

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

SECOND REGULAR SESSION - 1990

Legislative Document

No. 2486

H.P. 1814

House of Representatives, April 5, 1990

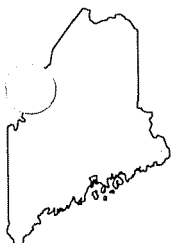
Reported by Representative MELENDY from the Joint Select Committee on Corrections pursuant to H.P. 1483 and printed under Joint Rule 2.

Ed Pert
EDWIN H. PERT, Clerk

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY

An Act Relating to Correctional Policy.



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

4 Sec. 1. 3 MRSA §163-A, sub-§11-A is enacted to read:

6 11-A. Statement of correctional system impact. To prepare
8 statements pertaining to the impact that proposed legislation has
10 upon correctional system resources, including the cost that the
12 correctional system would bear. The correctional system includes
14 correctional facilities and services operated or funded by the
16 State or by any county government. The statements must be
18 furnished to the appropriate committee for the information of its
20 members and for inclusion in bills that receive an "ought to
22 pass" report when reported by the committee. A statement is not
24 required for any bill that has no impact upon the correctional
26 system;

28 Sec. 2. 4 MRSA §454, as amended by PL 1979, c. 47, §§1 and 2,
30 is further amended to read:

32 **§454. Maine Criminal Justice Sentencing Institute**

34 There is established a Maine Criminal Justice Sentencing
36 Institute under the administrative supervision of the State Court
38 Administrator to provide a continuing forum for the regular
40 discussion of the most appropriate methods of sentencing
42 convicted offenders and adjudicated juveniles by judges in the
44 criminal justice system, prosecutors, law enforcement and
46 correctional personnel, representatives of advisory and advocacy
48 groups and such representatives of the defense bar as the
50 chairman chair of the Judicial Council may invite. All Supreme
52 Judicial Court, Superior Court, District Court and Administrative
Court Judges, all District Attorneys and attorneys within the
Criminal Division of the Office of the Attorney General are, and
such other criminal justice personnel as the Judicial Council may
authorize ~~shall~~ may be members of the institute.

The institute shall meet not less than once every 3 years,
at the call of the Judicial Council, for a 2-day period to
discuss recommendations for changes in the sentencing authority
and policies of the state's State's criminal and juvenile courts,
in response to current law enforcement problems and the available
alternatives for criminal and juvenile rehabilitation within the
state's State's correctional system. Inasmuch as possible the
deliberations of the institute ~~shall~~ must be open to the general
public.

Members of the institute ~~shall~~ are not entitled to receive
no compensation for their services, but ~~shall-be~~ are allowed, out
of any appropriation or other fund made available for the
purpose, such expenses for clerical and other services, travel
and incidentals as the Judicial Council may authorize.

2 **Sec. 3. 15 MRSA §3003, sub-§26**, as enacted by PL 1985, c. 439,
§7, is amended to read:

4 **26. Temporary holding resource.** "Temporary holding
6 resource" means an area not in a jail, consisting of not more
than 2 rooms, with a capacity to serve no more than 4 juveniles,
8 which may be used to provide secure or nonsecure shelter
supervision for a juvenile for a period not to exceed 72-hours 48
10 hours, excluding Saturday, Sunday and legal holidays. The level
of security provided is dependent on the intensity of personal
12 supervision employed rather than on the physical characteristics
of the facility.

14 **Sec. 4. 15 MRSA §3006** is enacted to read:

16 **§3006. Review of Maine Juvenile Code**

18 The Department of Corrections shall review the provisions of
19 this Part that relate to detention, custody and supervision of
20 juveniles and submit reports and recommended legislation to the
21 joint committee having jurisdiction over juvenile corrections
22 matters and to the Office of the Executive Director of the
23 Legislative Council on January 15, 1992 and on January 15, 1994.

24 **Sec. 5. 15 MRSA §3203-A, sub-§1, ¶B-1**, as amended by PL 1989,
26 c. 741, §3, is further amended to read:

28 B-1. When, in the judgment of a law enforcement officer,
immediate secure detention is required to prevent a juvenile
30 from imminently inflicting bodily harm ~~to~~ on others or ~~to~~
the juvenile, the officer may refer the juvenile for
32 temporary, emergency detention ~~to--a~~ in a jail or other
secure facility intended or primarily used for the detention
34 of adults approved pursuant to subsection 7, paragraph A or
a facility approved pursuant to subsection 7, paragraph B,
36 prior to notifying a juvenile caseworker or the Department
of the Attorney General, as applicable. Such a facility may
38 detain the juvenile ~~on-an-emergency-basis~~ for up to 2 hours
on an emergency basis, provided that the law enforcement
40 officer immediately notifies the juvenile caseworker or the
Department of the Attorney General and requests
42 authorization to detain the juvenile beyond the term of the
temporary, emergency detention pursuant to paragraph B. The
44 juvenile caseworker or the Department of the Attorney
General may, if continued emergency detention is required to
46 prevent the juvenile from imminently inflicting bodily harm
on others or the juvenile, authorize temporary emergency
48 detention in that facility for an additional 4 hours.
Following any temporary emergency detention, the juvenile
50 caseworker or the Department of the Attorney General shall
order the conditional or unconditional release of a juvenile
52 or shall effect a detention placement ~~within--2--hours~~

2 following a temporary, emergency detention. After December
31, 1991, any detention beyond 6 hours must be in a
4 placement other than a facility intended or primarily used
for the detention of adults and must be authorized by a
6 juvenile caseworker or the Department of the Attorney
General. It shall be is the responsibility of the law
8 enforcement officer to remain at the facility until the
juvenile caseworker or the Department of the Attorney
10 General has released the juvenile or has authorized
detention.

12 Sec. 6. 15 MRSA §3203-A, sub-§2, ¶A, as amended by PL 1989, c.
318, is further amended to read:

14
16 A. When a juvenile is arrested, the law enforcement officer
or the juvenile caseworker shall notify the legal custodian
18 of the juvenile without unnecessary delay and inform the
legal custodian of the juvenile's whereabouts, the name and
20 telephone number of the juvenile caseworker who has been
contacted and, if a juvenile has been placed in a secure
22 detention facility, that a detention hearing will be held
within 48 hours following this placement, excluding
24 Saturday, Sunday and legal holidays. After December 31,
1991, if the juvenile is held under subsection 7, paragraph
26 B-1, the law enforcement officer or the juvenile caseworker
shall notify the legal custodian that a detention hearing
28 will be held within 24 hours following this placement,
excluding Saturday, Sunday and legal holidays.

30 Sec. 7. 15 MRSA §3203-A, sub-§7, ¶A, as amended by PL 1989, c.
231, §1, is further amended to read:

32
34 A. A juvenile may be detained in a jail or other security
secure detention facility intended for use or primarily used
for the detention of adults only when the serving facility:

36 (1) Contains an area where juveniles are under direct
38 staff observation at all times, in a separate section
for juveniles which that complies with mandatory sight
40 and sound separation standards established by the
Department of Corrections pursuant to Title 34-A,
42 section 1208;

44 (2) Provides for no regular contact between the
juveniles with the adult detainees or inmates; and

46 (3) Has an adequate staff to monitor provide direct
48 observation and supervise the juvenile's activities at
all times during emergency detention.

50
52 Juveniles detained in adult-serving adult-serving facilities
shall may be placed only in the separate juvenile sections

2 which that comply with mandatory separation standards
4 established by the Department of Corrections pursuant to
6 Title 34-A, section 1208, unless the court orders that the
8 person be detained with adults for any period of detention
10 occurring after the detainee has attained the age of 18
12 years.

14 **Sec. 8. 15 MRSA §3203-A, sub-§7, ¶B-1** is enacted to read:

16 B-1. After December 31, 1991 and until December 31, 1993,
18 if the juvenile caseworker determines there is no acceptable
20 alternative, a juvenile may be detained for up to 24 hours,
22 excluding Saturday, Sunday and legal holidays, in a jail or
24 other secure detention facility intended or primarily used
26 for the detention of adults, if:

28 (1) The facility is not located in a standard
30 metropolitan statistical area and meets the statutory
32 criteria outlined in the federal Juvenile Justice
34 Delinquency Act, Section 223(a)(14)(A), (B) and (C);

36 (2) The facility complies with mandatory sight and
38 sound separation standards established by the
40 Department of Corrections in accordance with Title
42 34-A, section 1208;

44 (3) The facility has adequate certified correctional
46 staff to monitor and supervise the juvenile at all
48 times during detention; and

50 (4) The juvenile is detained only to await a detention
52 hearing.

Sec. 9. 15 MRSA §3203-A, sub-§7-A is enacted to read:

7-A. Nonsecure custody in secure detention facility.
Notwithstanding other provisions of this Part, a juvenile may be
held for up to 12 hours in nonsecure custody in a building
housing a jail or other secure detention facility intended or
primarily used for the detention of adults if the following
criteria are met:

A. The area where the juvenile is held is an unlocked,
multipurpose area not designed or intended for use as a
residential area, such as a lobby, office or interrogation
room which is not designated, set aside or used as a secure
detention area or is not a part of such an area, or if a
secure area, is used only for processing purposes;

B. The juvenile is not physically secured to a cuffing rail
or other stationary object during the period of custody in
the facility;

2 C. Use of the area is limited to providing nonsecure
4 custody only long enough and for the purposes of
6 identification, investigation, processing, release to
 parents, or arranging transfer to an appropriate juvenile
 facility or to court; and

8 D. The juvenile is under continuous visual supervision by a
10 law enforcement officer or facility staff person.

12 Sec. 10. 15 MRSA §3205, as enacted by PL 1989, c. 571, Pt. A,
§2, is amended to read:

14 **§3205. Juvenile in adult-serving jail**

16 No After December 31, 1991, no juvenile may be committed or
18 detained in an-adult-serving jail after-December-31--1991, or
20 other secure detention facility intended or primarily used for
22 the detention of adults except when bound over as an adult, or as
 provided for under the provisions of section 3203-A, subsection
 1, paragraph B-1, or subsection 7, paragraph A or B-1.

24 Sec. 11. 17-A MRSA §1203, sub-§1, ¶C is enacted to read:

26 C. Beginning January 1, 1995, for a Class A, Class B or
 Class C crime, the court must:

28 (1) Specify a county jail as the place of imprisonment
30 for any portion of the sentence that is 12 months or
 less; and

32 (2) Commit the person to the Department of Corrections
34 for any portion of the sentence that is more than 12
 months.

36 Sec. 12. 17-A MRSA §1252, sub-§1, ¶C is enacted to read:

38 C. Beginning January 1, 1995, for a Class A, Class B or
40 Class C crime, the court must:

42 (1) Specify a county jail as the place of imprisonment
 if the term of imprisonment is 12 months or less; or

44 (2) Commit the person to the Department of Corrections
46 if the term of imprisonment is more than 12 months.

48 Sec. 13. 30-A MRSA §451, sub-§4, as enacted by PL 1987, c.
50 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6;
 c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to
 read:

2 4. **Detention.** "Detention" In the case of an adult,
3 "detention" means the confining of an adult or juvenile held in
4 lawful custody in a specially constructed or modified facility
5 designed to ensure continued custody and control. Detention may
6 be confinement before trial or another hearing by a court or
7 confinement to serve court-imposed sentences or dispositions and
8 may be in a jail or lock-up. In the case of a juvenile,
9 "detention" means being held in a secure detention facility, as
10 defined in Title 15, section 3003, subsection 24-A.

11 **Sec. 14. 30-A MRSA §458-A is enacted to read:**

12 **§458-A. Temporary holding capacity**

13 By January 1, 1992, each county shall establish the capacity
14 to hold a juvenile for 48 hours, excluding Saturday, Sunday and
15 legal holidays, either in a temporary holding resource or in a
16 secure detention facility, as defined in Title 15, section 3003,
17 subsection 24-A.

18 **Sec. 15. 34-A MRSA §1203, sub-§2, ¶C,** as enacted by PL 1983,
19 c. 459, §6, is amended to read:

20 C. The chief advocate and all other advocates shall ~~be~~ are
21 classified state employees, except that the chief advocate
22 may assign volunteers and interns to duties within the
23 office with the approval of the commissioner.

24 **Sec. 16. 34-A MRSA §1203, sub-§3, ¶D,** as enacted by PL 1983,
25 c. 459, §6, is amended to read:

26 D. Make and publish reports necessary to the performance of
27 the duties described in this section, except that only the
28 chief advocate may report any findings of the office to
29 groups outside the department, such as legislative bodies,
30 advisory committees to the Governor, boards of visitors, law
31 enforcement agencies and the press. The chief advocate
32 shall report annually to the joint committee of the
33 Legislature having jurisdiction over corrections matters
34 regarding the activities of the office. A copy of the
35 report must be provided to the Office of the Executive
36 Director of the Legislative Council.

37 **Sec. 17. 34-A MRSA §1203, sub-§§6 to 8** are enacted to read:

38 **6. Protection for advocates.** An advocate may not be
39 disciplined or sanctioned for any actions taken on behalf of
40 clients if the advocate acts within the law and within the rules
41 of the department.

2 7. Protection for employees. Employees of the department
3 may not be disciplined or sanctioned for reporting abuse or
4 suspected abuse to an advocate.

6 8. Budget. When submitting any budget request to the
7 Legislature, the department and the Governor shall provide that
8 all funds for the Office of Advocacy be listed in a separate
9 account.

10 Sec. 18. 34-A MRSA §1210-A is enacted to read:

12 **§1210-A. Application of juvenile boarding fees**

14 Funds paid by counties to board juveniles at the Maine Youth
15 Center or at other juvenile facilities that are operated by the
16 department must be placed in a special account and expended to
17 develop and support community-based assessment, supervision and
18 treatment programs for juveniles. Funds in this account
19 unexpended at the end of the year may not lapse, but must be
20 carried forward into subsequent years.

22 Sec. 19. 34-A MRSA §3010 is enacted to read:

24 **§3010. Limit on prison population in Knox County**

26 The population of state correctional facilities in Knox
27 County may not exceed 800 prisoners, unless there are no other
28 beds available for housing prisoners elsewhere, based on the
29 prisoners' security classifications. Exceeding this population
30 in such an emergency situation may be done only for the length of
31 time necessary to resolve the emergency.

32 Sec. 20. 34-A MRSA §5406 is enacted to read:

34 **§5406. Community sentencing options unit; pilot program**

36 1. Definition. As used in this section, unless the context
37 indicates otherwise, "community sentencing options" means
38 alternative corrections programs based in the community to
39 provide judges with a range of sentencing options that do not
40 include incarceration and that use community resources and
41 placements.

44 2. Establishment. The Director of Probation and Parole,
45 with the approval of the commissioner, shall establish a
46 community sentencing options unit within one of the probation and
47 parole districts.

48 3. Responsibilities. The unit shall:

50 A. Prepare presentence investigation reports, including
51 recommendations for community sentencing options when
52

2 appropriate, for all defendants convicted of Class A, B or C
3 crimes within one probation and parole district; and

4 B. Arrange and contract with public and private agencies
5 for services necessary to implement community sentencing
6 options.

8 **Sec. 21. 34-A MRSA §5602, sub-§4-A is enacted to read:**

10 **4-A. Supervision ratio for juvenile caseworkers.** Beginning
11 July 1, 1995, the ratio of supervised juveniles to juvenile
12 caseworkers may not exceed 35 to 1. Supervised juveniles are
13 juveniles on court-ordered probation or on entrustment from the
14 Maine Youth Center or another juvenile correctional facility or
15 on informal adjustment status. The department may exceed its
16 authorized number of juvenile caseworker positions on an
17 emergency basis for up to 90 days if necessary to meet this ratio.

18 **Sec. 22. Reports.** The Department of Corrections shall examine
19 its hiring and training standards for correctional officers and
20 determine the feasibility of increasing the entry-level
21 requirements for correctional officers.

22 The Department of Corrections shall begin implementation of
23 its master plan recommendations regarding substance abuse
24 treatment, including the establishment of inpatient treatment
25 programs within its facilities.

26 The Department of Corrections shall consult with officials
27 from labor organizations, the Maine State Retirement System and
28 the Department of Administration to determine the feasibility of
29 equalizing employee benefits across correctional institutions.

30 By January 15, 1991, the Department of Corrections shall
31 report its findings and progress regarding this section to the
32 joint committee of the Legislature having jurisdiction over
33 corrections matters. A copy of this report must be provided to
34 the Office of the Executive Director of the Legislative Council.

35 **Sec. 23. Appropriation.** The following funds are appropriated
36 from the General Fund to carry out the purposes of this Act.

37		1990-91
38		
39	CORRECTIONS, DEPARTMENT OF	
40	Community-based Services-	
41	Bureau of Juvenile Corrections	
42		
43		
44		
45		
46		
47		
48		
49		
50	All Other	\$75,000

2 Provides funds for grants supporting
3 development of economical and effective
4 community-based alternatives to secure
5 detention for adjudicated and alleged
6 juvenile offenders.

7 **Correctional Services**

8 All Other 680,000

10 Provides \$500,000 to contract with public
11 and private agencies for services necessary
12 to implement community sentencing options
13 and \$180,000 to contract with community
14 service agencies to assist indigent
15 defendants in preparing proposals for
16 structured sentencing alternatives to
17 incarceration.

18 **Maine Correctional Center**

20 All Other 3,000

22 Provides funds to make the Southern Maine
23 Pre-Release Center accessible to people with
24 physical handicaps.

25 **Office of Advocacy**

27 Positions (3.0)
28 Personal Services 79,192
29 All Other 38,913
30 Capital Expenditures 3,018
31
32 TOTAL 121,123

33 Provides funds for 2 Advocates and one Clerk
34 Typist II position and \$35,000 to contract
35 for inmate legal services.

36 **Probation and Parole**

37 Positions (16.5)
38 Personal Services 466,560
39 All Other 48,948
40 Capital Expenditures 9,560
41
42 TOTAL 525,068

43 Provides funds for 4 Probation and Parole
44 Officers, 1.5 Clerk Typist II positions and

2 related expenses to develop a pilot
 4 community sentencing options unit within a
 6 probation and parole district. Provides
 8 funds for 4 Probation and Parole Officers
 10 and 4 Clerk Typist III positions and related
 expenses to develop 2 day centers to divert
 offenders from incarceration. Provides for
 2 adult Probation and Parole Officers and
 one juvenile Probation and Parole Officer to
 improve overall offender: officer ratios.

12 **DEPARTMENT OF CORRECTIONS**
 14 **TOTAL** \$1,404,191

16 **HUMAN SERVICES, DEPARTMENT OF**

18 **Community Services Project**

20 All Other \$185,000

22 Provides funds to demonstrate primary
 24 prevention with approximately 210 youth
 26 enabling approximately 325 elderly people to
 28 live more independently and securely. Of
 30 the 210 youth, 50% will be youth at large,
 32 30% will be youth at risk and 20% will be
 youth referred by the Department of
 Corrections. This appropriation for a
 community services project will provide no
 more than 75% of expenditures to operate 1
 program in Rockland, 1 in Portland and 2
 programs in other areas of the State.

34 **DEPARTMENT OF HUMAN SERVICES**
 36 **TOTAL** \$185,000

38 **LEGISLATURE**

40 **Legislature**

42 Positions (1)
 44 Personal Services \$31,139
 All Other 1,125
 Capital Expenditures 7,500

2 Provides funds for one Legislative Analyst
position, related support costs and
equipment effective October 1, 1990.

4

6	LEGISLATURE TOTAL	\$39,764
8	TOTAL APPROPRIATIONS	\$1,628,955

10 FISCAL NOTE

12 In addition to the General Fund appropriations in the amount
of \$1,628,955 included in section 23 of this bill, there are
14 other financial implications to be considered.

16 There will be a loss of revenue to the General Fund of
approximately \$100,000 in fiscal year 1990-91 as a result of
18 dedicating funds paid by counties to board juveniles at
facilities operated by the Department of Corrections.

20 Based upon the current caseload, authorization and funding
22 for an additional 27 juvenile caseworkers will be required in
fiscal year 1993-94 in order to meet the supervision ratio. It
24 is estimated that the increased General Fund appropriation that
will be necessary for this purpose is \$1,019,250, at a minimum.
26 This amount does not reflect any salary or benefit adjustments
that will occur in future fiscal years.

28 It should be noted that L.D. 2028 recommends an
30 appropriation of \$180,000 for sentencing alternatives and L.D.
2093 includes a \$75,000 appropriation for community-based
32 services for juvenile offenders. These items are included in
this bill as well.

34 The Department of Corrections will fulfill the reporting
36 requirements within its budgeted resources.

38 The addition of new legislative staff may also require
capital renovation funds in order to provide office space. The
40 amount of funds needed can not be determined at this time.

42 STATEMENT OF FACT

44 This bill:

46 1. Requires correctional impact statements to be attached
to all legislation that affects the State or county correctional
48 systems;

50 2. Requires that juvenile sentencing issues be considered
by the Maine Criminal Justice Sentencing Institute;

52

- 2 3. Amends the laws regarding detention of juveniles and
requires counties to maintain temporary holding capacity for
juveniles;
4
- 6 4. Requires that, as of January 1, 1995, sentences of one
year or less be served in county jails;
- 8 5. Amends the section of the statutes relating to the
Department of Corrections, Office of Advocacy;
10
- 12 6. Requires that boarding fees paid by counties to the
Maine Youth Center and other facilities be applied by the
Department of Corrections to community-based juvenile programs;
14
- 16 7. Establishes a maximum of 800 prisoners for Knox County
barring emergencies, in which case the maximum can be exceeded
until the emergency is resolved;
18
- 20 8. Establishes a special unit within a probation and parole
district to prepare presentence investigation reports on all
defendants convicted of Class A, B or C crimes and offer
recommendations for community sentencing options when appropriate;
22
- 24 9. Requires the supervised juvenile to caseworker ratio to
be no greater than 35 to 1 by July 1, 1995;
26
- 28 10. Requires the Department of Corrections to report to the
Legislature regarding training of correctional officers,
development of substance abuse treatment programs in its
facilities and equalization of employee benefits across its
institutions; and
30
- 32 11. Appropriates funds to carry out the purposes of this
34 bill.