

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 456

H.P. 353

House of Representatives, February 11, 1993

An Act to Ensure Reimbursement for Counties under the Community Corrections Programs.

(EMERGENCY)

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

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative STEVENS of Sabattus.
Cosponsored by Senator HANDY of Androscoggin and
Representatives: AHEARNE of Madawaska, AIKMAN of Poland, ALIBERTI of Lewiston,
ANDERSON of Woodland, AULT of Wayne, BAILEY of Township 27, BAILEY of
Farmington, BARTH of Bethel, BEAM of Lewiston, BENNETT of Norway, BOWERS of
Washington, BRUNO of Raymond, CAMERON of Rumford, CARLETON of Wells,
CARROLL of Gray, CATHCART of Orono, CLARK of Millinocket, CLEMENT of Clinton,
CLUKEY of Houlton, COFFMAN of Old Town, COLES of Harpswell, COTE of Auburn,
CROSS of Dover-Foxcroft, DAGGETT of Augusta, DEXTER of Kingfield, DONNELLY of
Presque Isle, DORE of Auburn, DRISCOLL of Calais, DUTREMBLE of Biddeford, ERWIN of
Rumford, FARNSWORTH of Hallowell, FARNUM of South Berwick, FARREN of
Cherryfield, GAMACHE of Lewiston, GEAN of Alfred, GOULD of Greenville, GRAY of
Sedgwick, GREENLAW of Standish, GWADOSKY of Fairfield, HALE of Sanford, HATCH of
Skowhegan, HEINO of Boothbay, HOGLUND of Portland, HOLT of Bath, HUSSEY of Milo,
JACQUES of Waterville, JALBERT of Lisbon, JONES of Pittsfield, JOY of Island Falls, KERR
of Old Orchard Beach, KILKELLY of Wiscasset, KNEELAND of Easton, KUTASI of Bridgton,

LEMKE of Westbrook, LEMONT of Kittery, LIBBY of Kennebunk, LIBBY of Buxton, LINDAHL of Northport, LIPMAN of Augusta, LOOK of Jonesboro, LORD of Waterboro, MARSH of West Gardiner, MARSHALL of Eliot, MARTIN of Van Buren, MARTIN of Eagle Lake, MELENDY of Rockland, MICHAEL of Auburn, MICHAUD of East Millinocket, MORRISON of Bangor, MURPHY of Berwick, NASH of Camden, NICKERSON of Turner, NORTON of Winthrop, OLIVER of Portland, OTT of York, PARADIS of Augusta, PENDEXTER of Scarborough, PENDLETON of Scarborough, PFEIFFER of Brunswick, PINEAU of Jay, PLOURDE of Biddeford, PLOWMAN of Hampden, POULIN of Oakland, POULIOT of Lewiston, QUINT of Paris, REED of Dexter, RICHARDSON of Portland, RICKER of Lewiston, ROBICHAUD of Caribou, ROTONDI of Athens, SIMONDS of Cape Elizabeth, SIMONEAU of Thomaston, SKOGLUND of St. George, SMALL of Bath, SPEAR of Nobleboro, ST. ONGE of Greene, STEVENS of Orono, STROUT of Corinth, SULLIVAN of Bangor, TARDY of Palmyra, TAYLOR of Cumberland, THOMPSON of Lincoln, TOWNSEND of Eastport, TRACY of Rome, TRUE of Fryeburg, TUFTS of Stockton Springs, VIGUE of Winslow, WINN of Glenburn, ZIRNKILTON of Mount Desert, Senators: BEGLEY of Lincoln, BERUBE of Androscoggin, BUSTIN of Kennebec, BUTLAND of Cumberland, CAHILL of Sagadahoc, CAREY of Kennebec, DUTREMBLE of York, GOULD of Waldo, HALL of Piscataquis, HANLEY of Oxford, KIEFFER of Aroostook, LAWRENCE of York, LUTHER of Oxford, O'DEA of Penobscot, PARADIS of Aroostook, SUMMERS of Cumberland, WEBSTER of Franklin.

2 **Emergency preamble.** Whereas, Acts of the Legislature do not
become effective until 90 days after adjournment unless enacted
as emergencies; and

4 Whereas, courts are now required to sentence short-sentence
6 prisoners directly to county jails; and

8 Whereas, the Department of Corrections is required to
reimburse the jails for the expenses of these prisoners; and

10 Whereas, the law currently provides an exception to this
12 reimbursement requirement for fiscal year 1991-92 and fiscal year
1992-93; and

14 Whereas, absence of these funds for the current fiscal year
16 will create a major hardship for the counties; and

18 Whereas, in the judgment of the Legislature, these facts
create an emergency within the meaning of the Constitution of
20 Maine and require the following legislation as immediately
necessary for the preservation of the public peace, health and
22 safety; now, therefore,

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

26 **Sec. 1. 17-A MRSA §1252, sub-§1, ¶D** is enacted to read:

28 D. The court may not specify a county jail as the place of
30 imprisonment unless, in response to the court's inquiry, the
32 county in which the jail is located indicates that it
34 received reimbursement for all costs agreed to with the
36 Commissioner of Corrections under Title 34-A, section 1210,
38 subsection 2. This paragraph requires that costs be
reimbursed regardless of whether the money is appropriated.
The Department of Corrections may present evidence regarding
the accuracy of the county's claim and, if the court finds
that reimbursement has been made, the persons must be
assigned to the jail.

40 **Sec. 2. 34-A MRSA §1210, sub-§2,** as amended by PL 1991, c.
622, Pt. W, is repealed and the following enacted in its place:

42 **2. Reimbursement.** The following provisions apply to
44 reimbursement by the department for community corrections.

46 A. Except as provided in subsection 6-A, the department,
48 under this section, shall reimburse each county quarterly
for each actual day served at that county correctional
facility by:

2 (1) Persons convicted of a Class A, Class B or Class C
4 crime and sentenced after March 31, 1987 to serve a
6 term of imprisonment pursuant to Title 17-A, section
 1203, subsection 1 or section 1252, subsection 1; and

8 (2) Persons convicted of a Class A, Class B or Class C
10 crime and sentenced after December 31, 1988 to serve a
 term of imprisonment pursuant to Title 17-A, section
 1203, subsection 1 or section 1252, subsection 1.

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

26 C. The obligation of the department to reimburse counties
28 pursuant to this section may not exceed the actual amount
30 appropriated during fiscal year 1991-92.

32 D. On a percentage basis, the funds appropriated for the
34 purposes of this section may not decrease from those
 appropriated in fiscal year 1990-91 any more than the total
 appropriations for the department decrease from that year.

36 E. Regardless of whether funds are appropriated for that
38 purpose, reimbursement required under this subsection must
40 be made before any funds appropriated to the department may
 be spent for other purposes.

42 F. Regardless of whether funds are appropriated,
44 reimbursement required under this subsection is a state
 mandate under the Constitution of Maine, Article IX, Section
 21.

46 G. If funds are not appropriated for reimbursement, a
 county's reimbursement for costs as agreed to with the

2 commissioner may not lapse but must be carried forward into
3 subsequent years.

4 **Sec. 3. 34-A MRSA §1210, sub-§6-A**, as corrected by RR 1991, c.
5 2, §127, is amended to read:

6 **6-A. Funds to be used for community corrections programs.**

7 Thirty percent of all funds ~~elaimed~~--by due each county for
8 reimbursement under this section must be retained by the
9 department until the county demonstrates that the retained funds
10 will be used for community corrections programs, as described in
11 subsection 1, paragraph B, that are developed as part of a
12 comprehensive local plan approved by the commissioner. One half
13 of the retained funds must be retained until the county
14 demonstrates that the funds will be used for adult programs, and
15 1/2 of the retained funds must be retained until the county
16 demonstrates that the funds will be used for juvenile programs.
17 All funds retained by the department under this subsection not
18 released by the end of the year may not lapse, but must be
19 carried forward into subsequent years, with each county's funds
20 carried over for that county. All funds not committed by any
21 county after 3 years from the date the county's claim is approved
22 by the department must be placed by the department in a pool from
23 which supplementary funds periodically must be made available to
24 all counties on a competitive basis. Annually, by September 1st,
25 the commissioner shall submit to the joint standing committee of
26 the Legislature having jurisdiction over corrections matters a
27 report of the activity in the prior fiscal year of the funds
28 retained under this subsection, including the following:

- 29 A. The amount retained from each county;
- 30 B. The amount of any funds that have been carried over from
31 previous fiscal years for each county;
- 32 C. The amount released to each county; and
- 33 D. The specific programs for which funds were released for
34 each county, including an indication of whether each program
35 serves juveniles or adults.

36 If the department has not reimbursed the county for all costs
37 agreed to for the current or proceeding years, the department may
38 not withhold funds from the county under this subsection for the
39 current or any proceeding years.

40 **Emergency clause.** In view of the emergency cited in the
41 preamble, this Act takes effect when approved.

STATEMENT OF FACT

2

4 Currently, the courts are required to specify the county
6 jail for persons convicted of Class D and E crimes and for other
8 classes of crime for which the sentence is 9 months or less. The
10 Department of Corrections is required to reimburse the jails for
12 those prisoners except that in fiscal years 1991-92 and 1992-93
14 the obligation for this reimbursement may not exceed the amount
16 appropriated for that purpose. It is required that 30% of the
18 reimbursed funds claimed be used by the county for community
20 corrections programs.

12

14 This bill does the following.

14

16 1. It prohibits the courts from specifying a jail if the
18 county indicates that the Department of Corrections has not
20 reimbursed it for past costs.

18

20 2. It repeals for fiscal year 1992-93 the provision that
22 prohibits reimbursement in excess of appropriations.

20

22 3. It provides that the percentage decrease of
24 appropriations to county jail reimbursement from fiscal year
26 1990-91 to the current year may not be any greater than the
28 decrease in the total appropriations to the Department of
30 Corrections for that time period.

22

24 4. It forbids the Department of Corrections from making
26 expenditures from any appropriations until the counties have been
28 reimbursed for jail expenses.

28

30 5. It makes the requirement to reimburse the county for
32 jailed prisoners a state mandate under the Constitution of Maine
34 that requires that the State reimburse municipal and county
36 governments for costs incurred to implement a state law.

32

34 6. It requires that the obligation to reimburse the county
36 for jail expenses for which funds are not appropriated is to
38 carry forward to subsequent years.

36

38 7. It changes the provision that requires that 30% of the
40 funds claimed by the county be used for community corrections to
42 a provision that 30% of the funds due the county be used for that
44 purpose.

40

42 8. For years in which the Department of Corrections fails
44 to completely reimburse the county for jailed prisoners it
46 rescinds the requirement that the department is to withhold 30%
48 of reimbursement pending demonstration that the funds will be
50 used for community corrections.

46