

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

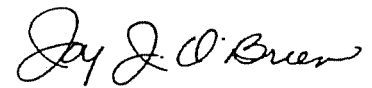
Legislative Document

No. 981

S.P. 364

In Senate, March 29, 1989

Reference to the Committee on Legal Affairs suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CAHILL of Sagadahoc.

Cosponsored by Senator BUSTIN of Kennebec and Representative BAILEY of Farmington.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-NINE

An Act to Clarify the Law Governing the Transfer of County Jail Prisoners.



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

3 **Sec. 1. 15 MRSA §1710**, as amended by PL 1981, c. 493, §§2 and
5 3, is further amended to read:

7 **§1710. Transfer of persons under sentence to county jails for
rehabilitative reasons**

9 A sheriff having in his custody of a person sentenced to a
11 county jail for a term of 60 days or more, upon receipt from such
12 that person of a request, in writing, for transfer to a
13 ~~correctional center~~ state correctional facility, may apply, in
14 writing, to the Commissioner of the ~~Department of~~ Corrections of
15 ~~the Department of Mental Health and Mental Retardation~~ for the
16 transfer of such that person from the county jail to ~~the Maine~~
17 ~~Correctional Center~~ a state correctional facility, solely for the
18 purpose of permitting such that person the opportunity to
19 participate in rehabilitative programs conducted at or from such
institution the state correctional facility.

21 In the event that the Commissioner of the ~~Department of~~
22 Corrections shall accept such the application, his the
23 commissioner's written acceptance shall be the sheriff's
24 sufficient authority to transport such that person to the
25 appropriate institution.

27 The attested copy of the judgment and order of commitment by
28 which the sheriff has legally held such that person before
29 transfer shall be delivered to the superintendent chief
30 administrative officer of the correctional center facility with a
31 copy of the authorization for transfer attested by the sheriff
32 and upon which shall be noted by the delivering officer the date
33 of delivery of the person to the correctional center facility.

35 In no case shall may the time of sentence to be served at
36 the state correctional center facility exceed the remaining time
37 of the sentence originally imposed. In every other respect the
38 person transferred shall be treated as if committed to the state
39 ~~correctional center~~ facility originally, including prosecution in
40 the event of escape, ~~as if committed thereto, originally~~. In the
41 event that any person transferred under this section is granted
42 furlough or permission to participate in any other rehabilitative
43 program as authorized under ~~Title 34, section 527~~, Title 34-A,
44 section 3035, any such grant shall be subject to the approval of
45 the sheriff of the county from which jail such that person was
46 transferred.

47 The county responsible for the support of the person
48 transferred under this section while he that person was
49 incarcerated in the county jail shall pay directly to the
50 ~~correctional center to which such person is transferred~~
51 Department of Corrections upon the request of the department an

1 amount equal ~~to the average~~ computed at a per diem per capita
2 ~~inmate cost at the county jail at the time of transfer~~ rate
3 established by the department; the county shall also reimburse
4 the ~~correctional center~~ department for any costs incurred by it
5 in the provision of extraordinary medical or surgical treatment
6 to the person transferred. All sums paid under
7 this section to a ~~correctional center~~ the department shall become
8 a part of the operating funds of ~~that institution~~ the department.
9 The payment amount provided for in this section may be adjusted
10 upon terms mutually agreeable to the sheriff and the Commissioner
11 of ~~the Department of~~ Corrections in the event that the county
12 jail shall house any work releasee under ~~Title 34, section 527~~
13 Title 34-A, section 3035, simultaneously with any period of
14 transfer of a transferee under this section.

15
16 **Sec. 2. 30-A MRS §1557, sub-§2**, as enacted by PL 1987, c.
17 737, Pt. A, §2 and Pt. C, §106, is repealed.

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

19
20 **4. Reimbursement for transferred prisoners.** The county
21 responsible for the support of the prisoner transferred under
22 this section while the prisoner was incarcerated in the county
23 jail shall pay directly to the receiving county jail or the
24 Department of Corrections upon the request of the receiving
25 sheriff or the department an amount computed at a per diem per
26 capita rate established by the receiving county jail or the
27 department. The county shall also reimburse the receiving county
28 jail or the department for any costs incurred by it in the
29 provision of extraordinary medical or surgical treatment to the
30 person transferred. All sums paid under this section to a county
31 jail or the department shall become a part of the operating funds
32 of that county jail or the department.

33
34 **Sec. 4. 30-A MRS §1656**, as enacted by PL 1987, c. 737, Pt.
35 A, §2, is amended to read:

36 **§1656. Transfer of prisoners when jail unfit or insecure**

37
38 **1. Transfer of prisoners when jail unfit or insecure.**
39 Whenever complaint on oath is made to a Justice of the Superior
40 Court that a prisoner or prisoners should be removed from a jail
41 to another jail or to a state correctional facility because that
42 jail is unfit for occupation or is insufficient for the secure
43 keeping of any person charged with a crime and committed to await
44 trial or any person serving a sentence in that jail, the Justice
45 of the Superior Court shall:

46
47
48 **A.** Schedule the time and place for a hearing on this
49 complaint;

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

5
6 C. Order removal, at the expense of the sending county, of
7 the prisoner or prisoners to a state correctional facility
8 pending hearing, provided that the Commissioner of
9 Corrections and the sending sheriff agree; and

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

13
14 (1) Issue a warrant for the transfer of the prisoner
15 or prisoners, at the expense of the sending county, to
16 any jail; or

17
18 (2) Issue a warrant for the transfer of the prisoner
19 or prisoners, at the expense of the sending county, to
20 a state correctional facility, provided that the
21 Justice of the Superior Court finds that the receiving
22 institution is able to resolve the problem causing the
23 need to transfer, the nature of the offense committed
24 or alleged to have been committed by the prisoner is so
25 severe that it requires sending to the receiving
26 institution and the security of the sending facility is
27 inadequate to handle the problem.

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

39
40 3. **Transfer of prisoners when jail unfit due to a**
41 **casualty.** If by fire or other casualty any jail is destroyed or
42 rendered unfit for use, any Justice of the Superior Court may,
43 upon being notified by the district attorney of the county where
44 the jail was or is located, issue a an order to the sheriff and
45 the deputies and constables of that county to have all prisoners
46 who might be liable to imprisonment in that county imprisoned in
47 the jail of some adjoining county or in any other place of
48 confinement. The order shall be printed in the newspapers having
49 general circulation in that county.

51 4. Reimbursement for transferred prisoners. The county
responsible for the support of the person transferred under this

1 section while incarcerated in the county jail shall pay directly
2 to the receiving county jail or the Department of Corrections
3 upon the request of the receiving sheriff or the department an
4 amount computed at a per diem per capita rate established by the
5 receiving county jail or the department. The county shall also
6 reimburse the receiving county jail or the department for any
7 costs incurred by it in the provision of extraordinary medical or
8 surgical treatment to the person transferred. All sums paid
9 under this section to a county jail or the department shall
10 become a part of the operating funds of that county jail or the
11 department.

13
15 **STATEMENT OF FACT**

17 Current law limits the ability to house sentenced county
18 jail prisoners who are security problems in state correctional
19 facilities and does not make explicit provision for the county to
20 pay the per diem costs if transferred. This bill allows
21 transfers of sentenced county jail prisoners and explicitly
22 establishes a basis for reimbursement.
23