
26           addition to meeting the other requirements of this  
28           subsection, be for alternative housing outside the secure  
          perimeter of a jail facility for prisoners who are  
          classified as a minimum or low risk to the community, and  
          developed as part of a comprehensive local plan approved by  
          the commissioner to provide and monitor community-based  
          programs as defined under subsection 1, paragraph B.

30           **Sec. 9. 34-A MRSA §1210, sub-§5, ¶C, as amended by PL 1987, c.**  
32           **335, §1, is further amended to read:**

34           C. Commodities:

- 36                   (1) Food;
- 38                   (2) Fuel; and
- 40                   (3) Supplies:
- 42                           (a) Cleaning;
- 44                           (b) Institutional; and
- 46                           (c) Office; and

48           **Sec. 10. 34-A MRSA §1210, sub-§5, ¶D, as amended by PL 1987,**  
          **c. 335, §1, is repealed.**

50           **Sec. 11. 34-A MRSA §1210, sub-§6, as enacted by PL 1985, c.**  
          **821, §18, is amended to read:**

2           6. County Correctional Improvement Account. The county  
3 commissioners of each county shall establish the County  
4 Correctional Improvement Account for funds received from the  
5 State under this section, which shall must be used for improving,  
6 maintaining and developing correctional programs, community-based  
7 correctional programs, standards compliance and, capital  
8 improvements and the support of prisoners in that county,  
9 including personal services, contractual services, commodities,  
10 debt service and capital outlay. Funds in this account  
11 unexpended at the end of the year ~~do~~ may not lapse, but shall  
12 carry must be carried forward into subsequent years. All funds  
13 received under this section must be accounted for under the  
14 normal budgetary process.

16           Sec. 12. 34-A MRSA §1210, sub-§6-A is enacted to read:

18           6-A. County community corrections grant program. Thirty  
19 percent of all funds claimed by each county for reimbursement  
20 under this section, except those funds reimbursed for capital  
21 building expenditures, must be retained by the department for the  
22 purpose of awarding grants for community corrections programs, as  
23 defined in subsection 1, paragraph B. Two thirds of the funds  
24 retained by the department must be reserved for adult program  
25 grants and 1/3 of the funds retained by the department must be  
26 reserved for juvenile diversion program grants. All funds  
27 retained by the department under this subsection not granted by  
28 the end of the year may not lapse, but must be carried forward  
29 into subsequent years, with the adult funds carried over for  
30 adult program grants and the juvenile funds carried over for  
31 juvenile diversion program grants. The department shall adopt  
32 rules in accordance with the Maine Administrative Procedure Act,  
33 Title 5, chapter 375 for the application, award and management of  
34 grants in accordance with this subsection. Annually, by  
35 September 1, the commissioner shall submit to the committee of  
36 the Legislature having jurisdiction over corrections matters a  
37 report of the activity in the prior fiscal year of the county  
38 community corrections grant program, including at least the  
39 following:

40           A. The amount retained from each county;

41           B. The amount of any funds that have been carried over from  
42 previous fiscal years;

43           C. The amount awarded to each county; and

44           D. The specific programs for which grants were awarded,  
45 including an indication of whether each program serves  
46 juveniles or adults.

52



**FISCAL NOTE**

2

4 There are future costs associated with reimbursing counties  
6 for capital building expenditures made after June 30, 1990.  
8 These costs will not be realized until 1996 and are estimated to  
10 be \$4,500,000 through 1999.

8

10 The Department of Corrections will utilize existing staff  
12 resources to promulgate rules, award and manage the county  
14 community corrections grant program.'

12

14

**STATEMENT OF FACT**

16

18 Current law limits the ability to house sentenced county  
20 jail prisoners who are security problems in state correctional  
22 facilities and does not make explicit provision for the county to  
24 pay the per diem costs if transferred. Sections 1 to 4 of this  
26 amendment allow transfers of sentenced county jail prisoners, or  
28 those awaiting sentencing, and explicitly establish a basis for  
30 reimbursing board costs.

24

26 Section 5 of the amendment repeals the definition of  
28 "commissioner" which is within the section, and makes the general  
30 definition in the Maine Revised Statutes, Title 34-A, section  
32 1001 applicable.

28

30 Section 6 of the amendment changes the definition of  
32 "community corrections" to include additional programs.

32

34 Sections 7, 8 and 10 of the amendment separate the  
36 reimbursement for operating costs and capital building  
38 expenditures. The operating costs are covered under a per diem  
40 rate. The capital costs for the increase in the number of  
42 prisoners sent to county jails under the changes in Title 34-A,  
44 section 1203, subsection 1, are paid for by the State.

38

40 Section 11 of the amendment makes it clear that funds  
42 received by counties as reimbursement from the State for inmates  
44 serving sentences of Class A, B or C crimes can be used for all  
46 costs related to the support of prisoners in that jail.

44

46 Section 12 of the amendment establishes a grant fund from a  
48 portion of the funds claimed for reimbursement by the counties.  
50 Grants from this fund would be awarded by the Department of  
Corrections to the counties for the purpose of establishing  
community programs for adults and juveniles at the county level.  
The commissioner is required to report annually on the activity  
of the grant program.