

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 162

S.P. 74

In Senate, January 20, 1995

**An Act to Remove the Department of Corrections as the Inspecting
Authority of County Jails.**

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator FERGUSON of Oxford.
Cosponsored by Senators: BEGLEY of Lincoln, LORD of York, MICHAUD of Penobscot,
Representatives: BARTH of Bethel, HEESCHEN of Wilton.

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

2
4 **Sec. 1. 34-A MRSA §1208**, as enacted by PL 1983, c. 581, §§10
and 59, is amended to read:

6 **§1208. Standards for county and municipal detention facilities**

8 The commissioner shall establish standards, pursuant to the
10 Maine Administrative Procedure Act, Title 5, chapter 375, for
12 county and municipal jails, holding facilities and short-term
detention areas, referred to in this section as county and
municipal detention facilities, as follows ~~and shall enforce them.~~

14 **1. Establishment.** The commissioner shall establish both
16 mandatory and desirable standards for all county and municipal
detention facilities, setting forth requirements for maintaining
safe, healthful and secure facilities.

18 **2. Inspections.** Inspections of county and municipal
20 detention facilities are governed as follows.

22 A. ~~The commissioner~~ commissioners of the county in which a
24 facility is located shall conduct a comprehensive inspection
of each county and municipal detention facility every 2
26 years, in order to provide the department with information,
verified by on-site inspection, regarding compliance with
all department standards.

28 B. ~~The commissioner~~ county commissioners shall conduct no
30 fewer than 3 additional inspections of each county and
municipal detention facility during the period between each
32 comprehensive inspection, in order to determine continued
compliance with standards.

34 C. ~~The commissioner~~ county commissioners may inspect a
36 county or municipal detention facility at any time, without
prior notice, to determine compliance with standards.

38 D. ~~The commissioner~~ county commissioners shall prepare a
40 written report of each inspection and shall send a copy of
the report to appropriate county or municipal officials and
42 the commissioner within 15 days after the inspection.

44 (1) The report shall must summarize inspection
findings.

46 (2) The report shall must list the standards with
48 which the facility does not comply and set forth the
reasons for noncompliance.

2 E. ~~The commissioner~~ county commissioners shall order the
noncomplying county or ~~municipality~~ municipal facility to
4 respond to this report in accordance with subsection 3.

6 F. The county commissioners may delegate the inspections
required by this subsection to the commissioner.

8 **3. Standards compliance.** Each county and municipal
detention facility shall, unless granted a variance pursuant to
10 subsection 5, comply with the mandatory standards established by
the commissioner.

12 A. Within 60 days from the receipt of an inspection report
14 for each mandatory standard listed in subsection 2,
paragraph D, subparagraph (2), the county or ~~municipality~~
16 municipal facility shall either:

18 (1) Correct deficiencies listed in the report and
submit to the department a written response listing the
20 corrections made; or

22 (2) Offer a plan to correct those deficiencies for
consideration by the ~~department~~ county commissioners.

24 B. If a county or ~~municipality~~ municipal facility fails to
26 correct deficiencies and offers no plan of correction, or if
the plan of correction offered to the ~~department~~ county
28 commissioners is determined inadequate by ~~the commissioner~~
them, the ~~commissioner~~ county commissioners shall determine
30 an appropriate action to restrict or modify the operations
of the facility, consistent with the nature of the
32 uncorrected deficiencies, which action may include ordering
an entire facility closed until the deficiencies have been
34 corrected.

36 (1) Before any such action is taken, the ~~commissioner~~
county commissioners shall notify the county or
38 ~~municipality~~ municipal facility in writing of the
planned action and shall offer the opportunity to meet
40 and discuss the planned action.

42 (2) If a meeting is not requested by the county or
~~municipality~~ municipal facility within 15 days after
44 the county or ~~municipality~~ municipal facility receives
notice of the planned action, or if a meeting is held
46 and fails to produce a plan of correction acceptable to
the ~~commissioner~~ county commissioners, the ~~commissioner~~
48 county commissioners shall take the planned action.

2 **4. Emergency powers.** The ~~commissioner~~ county commissioners
may take immediate action in response to noncompliance with a
4 mandatory standard, if the noncompliance is determined to
endanger the safety of the staff, inmates or visitors of any
county or municipal detention facility.

6
8 A. The ~~commissioner's~~ county commissioners' action under
this subsection ~~shall-expire~~ expires within 90 days or upon
compliance with the mandatory standard.

10
12 B. After having taken action under this section, the
~~commissioner~~ county commissioners shall send a written
inspection report to the affected facility.

14
16 C. The ~~commissioner~~ county commissioners shall decide what
long-term action to take with respect to the affected
18 facility on the basis of county or municipality response to
the inspection report and subsequent meetings.

20 **5. Variances.** The commissioner shall establish written
procedures to govern the submission and consideration of requests
22 for variances from established departmental standards, including
provisions for ~~department~~ consideration of appeals of decisions.

24
26 A. The ~~commissioner~~ county commissioners may grant a
variance from the department standards but only when he
28 determines the county commissioners determine that the
variance will not result in diminishing the safety, health
or security of staff, inmates or visitors of a county or
30 municipal detention facility.

32 B. The ~~commissioner~~ county commissioners may grant
variances ~~to-counties-and-municipalities~~ for periods of up
34 to 2 years.

36 C. County and municipal ~~officials~~ facilities may request
variances from mandatory department standards if:

38 (1) Efforts are underway to achieve compliance and
40 continued failure to comply is only temporary; or

42 (2) The intent and spirit of the standards may be
44 attained through other means.

46 D. The officials applying for a variance have the burden of
showing clear justification for the variance.

2 **6. Advisory review.** The commissioner shall create and
maintain a county and municipal detention facility advisory
committee.

4
6 A. The committee ~~shall~~ must consist of representatives of
the Department of Corrections, Maine Sheriffs' Association,
Maine County Commissioners' Association, Maine Chiefs of
8 Police Association, Attorney General, Legislature and
citizens.

10 B. The terms of members of this committee ~~shall be~~ are one
12 year.

14 C. Members of the county and municipal detention facility
advisory committee are eligible for reappointment at the
16 expiration of their term.

18 D. The commissioner shall consult the committee when
promulgating standards and the county commissioners may
20 consult the committee when variances are sought, when
actions are contemplated by the ~~commissioner~~ county
22 commissioners in response to a failure to comply with
standards and when the ~~commissioner--determines~~ county
24 commissioners determine that the consultation is necessary
for other reasons.

26 **7. Technical assistance.** The commissioner may provide
28 technical assistance to county and municipal detention facilities
to facilitate compliance with standards.

30
32 **STATEMENT OF FACT**

34 Currently, the Commissioner of Corrections is required to
set standards for county jails and to inspect jails against these
36 standards. This bill gives the responsibility for inspecting the
jails to the commissioners of the county in which the jail is
38 located.