

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1312, L.D. 1796, Bill, "An Act to Facilitate the Lawful Detention of Juveniles"

Amend the bill by striking out everything after the enacting clause and before the emergency clause and inserting in its place the following:

'Sec. 1. 15 MRSA §3203-A, sub-§7. ¶B-1, as amended by PL 1995, c. 155, §1, is further amended to read:

B-1. After December 31, 1991 and until the Northern Maine Regional Juvenile Detention Facility begins operating, if the juvenile caseworker determines there is no acceptable alternative, a juvenile may be detained for up to 24 hours, excluding Saturday Saturdays, Sunday Sundays and legal holidays, in a jail or other secure detention facility intended or primarily used for the detention of adults, if:

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

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

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

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(4) The juvenile is detained only to await a court hearing, a preliminary hearing pursuant to Title 17-A, section 1205, an entrustment violation hearing or transfer to another detention facility.

If the requirements of this paragraph are otherwise met and if a condition that threatens safety exists, such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel, a juvenile may be further detained in a jail or other secure detention facility intended or primarily used for the detention of adults for up to 24 hours after the time that conditions allow for reasonably safe travel.

Sec. 2. 15 MRSA §3203-A, sub-§7, ¶B-2, as amended by PL 1995, c. 155, §2, is further amended to read:

B-2. Notwithstanding any other provision of law, until the Northern Maine Regional Juvenile Detention Facility begins operating, a juvenile may be detained in a county jail, as long as the juvenile is detained in a separate juvenile section ~~approved by the federal Office of Juvenile Justice and Delinquency Prevention~~ and in compliance with paragraph A.

Sec. 3. 15 MRSA §3314, sub-§2, as amended by PL 1995, c. 502, Pt. F, §6, is further amended to read:

2. **Suspended disposition.** The court may impose any of the dispositional alternatives provided in subsection 1, and may suspend its disposition and place the juvenile on a specified period of probation that is subject to such provisions of Title 17-A, section 1204, as the court may order and that is administered pursuant to the provisions of Title 34-A, chapter 5, subchapter IV, except that in no case may the court impose the condition set out in Title 17-A, section 1204, subsection 1-A. The court may impose as a condition of probation that a juvenile reside outside the juvenile's home in a setting satisfactory to the juvenile caseworker if the court determines that reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home and that continuation in the juvenile's home would be contrary to the welfare of the juvenile. Imposition of such a condition does not affect the legal custody of the juvenile.

Revocation of probation is governed by the procedure contained in Title 17-A, sections 1205, 1205-A and 1206, except that Title 17-A, section 1206, subsection 7-A, does not apply, provided that a disposition under subsection 1, paragraph F, may be modified to a disposition under subsection 1, paragraph H. If a motion for

2 revocation of probation is filed with the court and if the
3 juvenile is being detained pending the court hearing, the court
4 shall review within 5 days, excluding Saturdays, Sundays and
5 legal holidays, the decision to detain the juvenile, if the court
6 has not previously reviewed the decision. Following that review,
7 the court shall order the juvenile's release unless the court
8 finds, by a preponderance of the evidence, that continued
9 detention is necessary to meet one of the purposes of detention
10 under section 3203-A, subsection 4, paragraph C.

11 **Sec. 4. 30-A MRSA §1557, as repealed and replaced by PL 1995,**
12 **c. 368, Pt. R, §6, is repealed.**

13 **Sec. 5. 30-A MRSA §1557-A is enacted to read:**

14 **§1557-A. Transfer from jails**

15 **1. Transfer.** A sheriff may transfer a prisoner serving a
16 sentence in a county jail from one jail to another to serve any
17 part of that sentence upon the request of the sheriff of the
18 sending jail and the approval of the sheriff of the receiving
19 jail. A sheriff may transfer a prisoner serving a sentence in a
20 county jail to the Department of Corrections to serve any part of
21 that sentence upon the request of the sheriff and the approval of
22 the Commissioner of Corrections.

23 **2. Transfer cost.** The county of the sending jail shall pay
24 the cost of the transfer or return of the prisoner.

25 **3. Reimbursement.** The county responsible for the support
26 of a prisoner transferred under this section while the prisoner
27 was incarcerated in the county jail shall pay, directly to the
28 receiving county jail or the Department of Corrections upon the
29 request of the sheriff of the receiving jail or the department,
30 an amount computed at a per diem per capita rate established by
31 the receiving county jail or the department. The county also
32 shall reimburse the receiving county jail or the department for
33 any costs incurred in the provision of extraordinary medical or
34 surgical treatment to the person transferred. The payment amount
35 provided for in this section may be adjusted or dispensed with
36 upon terms mutually agreeable to the sheriff of the sending jail
37 and the sheriff of the receiving jail or the department if the
38 sending jail houses any prisoners for the receiving jail or the
39 department.

40 **4. Transferee subject to rules.** A person transferred under
41 this section is subject to the general rules of the facility to
42 which the person is transferred, except that:
43

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A. The term of the original sentence remains the same unless altered by the court;

B. The person becomes eligible for meritorious good time as provided in Title 17-A, section 1253 for a person sentenced to imprisonment in a county jail;

C. The person becomes eligible for release and discharge as provided in Title 17-A, section 1254 for a person sentenced to imprisonment in a county jail;

D. The person is entitled to have the time served in the facility under this section deducted from the sentence; and

E. A person transferred under this section becomes eligible for furloughs, work or other release programs, participation in public works and charitable projects and home-release monitoring as authorized by sections 1556, 1605, 1606 and 1659 and may apply pursuant to the rules governing the sending jail.

5. Return of prisoner. A prisoner transferred pursuant to this section must be returned to the sending jail upon the request of the sheriff of the sending jail, the sheriff of the receiving jail or the Commissioner of Corrections.

6. Commissioner of Corrections to determine temporary housing assignments. If a county that does not have a jail or has a jail that is not fully certified is unable to locate space in any other county facility for an adult or juvenile, that county may contact the Commissioner of Corrections for approval to obtain temporary housing in a correctional or detention facility operated by the Department of Corrections. The sending county shall contact each other county facility in a continuing effort to locate placement in a county facility. When the sending county locates available space in a county facility, the sheriff of the sending county shall transfer the person from the department's correctional or detention facility and place the person in the county facility.

Sec. 6. 34-A MRSA §3063-A, as enacted by PL 1995, c. 368, Pt. R, §12, is amended to read:

§3063-A. Transfer from jails

The commissioner may accept custody of prisoners transferred to the department from county jails under Title 30-A, section 1557 1557-A.'

R. 48.

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Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

The requirement that the court review any decision to detain a juvenile within 5 days of the filing of a motion for probation revocation may increase the operating costs of the Judicial Department. The amount of additional General Fund appropriations required to cover overtime, per diems for active retired judges and related costs can not be determined at this time.'

STATEMENT OF FACT

This amendment does the following.

1. It removes section 1 of the bill, which would have eliminated the 72-hour limit on the use of a temporary holding resource.

2. It directs the court to review the decision to detain a juvenile who is detained pending a hearing for revocation of probation within 5 days from the time the motion is filed.

3. It removes from law the requirement that the federal Office of Juvenile Justice and Delinquency Prevention approve a separate juvenile detention section in a county jail. This requirement continues to exist pursuant to federal regulation.

4. It corrects an error that was created when Public Law 1995, chapter 368, Part R, section 6 repealed the Maine Revised Statutes, Title 30-A, section 1557 and replaced the section with new language that did not fit substantively within the former structure. The correction is accomplished by repealing section 1557 and enacting a new section 1557-A.

5. It corrects a cross-reference to reflect the creation of Title 30-A, section 1557-A.

6. It adds a fiscal note to the bill.