

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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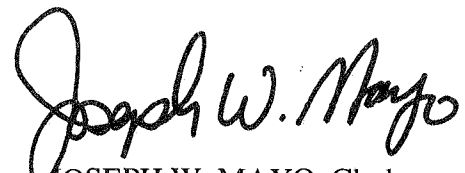
H.P. 1050

House of Representatives, March 11, 1997

**An Act to Amend the Law to Be Consistent with the Organizational Structure of the Department of Corrections and for Other Purposes.**

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Submitted by the Department of Corrections pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative POVICH of Ellsworth.  
Cosponsored by Senator MURRAY of Penobscot and  
Representatives: BUNKER of Kossuth Township, FRECHETTE of Biddeford, JONES of  
Greenville, O'BRIEN of Augusta, PEAVEY of Woolwich, TOBIN of Dexter, WHEELER of  
Bridgewater.

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

2  
4       **Sec. 1. 15 MRSA §2121, sub-§2**, as amended by PL 1985, c. 556, §1, is further amended to read:

6       **2. Post-sentencing proceeding.** "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence which that affects whether there is incarceration or its length, including revocation of parole ~~or entrustment of a juvenile~~, failure to grant parole, an error of law in the computation of a sentence and default in payment of a fine or restitution. It does not include administrative disciplinary proceedings resulting in a withdrawal of good-time deductions, revocation of probation, cancellation of supervised community confinement or aftercare status of a juvenile or proceedings before the Appellate Division of the Supreme Judicial Court.

18       **Sec. 2. 15 MRSA §3315, sub-§3**, as enacted by PL 1995, c. 502, Pt. F, §8, is amended to read:

22       **3. Court review of determination.** Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2, that determination must be reviewed by the court not less than once every ~~18~~ 12 months until the juvenile is discharged or no longer residing outside the juvenile's home.

28       **Sec. 3. 17-A MRSA §15, sub-§1, ¶A**, as repealed and replaced by PL 1995, c. 668, §2 and c. 680, §3, is repealed and the following enacted in its place:

32       A. Any person who the officer has probable cause to believe has committed or is committing:

34               (1) Murder;

36               (2) Any Class A, Class B or Class C crime;

38               (3) Assault while hunting;

40               (4) Any offense defined in chapter 45;

42               (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;

44               (5-A) Assault or reckless conduct if the officer reasonably believes that the person and the victim are

2 family or household members, as defined in Title 15,  
3 section 321;

4 (6) Theft as defined in section 357, when the value of  
5 the services is \$2,000 or less if the officer  
6 reasonably believes that the person will not be  
7 apprehended unless immediately arrested;

8 (7) Forgery, if the officer reasonably believes that  
9 the person will not be apprehended unless immediately  
10 arrested;

11 (8) Negotiating a worthless instrument if the officer  
12 reasonably believes that the person will not be  
13 apprehended unless immediately arrested;

14 (9) A violation of a condition of probation when  
15 requested by a probation officer or juvenile caseworker;

16 (10) Violation of a condition of release in violation  
17 of Title 15, section 1026, subsection 3; Title 15,  
18 section 1027, subsection 3; Title 15, section 1051,  
19 subsection 2; and Title 15, section 1092;

20 (11) Theft involving a detention under Title 17,  
21 section 3521;

22 (12) Harassment, as set forth in section 506-A;

23 (13) Violation of a protection order, as specified in  
24 Title 5, section 4659, subsection 2; Title 15, section  
25 321, subsection 6; Title 19, section 769, subsection 2;  
26 and Title 19, section 770, subsection 5; or

27 (14) A violation of a sex offender registration  
28 provision under Title 34-A, chapter 11 or 13; and

29 **Sec. 4. 25 MRSA §2801-B, sub-§1, ¶A, as enacted by PL 1989, c.**  
30 **521, §§2 and 17, is amended to read:**

31 **A. Employees of the Department of Corrections, ~~Division of~~**  
32 **~~Probation and Parole~~ with a duty to perform probation**  
33 **~~functions or to perform intensive supervision functions;~~**

34 **Sec. 5. 30-A MRSA §1656, sub-§§1 and 2, as amended by PL 1995,**  
35 **c. 368, Pt. R, §7, are further amended to read:**

36 **1. Transfer of prisoners when jail unfit or insecure.**  
37 **Whenever complaint on oath is made to a Justice of the Superior**  
38 **Court that a prisoner or prisoners should be removed from a jail**

2 to another jail or to a--state--correctional--facility the  
Department of Corrections because that jail is unfit for  
4 occupation or is insufficient for the secure keeping of a person  
charged with a crime and committed to await trial or awaiting  
6 sentencing, the Justice of the Superior Court shall:

8 A. Schedule the time and place for a hearing on this  
complaint;

10 B. Have not less than 3 days' notice of that hearing given  
to the sheriff or sheriffs of the county jail or jails  
12 involved and, if transfer to a--state--correctional--facility  
the Department of Corrections is anticipated, to the  
14 Commissioner of Corrections;

16 C. Order removal, at the expense of the sending county, of  
the prisoner or prisoners to a--state--correctional--facility  
18 the Department of Corrections pending hearing, as long as  
the Commissioner of Corrections and the sending sheriff  
20 agree; and

22 D. Conduct a hearing and if the matter complained of is  
found true:

24 (1) Issue a warrant for the transfer of the prisoner  
26 or prisoners, at the expense of the sending county, to  
any jail; or

28 (2) Issue a warrant for the transfer of the prisoner  
30 or prisoners, at the expense of the sending county, to  
a--state--correctional--facility,--if--the--Justice--of--the  
32 Superior--Court--finds--that--the--receiving--institution--is  
able--to--resolve--the--problem--causing--the--need--to  
34 transfer,--the--nature--of--the--offense--committed--or  
alleged--to--have--been--committed--by--the--prisoner--is--so  
36 severe--that--it--requires--sending--to--the--receiving  
institution--and--the--security--of--the--sending--facility--is  
38 inadequate--to--handle--the--problem the Department of  
Corrections.

40 A warrant for transfer may be issued only when the Justice  
42 of the Superior Court finds that the receiving jail or the  
44 Department of Corrections is able to resolve the problem  
46 causing the need to transfer, the nature of the offense  
48 committed or alleged to have been committed by the prisoner  
is so severe that it requires transfer and the security of  
the sending facility is inadequate to handle the problem.

50 2. **Emergency.** In the event of an emergency, regardless of  
whether a complaint on oath has been made to a Justice of the

2 Superior Court, the sheriff, with the agreement of the  
3 Commissioner of Corrections, may immediately, at the expense of  
4 the sending county, remove a person charged with a crime and  
5 committed to await trial or awaiting sentencing from the county  
6 jail to a ~~state correctional facility~~ the Department of  
7 Corrections. If removal is made under this section, a complaint  
8 on oath must be made to a Justice of the Superior Court within 24  
9 hours, excluding Saturdays, Sundays and legal holidays, and a  
10 hearing must be conducted in accordance with the requirements in  
11 subsection 1, paragraph D, ~~subparagraph (2)~~.

12 **Sec. 6. 34-A MRSA §1001, sub-§11**, as enacted by PL 1983, c.  
13 459, §6, is amended to read:

14  
15 **11. Juvenile client.** "Juvenile client" means a juvenile  
16 committed to the Maine Youth Center who is either residing at the  
17 center or is under on aftercare supervision status.

18  
19 **Sec. 7. 34-A MRSA §1001, sub-§15-A** is enacted to read:

20  
21 **15-A. Regional correctional administrator.** "Regional  
22 correctional administrator" means the supervisor of adult  
23 probation and parole and intensive supervision services or the  
24 supervisor of juvenile caseworker services for a region.

25  
26 **Sec. 8. 34-A MRSA §3003, sub-§1**, as amended by PL 1995, c.  
27 418, Pt. A, §39, is further amended to read:

28  
29 **1. Limited disclosure.** All orders of commitment, medical  
30 and administrative records, applications and reports, and facts  
31 contained in them, pertaining to any person receiving services  
32 from the department, must be kept confidential and may not be  
33 disclosed by any person, except that criminal history record  
34 information may be disseminated in accordance with Title 16,  
35 chapter 3, subchapter VIII, and documents, other than those  
36 documents pertaining to information obtained by the department  
37 for the purpose of evaluating a client's ability to participate  
38 in a community-based program or from informants in a correctional  
39 or detention facility for the purpose of determining whether  
40 facility rules have been violated, or a victim's request for  
41 notice of release, may be disclosed:

42  
43 **A.** To any person, if the person receiving services, that  
44 person's legal guardian, if any, and, if that person is a  
45 minor, that person's parent or legal guardian, gives  
46 informed written consent to the disclosure of the documents  
47 referred to in this subsection after being given the  
48 opportunity to review the documents sought to be disclosed;

49  
50 **B.** To any state agency if necessary to carry out the  
statutory functions of that agency;

2 C. If ordered by a court of record, subject to any  
4 limitation in the Maine Rules of Evidence, Rule 503;

6 D. To any criminal justice agency if necessary to carry out  
8 the administration of criminal justice, the administration  
of juvenile criminal justice or for criminal justice agency  
employment; and

10 E. To persons engaged in research if:

12 (1) The research plan is first submitted to and  
14 approved by the commissioner;

16 (2) The disclosure is approved by the commissioner; and

18 (3) Neither original records nor identifying data are  
20 removed from the facility or office that prepared the  
records.

22 The commissioner and the person doing the research shall  
24 preserve the anonymity of the person receiving services from  
the department and may not disseminate data that refer to  
that person by name, number or in any other way that might  
26 lead to the person's identification.

28 Notwithstanding any other provision of law, the department may  
30 release the names, dates of birth and social security numbers of  
juveniles receiving services from the department and, if  
32 applicable, ~~the Medicaid~~ eligibility numbers and the dates on  
which those juveniles received ~~Medicaid~~ services to ~~the Bureau of~~  
34 ~~Medical Services and the Bureau of Family Independence~~ within the  
Department of Human Services for the sole purpose of determining  
36 eligibility and billing for ~~Medicaid~~ services under federally  
funded programs administered by the Department of Human Services  
and provided by or through the department. The department may  
38 also release to the Department of Human Services information  
required for, and to be used solely for, audit purposes,  
40 consistent with federal law, for ~~Medicaid~~ those services provided  
by or through the department. Department of Human Services  
42 personnel must treat this information as confidential in  
accordance with federal and state law and must return the records  
when their purpose has been served.

44 **Sec. 9. 34-A MRS §3003, sub-§1-A,** as enacted by PL 1993, c.  
46 13, §2, is repealed.

48 **Sec. 10. 34-A MRS §3032, sub-§4,** as enacted by PL 1983, c.  
50 459, §6, is amended to read:

2 4. **Loss of good time.** All punishments involving loss of  
earned good time shall or withdrawal of deductions must be first  
4 approved by the chief administrative officer.

6 **Sec. 11. 34-A MRSA §3036-A, sub-§9,** as enacted by PL 1993, c.  
170, §1, is amended to read:

8 **9. Probation violation; revocation.** If a prisoner on  
supervised community confinement violates a condition of  
10 supervised community confinement imposed on the prisoner and if  
the violation conduct is also a violation of a condition of  
12 probation imposed as part of the sentence the prisoner is serving  
while on supervised community confinement, ~~the--Director--of~~  
14 ~~Probation-and-Parole,-or-a-designated-representative,~~ a probation  
officer may file with any court a motion for revocation of  
16 probation and the court may revoke probation as specified in  
Title 17-A, section 1206.

18 **Sec. 12. 34-A MRSA §3063-A,** as amended by PL 1995, c. 647,  
20 §6, is further amended to read:

22 **§3063-A. Transfer from jails**

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

28 **Sec. 13. 34-A MRSA §3810,** as amended by PL 1989, c. 591, §2,  
is further amended to read:

30 **§3810. Aftercare status**

32 **1. Commissioner's powers.** During a juvenile client's  
34 commitment to the center, the commissioner may, at the  
commissioner's discretion:

36 A. Keep the juvenile client at the center; or

38 B. ~~Upon-prior-mutual-agreement,-entrust~~ Place the juvenile  
40 client, on aftercare status for a period not exceeding the  
term of the juvenile's commitment, ~~to-the-care-of+.~~

42 (1) ~~--Any-suitable-person-or-persons+--~~

44 (2) ~~--The-Division-of-Probation-and-Parole+--~~

46 (3) ~~--The-Department-of-Human-Services+--~~

48 (4) ~~--Some-other-public-or-private-child-care-agency+-or~~

50 (5) ~~--The-Bureau-of-Juvenile-Corrections+--~~



2           **2. Reports.** As often as the commissioner requires, the  
3 person or agency ~~to--whom~~ caring for the juvenile client is  
4 entrusted while on aftercare status shall report to the  
5 commissioner:

6  
7           A. The progress and behavior of the juvenile client,  
8 whether or not the juvenile client remains under the care of  
9 the person or agency; and

10  
11           B. If the juvenile client is not under the care of the  
12 person or agency, where the client is.

13           **3. Center services.** The commissioner shall provide  
14 aftercare ~~and-entrustment~~ services to juvenile clients.

15  
16           **4. Cancellation.** If the commissioner is satisfied at any  
17 time that the welfare of the juvenile client will be promoted by  
18 return to the center, the commissioner may cancel the ~~trust~~  
19 aftercare status and resume charge of the client with the same  
20 powers as before the ~~trust~~ placement on aftercare status was made.

21  
22           **Sec. 14. 34-A MRSA §3811, first ¶,** as amended by PL 1983, c.  
23 581, §53, is further amended to read:

24  
25           When a juvenile client who has been placed on ~~entrustment~~  
26 aftercare status, who has been granted a furlough or work or  
27 education release or who has ~~absented-himself~~ been absent from  
28 the center without leave is taken into custody for the purpose of  
29 return to the center by an officer or employee of the center, at  
30 the direction of the commissioner, or by a law enforcement  
31 officer, at the request of the commissioner, and because of the  
32 juvenile client's distance from the center at the time of being  
33 taken into custody, it becomes necessary to detain the client  
34 overnight:

35  
36           **Sec. 15. 34-A MRSA §5602, sub-§2, ¶C,** as enacted by PL 1985,  
37 c. 439, §22, is amended to read:

38  
39           C. To provide appropriate services to juveniles committed  
40 to the Maine Youth Center who are ~~on--leave--or~~ in the  
41 community on ~~entrustment~~ aftercare status.

42  
43           **Sec. 16. 34-A MRSA §6001, 6002 and 6003,** as enacted by PL  
44 1989, c. 591, §3, are repealed.

## SUMMARY

2

4 This bill eliminates references to the Director of Probation  
and Parole and the Division of Probation and Parole in various  
6 provisions in the Maine Revised Statutes, in accordance with the  
elimination of that position and that division that was  
accomplished by Public Law 1995, chapter 502. It also  
8 eliminates reference to the Bureau of Juvenile Corrections in  
light of the reorganization of the Department of Corrections in  
10 which there is an Associate Commissioner for Adult Services and  
an Associate Commissioner for Juvenile Services. In addition, it  
12 clarifies the confusing use of the terminology "entrustment" and  
"aftercare status" in relation to a juvenile who has been  
14 committed to the Maine Youth Center and, at the commissioner's  
discretion, been placed in the community during that commitment.  
16 It provides that any challenge to the commissioner's decision to  
return a juvenile to the Maine Youth Center from aftercare status  
18 or to return an adult to a correctional facility from supervised  
community confinement is not a proper subject for postconviction  
20 review. It amends the provision requiring court review of an  
out-of-home placement determination to be every 12 months, in  
22 conformity with federal law. The bill also amends the Department  
of Correction's confidentiality provision to facilitate the  
24 receipt of federal funds. It adds a reference to "deduction" in  
the prison disciplinary statute to conform with the Maine Revised  
26 Statutes, Title 17-A, section 1253, subsection 8. Finally, it  
clarifies that persons transferred from a county jail for  
28 safekeeping are transferred to the Department of Corrections and  
not a specific facility.