

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 1447

H.P. 998

House of Representatives, April 8, 1991

Reference to the Joint Select Committee on Corrections suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Speaker MARTIN of Eagle Lake.

Cosponsored by Representative KETOVER of Portland, Senator BERUBE of Androscoggin and Representative JOSEPH of Waterville.

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STATE OF MAINE

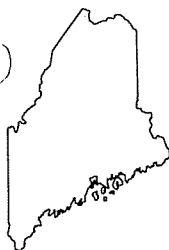
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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

---

An Act Transferring County Jail Operations to the State.

---



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

2  
3 Sec. 1. 4 MRSA §1057, sub-§§1 and 3, as enacted by PL 1987, c.  
4 339, §3, are amended to read:

6 1. Fund established. There is hereby established a fund to  
7 be known as the Jail Operations Surcharge Fund. This fund shall  
8 be is maintained by the Treasurer of State for the sole purpose  
9 of ~~reimbursing--counties~~ paying for costs associated with  
10 operations of the jail system.

12 3. Payment. Monthly, the Treasurer of State shall make  
13 payments from this fund to ~~each county in direct proportion to~~  
14 ~~the amount of revenue obtained from all courts within each~~  
15 ~~county, provided a county may not receive an amount greater than~~  
16 ~~the prior year's expenditures on its jail~~ the Department of  
17 Corrections. The amount of total payments made ~~to counties shall~~  
18 must equal 2% of the total fines, forfeitures and penalties,  
19 including this surcharge, received by the Treasurer of State.  
20 The balance remaining in the Jail Operations Surcharge Fund at  
21 the end of each month shall ~~accrue~~ accrues to the General Fund.

22  
23 Sec. 2. 15 MRSA §224, sub-§4, as enacted by PL 1977, c. 66, is  
24 amended to read:

26 4. Expenses for rendition of escaped prisoners. Expenses  
27 for rendition of prisoners who have escaped from custody shall ~~be~~  
28 are paid by the State of Maine if the escape occurred while the  
29 prisoner was committed to or being held at a state institution or  
30 while the prisoner was in the custody of a state officer, ~~shall~~  
31 ~~be paid by the sheriff if the escape occurred while the prisoner~~  
32 ~~was committed to or being held at a county jail or while in the~~  
33 custody of a county officer or shall ~~be~~ are paid by a  
34 municipality if the escape occurred while the prisoner was being  
35 held at a lockup or in the custody of a municipal officer. Escape  
36 and custody shall have the same meaning as defined in Title 17-A.

38 Sec. 3. 15 MRSA §453, as amended by PL 1969, c. 506, §1, is  
39 further amended to read:

40 **§453. Detention at State Prison of dangerous persons**

42  
43 When a verdict of guilty is rendered against any person for  
44 an offense punishable by imprisonment in the State Prison, and  
45 such the person is committed to jail pending decision by the  
46 Supreme Judicial Court on appeal or otherwise, or is committed to  
47 jail to await action of a grand jury after a finding of probable  
48 cause, or to await trial after indictment, the ~~sheriff of the~~  
49 ~~county in~~ jailer of the jail to which such the person is  
50 committed ~~to jail~~ may certify, in writing, to any Justice of the  
Superior or Supreme Judicial Court that in ~~his~~ the justice's

2 opinion such the person is dangerous and liable to attempt to  
3 escape from such the jail. Thereupon such The justice may order,  
4 after hearing, that said the person be transferred and committed  
5 to the State Prison for safekeeping to await the final decision  
6 from the Supreme Judicial Court. ~~The county committing such~~  
7 ~~person to the State Prison for safekeeping shall be liable to the~~  
8 ~~State for each such person, a proportional amount of the overall~~  
~~inmate per capita cost per day based on previous year.~~

10 Sec. 4. 15 MRSA §1023, sub-§5, as amended by PL 1989, c. 185,  
11 is further amended to read:

12 5. Fees. A bail commissioner shall ~~receive~~ receives a fee  
13 not to exceed \$25 for the charges pursuant to which the defendant  
14 is presently in custody. The bail commissioner shall submit such  
15 forms as the Judicial Department shall ~~direct~~ directs to verify  
16 the amount of fees received under this subsection. The sheriff  
17 ~~of the county~~ jailer of the jail in which the defendant is  
18 detained may create a fund for the distribution by the sheriff  
19 jailer or the sheriff's jailer's designee for the payment in  
20 whole or in part of the \$25 bail commissioner fee for those  
21 defendants who do not have the financial ability to pay that fee.

24 Sec. 5. 15 MRSA §1705, as repealed and replaced by PL 1985,  
25 c. 242, is repealed.

26 Sec. 6. 15 MRSA §1710, as repealed and replaced by PL 1989,  
27 c. 887, §1, is repealed.

30 Sec. 7. 15 MRSA §2211-A, as amended by PL 1987, c. 402, Pt.  
31 A, §112, is further amended to read:

32 **§2211-A. Persons confined in county jail; hospitalization for**  
33 **mental illness**

36 When the ~~sheriff or keeper of a county jail~~ jailer believes  
37 that any person confined in the county jail is mentally ill  
38 requiring hospitalization, he the jailer shall apply, in writing,  
39 for the admission of any such person to either state hospital for  
40 the mentally ill, giving his reasons ~~therefor~~ for the  
41 hospitalization. The application and certification shall must be  
42 in accordance with the requirements of Title 34 34-B, section  
43 ~~2333~~ 3863.

44 Any such person with respect to for whom such an application  
45 and certification are made may be admitted to either state  
46 hospital for the mentally ill. Except as otherwise specifically  
47 provided in this section, Title 34 34-B, chapter 191 3,  
48 ~~subchapters I and III~~ subchapter IV, except section 2373 3868  
49 shall ~~be~~ is applicable to any such person as if the admission of  
50 such that person were applied for under Title 34 34-B, section  
51 ~~2333~~ 3863.

2 Admission to a hospital under this section shall ~~have~~ has no  
4 effect upon a sentence then being served, upon an existing  
6 commitment on civil process, or upon detention pending any stage  
8 of a criminal proceeding in which any such person is the  
defendant, and the court having jurisdiction shall ~~retain~~ retains  
it. Such ~~The~~ sentence shall ~~continue~~ continues to run and any  
such ~~the~~ commitment or detention shall ~~remain~~ remains in force,  
unless terminated in accordance with law.

10 A copy of the document by which any such person is held in  
12 the county jail, attested by the ~~sheriff or jail keeper~~ shall  
jailer, must accompany the application for admission. Following  
14 admission to a state hospital for the mentally ill under this  
16 section, a copy of the application and certification similarly  
attested shall must be filed with the court having jurisdiction  
18 over any case, civil or criminal, in which any ~~such the~~ person is  
the defendant. The clerk of the court when a criminal proceeding  
20 is pending against any such person shall forward a copy of the  
application and certification to the attorney for the defendant  
and the attorney for the State.

22 If the sentence being served at the time of admission has  
24 not expired or commitment on civil process or detention has not  
26 been terminated in accordance with law at the time any such  
person is ready for discharge from hospitalization, he the person  
shall must be returned by the sheriff of the county from which  
28 admitted, or any of his the sheriff's deputies, to the county  
jail from which admitted.

30 ~~All expenses incident to transportation of any person~~  
32 ~~between the hospital and county jail under this section shall be~~  
~~paid from the treasury of the county wherein county jail~~  
34 ~~incarceration originated.~~

36 Admission to a hospital under this section shall may not be  
used to effect the examination or observation of any person for  
38 the purpose of a criminal proceeding pending in either the  
District Court or the Superior Court. The Superior Court prior  
40 to trial of any defendant admitted for hospitalization under this  
section may, at any time upon motion of the defendant's attorney,  
42 attorney for the State or upon the court's own motion, hold a  
hearing with respect to the competence of any such person to  
44 stand trial as provided in section 101-B, and appropriate  
disposition may be made thereunder. The court's order following  
46 hearing in such the case may terminate the admission effected  
under this section.

48 In addition to the authority given by this section to apply  
50 for the involuntary admission to a state hospital for the  
mentally ill of a person confined in the county jail, a person

2 confined in a county jail, when such hospitalization is  
3 recommended by a licensed physician or licensed psychologist,  
4 shall must be allowed to apply for informal admission to a state  
5 hospital for the mentally ill under Title 34, ~~section 2290~~ 34-B,  
6 sections 3831 and 3832. In the event of any such application,  
7 all other provisions of this section as to notice of status as an  
8 inmate of a county jail, notice to the court and counsel,  
9 transportation and expenses thereof, and the continuation and  
10 termination of sentence, commitment or detention, shall apply.  
11 Except as otherwise provided in this section, the provisions of  
12 law applicable to persons admitted to a state hospital for the  
13 mentally ill under Title 34, ~~section 2290~~ shall 34-B, sections  
14 3831 and 3832, apply to any person confined in a county jail  
15 admitted to a state hospital for the mentally ill under said  
16 ~~section~~ those sections.

17 **Sec. 8. 17-A MRSA §1253, sub-§1,** as repealed and replaced by  
18 PL 1985, c. 821, §11, is amended to read:

19 **1.** The sentence of any person committed to the custody of  
20 the Department of Corrections shall ~~commence to run~~ commences on  
21 the date ~~on which~~ that person is received into the correctional  
22 facility designated as the initial place of confinement by the  
23 Commissioner of Corrections pursuant to section 1258. That day  
24 is counted as the first full day of the sentence.

25 ~~The sentence of any person committed to the custody of a sheriff~~  
26 ~~shall commence to run on the date on which that person is~~  
27 ~~received into the county jail specified in the sentence. That day~~  
28 ~~is counted as the first full day of the sentence if the term of~~  
29 ~~imprisonment, or the initial unsuspended portion of a split~~  
30 ~~sentence, is over 30 days; otherwise, credit is accorded only for~~  
31 ~~the portion of that day for which the person is actually in~~  
32 ~~execution of the sentence.~~

33 **Sec. 9. 17-A MRSA §1253, sub-§1-A,** as repealed and replaced by  
34 PL 1985, c. 282, §6, is repealed.

35 **Sec. 10. 17-A MRSA §1341, sub-§1,** as amended by PL 1989, c.  
36 375, is further amended to read:

37 **1. Assessment.** When a person is sentenced to incarceration  
38 in a county jail, the sentencing court shall consider and may  
39 assess as part of the sentence a reimbursement fee to help defray  
40 the expenses of the offender's room and board. The fee may not  
41 exceed the cost of incarcerating the offender or \$20 per day,  
42 whichever is less. ~~Any reimbursement fee assessed shall be~~  
43 ~~collected by the county treasurer of the county in which the~~  
44 ~~offender is incarcerated and paid into the treasury of that~~  
45 ~~county and credited to the county responsible for paying for the~~  
46 ~~incarceration of the offender.~~

2           Sec. 11. 19 MRSA §483, as amended by PL 1971, c. 544, §62, is  
repealed.

4           Sec. 12. 19 MRSA §775, as enacted by PL 1979, c. 668, §6, is  
6           repealed.

8           Sec. 13. 25 MRSA §1502, last ¶, is repealed.

10          Sec. 14. 30-A MRSA §121, sub-§1, as amended by PL 1989, c.  
12          104, Pt. C, §§8 and 10, is further amended to read:

14           1. ~~Buildings. The county commissioners, in the county seat~~  
~~of their county, may provide a jail and shall keep it in proper~~  
16           repair. The county commissioners, in the county seat of their  
county, shall provide and keep in repair:

18           A. Courthouses pursuant to Title 4, section 115, with a  
20           suitable room in each for the county law library;

22           B. Fireproof buildings of brick or stone, with separate  
fireproof rooms and suitable alcoves, cases or boxes for  
24           each office, for the safekeeping of records and papers  
belonging to the offices of:

26                   (1) The register of deeds;

28                   (2) The register of probate;

30                   (3) The register of insolvency; and

32                   (4) The clerk of courts; and

34           C. Any other necessary buildings.

36          Sec. 15. 30-A MRSA §353, as amended by PL 1989, c. 104, Pt.  
38          C, §§8 and 10, is further amended to read:

40          **§353. Officer not to act as attorney or draw papers; employee of  
jailer not to act as judge or attorney**

42          No officer may appear before any court as attorney or  
44          adviser of any party in an action or draw any writ, complaint,  
declaration, citation, process or plea for any other person; all  
46          such acts are void. ~~Ne person employed by the keeper of a jail~~  
~~in any capacity may exercise any power or duty of a judicial~~  
48          ~~officer or notary public or act as attorney for any person~~  
~~confined in the jail; all such acts are void.~~

50          Sec. 16. 30-A MRSA §373, sub-§1, ¶¶ B and C, as amended by PL  
1989, c. 104, Pt. C, §§8 and 10, are repealed.

2           **Sec. 17. 30-A MRSA §373, sub-§2**, as amended by PL 1989, c.  
104, Pt. C, §§8 and 10, is further amended to read:

4  
6           **2. Expenses allowed.** The county commissioners shall allow  
and pay from the county treasuries all actual and necessary  
8           expenses for travel and hotel bills within their respective  
counties and necessary incidental expenses as are just and  
10           proper, incurred in the performance of the sheriffs' public  
duties, ~~including all necessary expense for aid in keeping the~~  
12           jails.

14           **Sec. 18. 30-A MRSA §424**, as amended by PL 1989, c. 104, Pt.  
C, §§8 and 10, is repealed.

16           **Sec. 19. 30-A MRSA §451, sub-§4**, as amended by PL 1989, c.  
925, §12, is repealed.

18           **Sec. 20. 30-A MRSA §451, sub-§8**, as amended by PL 1989, c.  
20           104, Pt. C, §§8 and 10, is repealed.

22           **Sec. 21. 30-A MRSA §454**, as amended by PL 1989, c. 104, Pt.  
C, §§8 and 10, is repealed.

24           **Sec. 22. 30-A MRSA §701, sub-§2**, as amended by PL 1989, c.  
26           104, Pt. C, §§8 and 10, is further amended to read:

28           **2. Preparation of estimates.** In order to assess a county  
tax, the county commissioners, prior to November 7th in each  
30           year, shall prepare estimates of the sums necessary to pay the  
expenses ~~which~~ that have accrued or may probably accrue for the  
32           coming year, including the building and repairing of jails,  
courthouses and appurtenances, with the debts owed by their  
34           counties.

36           The estimates must be drawn so as to authorize the appropriations  
to be made to each department or agency of the county government  
38           for the year. The estimates must provide specific amounts for  
personal services, contractual services, commodities, debt  
40           service and capital expenditures.

42           **Sec. 23. 30-A MRSA c. 13**, as amended, is repealed.

44           **Sec. 24. 34-A MRSA §1001, sub-§1**, as enacted by PL 1983, c.  
459, §6, is amended to read:

46  
48           **1. Chief administrative officer of a correctional facility.**  
"Chief administrative officer of a correctional facility" means  
50           the head of a correctional facility, including, but not limited  
to:

52           A. The Warden of the Maine State Prison;



- 2 B. The Superintendent of the Maine Correctional Center;  
4 C. The Director of the Charleston Correctional Facility; and  
6 D. The Superintendent of the Maine Youth Center; and  
8 E. The jailer of each jail.

10 Sec. 25. 34-A MRSA §1001, sub-§6, as amended by PL 1989, c.  
12 898, §3, is further amended to read:

14 6. **Correctional facility.** "Correctional facility" means the  
16 Maine State Prison, Maine Correctional Center, Charleston  
18 Correctional Facility, community ~~restitution~~ restitution centers,  
20 Maine Youth Center, Downeast Correctional Facility, each county  
jail or any other entity which that falls under the jurisdiction  
of the department, but does not include a ~~county-jail~~, holding  
facility or short-term detention area.

22 Sec. 26. 34-A MRSA §3063, as repealed and replaced by PL  
1983, c. 581, §§28 and 59, is repealed.

24 Sec. 27. 34-A MRSA c. 3, sub-c. VIII, is enacted to read:

26 **SUBCHAPTER VIII**

28 **JAILS**

30 **§3961. Establishment**

32 There are established county jails located at the several  
34 county seats for pretrial detention and the confinement and  
36 rehabilitation of persons who have been duly sentenced and  
committed to the Department of Corrections.

38 **§3962. Purposes**

40 The purpose of the county jails is to provide pretrial  
42 detention and confinement of convicted persons, and when  
appropriate, may include vocational and academic education and  
44 work which may involve public restitution.

46 **§3963. Jailer**

48 1. Chief administrative officer. The chief administrative  
officer of each jail is called the jailer and is responsible to  
the commissioner.

50 2. Duties. In addition to other duties set out in this  
52 Title, each jailer has the following duties.

2           A. The jailer shall exercise proper supervision over the  
3           employees, grounds, buildings and equipment at the jail.

4  
5           B. The jailer shall supervise and control the prisoners at  
6           the jail in accordance with departmental rules.

7  
8           3. Powers. In addition to other powers granted in this  
9           Title, the jailer may appoint one assistant jailer, subject to  
10          the Civil Service Law, and the assistant jailer has the powers,  
11          duties, obligations and liabilities of the jailer when the jailer  
12          is absent or unable to perform the jailer's duties.

13          §3964. Prisoners generally

14  
15          1. Confinement. All prisoners at each jail must be  
16          detained and confined in accordance with the sentences of the  
17          court and the rules of the department.

18  
19          2. Employment. The commissioner may authorize the  
20          employment of prisoners of jails on public works with any  
21          department, agency or entity of the State or of county or local  
22          government and may authorize the use of prisoners to provide  
23          assistance in the improvement of property owned by nonprofit  
24          organizations.

25  
26                 A. The commissioner shall promulgate such rules as the  
27                 commissioner determines proper to ensure the care and  
28                 treatment of the prisoners and the safe working conditions  
29                 of prisoners and departmental employees.

30  
31                 B. The purposes of the employment authorized in this  
32                 subsection are to provide training to the prisoner and to  
33                 provide a form of public restitution for the crime or crimes  
34                 committed by the prisoner.

35  
36                 C. The commissioner may request that nonprofit  
37                 organizations pay for the transportation of the prisoners  
38                 and pay the per diem compensation of correctional officers  
39                 or instructors who must accompany the prisoners or oversee  
40                 the work performed.

41  
42          3. Escape. Any prisoner who escapes from the a jail, or  
43          from any assignment beyond the grounds of a jail, including  
44          community rehabilitative programs, is guilty of escape under  
45          Title 17-A, section 755.

46  
47          §3965. Jail employees

48  
49          Employees of each jail have the same power as sheriffs in  
50          their respective counties to search for and apprehend escapees  
51          from the jail when authorized to do so by the jailer.  
52

2           **Sec. 28. 37-B MRSA §412**, as enacted by PL 1983, c. 460, §3,  
is amended to read:

4  
6           **§412. Receiving prisoners**

8           When an officer of the military forces delivers a prisoner  
and furnishes a statement of the offense charged against that  
10 prisoner to a provost marshal, commander of the guard, warden,  
keeper, jailer or officer of a city or county jail or other  
12 correctional center designated under section 408, that official  
shall commit the prisoner to his the official's charge.

14           **Sec. 29. 37-B MRSA §413**, as enacted by PL 1983, c. 460, §3,  
is amended to read:

16  
18           **§413. Report of persons held**

20           Every provost marshal, commander of the guard, warden,  
keeper, jailer or officer of a city or county jail or other  
22 correctional center designated under section 408 to whose charge  
a prisoner is committed shall, within 24 hours after such that  
24 commitment or as soon as he the official is relieved from guard,  
report to his the official's commanding officer the name of the  
26 prisoner, the offense charged against him the prisoner and the  
name of the person who ordered or authorized commitment.

28           **Sec. 30. Effective date.** This Act takes effect on January 1,  
1992.

30  
32           **Sec. 31. Transition.** All debts, bonds, notes or obligations  
of each of the counties solely related to the jail facilities  
34 become obligations of the State on the effective date. When an  
obligation is for a building containing the jail and other county  
36 facilities, the State's share of that obligation is established  
by the Commissioner of Corrections on the basis of prorated  
square footage.

38  
40           All employees of the county who perform duties in the jail  
are eligible for appointment to similar duties in the jail under  
42 the Civil Service Law on or after the effective date of this Act.

44   **STATEMENT OF FACT**

46           The purpose of this bill is to transfer jurisdiction over  
the county jails, including their facilities, debts and  
48 obligations, from the counties to the Department of Corrections.