

MAINE STATE LEGISLATURE

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CRIMINAL JUSTICE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 264, L.D. 313, Bill, "An Act Regarding Prisoner Participation in Public Work Projects or Improvements to Charitable Organizations' Property"

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

Sec. 1. 30-A MRSA §1605, sub-§2, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c. 9, §2 and c. 104, Pt. C, §§8 and 10, is repealed.

Sec. 2. 30-A MRSA §1605, sub-§2-A is enacted to read:

2-A. Grant of privilege. The granting of a privilege described in subsection 1 is governed by the following:

A. Prior to 90 days after the adjournment of the First Regular Session of the 121st Legislature, the sheriff may grant a privilege described in subsection 1; and

B. Beginning 90 days after the adjournment of the First Regular Session of the 121st Legislature, unless the court expressly grants a privilege described in subsection 1, the prisoner is sentenced to ordinary confinement. The court may grant a privilege at the time of sentence or commitment or thereafter.

2 **Sec. 3. 30-A MRSA §1605, sub-§3**, as enacted by PL 1987, c.
3 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c.
4 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

6 **3. Wages, self-employment income; collection.** If a
7 prisoner is employed for wages or salary, the sheriff shall
8 collect the wages or salary or require the prisoner to turn over
9 the wages or salary in full when received. If the prisoner is
10 self-employed, the self-employment income shall must be turned
11 over to the sheriff ~~as may be ordered by the court~~. The sheriff
12 shall deposit the income in a trust checking account and shall
13 keep a ledger showing the status of the account of each
14 prisoner. The wages or salaries are not subject to trustee
15 process in the hands of either the employer or the sheriff, and
16 the self-employment income is not subject to trustee process in
17 the hands of the sheriff during the prisoner's term and shall may
18 be disbursed only as provided in this section; but for tax
19 purposes they are income of the prisoner.

20 This subsection is repealed 90 days after the adjournment of the
21 First Regular Session of the 121st Legislature.

22 **Sec. 4. 30-A MRSA §1605, sub-§3-A** is enacted to read:

24 **3-A. Wages, self-employment income; collection.** If a
25 prisoner is employed for wages or salary, the sheriff shall
26 collect the wages or salary or require the prisoner to turn over
27 the wages or salary in full when received. If the prisoner is
28 self-employed, the self-employment income must be turned over to
29 the sheriff as may be ordered by the court. The sheriff shall
30 deposit the income in a trust checking account and shall keep a
31 ledger showing the status of the account of each prisoner. The
32 wages or salaries are not subject to trustee process in the hands
33 of either the employer or the sheriff, and the self-employment
34 income is not subject to trustee process in the hands of the
35 sheriff during the prisoner's term and may be disbursed only as
36 provided in this section; but for tax purposes they are income of
37 the prisoner.

38 This subsection takes effect 90 days after the adjournment of the
39 First Regular Session of the 121st Legislature.

40 **Sec. 5. 30-A MRSA §1605, sub-§5**, as enacted by PL 1987, c.
41 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c.
42 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

43 **5. Disbursements.** ~~By order of the court, the~~ The wages or
44 salaries of employed prisoners and employment income of
45 self-employed prisoners shall must be disbursed by the sheriff
46 for the following purposes, in the following order stated:
47 48 49 50

- 2 A. The board of the prisoners;
- 4 B. Necessary travel expenses to and from work and other
6 incidental expenses of the prisoners;
- 8 C. Support of the prisoners' dependents, if any;
- 10 D. Payments, either in full or ratably, of restitution, and
12 of the prisoners' obligations, acknowledged in writing, in
14 accordance with Title 17-A, chapter 54, or which that have
16 been reduced to judgment; and
- 18 E. The balance, if any, to the prisoners upon their release.

16 This subsection is repealed 90 days after the adjournment of the
18 First Regular Session of the 121st Legislature.

20 **Sec. 6. 30-A MRSA §1605, sub-§5-A** is enacted to read:

22 5-A. Disbursements. By order of the court, the wages or
24 salaries of employed prisoners and employment income of
26 self-employed prisoners must be disbursed by the sheriff for the
28 following purposes, in the following order:

- 26 A. The board of the prisoners;
- 28 B. Necessary travel expenses to and from work and other
30 incidental expenses of the prisoners;
- 32 C. Support of the prisoners' dependents, if any;
- 34 D. Payments, either in full or ratably, of restitution, and
36 of the prisoners' obligations, acknowledged in writing, in
38 accordance with Title 17-A, chapter 54, or that have been
40 reduced to judgment; and
- 42 E. The balance, if any, to the prisoners upon their release.

40 This subsection takes effect 90 days after the adjournment of the
42 First Regular Session of the 121st Legislature.

44 **Sec. 7. 30-A MRSA §1605, sub-§§6 and 7**, as enacted by PL 1987,
46 c. 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6,
48 c. 9, §2 and c. 104, Pt. C, §§8 and 10, are further amended to
50 read:

48 **6. Restitution disbursements.** Notwithstanding subsection 5
50 and subsection 5-A, the wages or salaries of employed prisoners,
 employment income of self-employed prisoners or income from any

2 other source shall must be disbursed by the sheriff in accordance
with any restitution authorized by section 1562. These
4 disbursements may not be authorized until any disbursements
required by subsection 5, paragraphs A to D have been made.

6 **7. Employment in other county.** The court sheriff may by
~~order authorize the sheriff, to whom the prisoner is committed,~~
8 to arrange with another sheriff for the employment of the
prisoner in the other's county, and while so employed to be in
10 the other's custody, but in other respects to be and continue
subject to the commitment.

12 This subsection is repealed 90 days after the adjournment of the
14 First Regular Session of the 121st Legislature.

16 **Sec. 8. 30-A MRSA §1605, sub-§7-A** is enacted to read:

18 7-A. Employment in other county. The court may by order
authorize the sheriff to whom the prisoner is committed to
20 arrange with another sheriff for the employment of the prisoner
in the other's county, and while so employed to be in the other's
22 custody, but in other respects to be and continue subject to the
commitment.

24 This subsection takes effect 90 days after the adjournment of the
26 First Regular Session of the 121st Legislature.

28 **Sec. 9. 30-A MRSA §1606**, as amended by PL 1997, c. 54, §2, is
further amended to read:

30 **§1606. Prisoner participation in public works projects**

32 **1. Participation in public works projects authorized.** The
sheriff in charge of a county jail may permit certain inmates of
34 that jail to participate in public works-related projects and or
36 in the improvement of property owned by charitable organizations
if the public works project or the property of the charitable
38 organization is in the county where the jail is located. The
sheriff may request payment from charitable organizations for the
40 transportation of the prisoners and for the transportation and
per diem compensation for any guards who accompany the
42 prisoners. For the purposes of this section, "charitable
organization" means any nonprofit organization organized or
44 incorporated in this State or having a principal place of
business in this State that is exempt from federal income
46 taxation under the United States Internal Revenue Code of 1986,
Section 501(a), because the nonprofit organization is described
48 in the United States Internal Revenue Code of 1986, Section
501(c)(3). ~~Before an inmate is permitted to participate in this~~
50 ~~type of project, the judge or justice who originally sentenced~~

~~the inmate to the county jail must sign an approval to the inmate's participation.~~

1-A. Court approval. Before an inmate is permitted to participate in a public works-related project pursuant to subsection 1, the judge or justice who originally sentenced the inmate to the county jail must sign an approval to the inmate's participation.

This subsection takes effect 90 days after the adjournment of the First Regular Session of the 121st Legislature.

2. Sentence prorated. Inmates participating in a public works-related project or an improvement of property owned by a charitable organization under this section must ~~may~~ have their sentences to the jail prorated at the rate of up to one day removed from the sentences for every 16 hours of participation in the project, except that inmates committed to the custody of the sheriff for nonpayment of fines under Title 17-A, section 1304 must have their sentences prorated at the rate of \$5 removed from the fines for every one hour of participation in the project.

3. Participation not deemed employment. Participation in this type of project may not be deemed employment under section 1605, subsections 3 to 8.

Sec. 10. 30-A MRSA §1659, first ¶, as amended by PL 1999, c. 247, §1, is further amended to read:

The sheriff of each county may establish and maintain a home-release monitoring program to permit certain inmates, ~~approved by the court in which they were sentenced,~~ to be released and monitored electronically or by intensive supervision by the county and to live at their residences as a portion of the term of incarceration.

Sec. 11. 30-A MRSA §1659, sub-§1, as amended by PL 1999, c. 247, §2, is further amended to read:

1. Petition. A sheriff, upon written request from an inmate eligible for participation in a home-release monitoring program and recommended by the jail administrator, may ~~petition the court in which the inmate was sentenced for authorization to~~ electronically monitor or intensively supervise and to release the inmate to participate in a home-release monitoring program established in that county. ~~Unless the court expressly grants the privilege of home release, the inmate is sentenced to ordinary confinement.~~ Prior to releasing an inmate for participation in a home-release monitoring program, the sheriff shall provide to the court in which the inmate was sentenced

2 notice of the release. The court in which the inmate was
3 sentenced may withdraw the privilege of home release at any time
4 by order entered with or without notice of hearing. Prior to
5 issuing an order withdrawing the privilege, the court must
6 provide an opportunity for the sheriff to provide comment. At
7 the time of granting this the privilege, the court sheriff shall
8 determine whether the inmate is responsible for the cost of
9 participating in the home-release program based on the inmate's
10 ability to pay.

11 This subsection is repealed 90 days after the adjournment of the
12 First Regular Session of the 121st Legislature.

13 **Sec. 12. 30-A MRS §1659, sub-§1-A is enacted to read:**

14 **1-A. Petition.** A sheriff, upon written request from an
15 inmate eligible for participation in a home-release monitoring
16 program and recommended by the jail administrator, may petition
17 the court in which the inmate was sentenced for authorization to
18 electronically monitor or intensively supervise and to release
19 the inmate to participate in a home-release monitoring program
20 established in that county. Unless the court expressly grants
21 the privilege of home release, the inmate is sentenced to
22 ordinary confinement. The court in which the inmate was
23 sentenced may withdraw the privilege of home release at any time
24 by order entered with or without notice of hearing. Prior to
25 issuing an order withdrawing the privilege, the court must
26 provide an opportunity for the sheriff to provide comment. At
27 the time of granting the privilege, the court shall determine
28 whether the inmate is responsible for the cost of participating
29 in the home-release program based on the inmate's ability to pay.

30 This subsection takes effect 90 days after the adjournment of the
31 First Regular Session of the 121st Legislature.

32 **Sec. 13. 30-A MRS §1659, sub-§3, ¶I, as amended by PL 1999, c.**
33 **247, §6, is further amended to read:**

34 **I.** As a condition of participation of an inmate in a
35 home-release program, the court sheriff shall require the
36 inmate to pay a fee, as determined by the court sheriff,
37 including an electronic monitoring fee, if applicable, a
38 substance testing fee or both, unless the court sheriff
39 determines that the inmate does not have the financial
40 resources to pay these fees. The fee charged may include
41 the costs associated with a home-release program for people
42 who do not have the financial resources to pay the fees.

43 This paragraph is repealed 90 days after the adjournment of
44 the First Regular Session of the 121st Legislature.

2 **Sec. 14. 30-A MRSA §1659, sub-§3, ¶I-1** is enacted to read:

4 I-1. As a condition of participation of an inmate in a
6 home-release program, the court shall require the inmate to
8 pay a fee, as determined by the court, including an
10 electronic monitoring fee, if applicable, a substance
12 testing fee or both, unless the court determines that the
14 inmate does not have the financial resources to pay these
16 fees. The fee charged may include the costs associated with
18 a home-release program for people who do not have the
20 financial resources to pay the fees.

22 This paragraph takes effect 90 days after the adjournment of
24 the First Regular Session of the 121st Legislature.

26 **Sec. 15. 30-A MRSA §1660** is enacted to read:

28 **§1660. Report**

30 **1. Annual report.** Annually by January 15th, beginning in
32 2003, the Commissioner of Corrections shall submit a report in
34 accordance with this section to the joint standing committee of
36 the Legislature having jurisdiction over criminal justice matters.

38 **2. Contents.** The report must include the following
40 information for each county corrections facility about releases
42 of inmates from the facility pursuant to sections 1605, 1606 and
44 1659 during the prior calendar year:

46 A. The total number of inmates who were granted the
48 privilege of release;

50 B. The number of inmates that were granted the privilege of
 release for each of the following purposes and the nature of
 the crimes committed by those inmates:

(1) Employment;

(2) Participation in public works-related projects;

(3) Participation in a home-release monitoring
 program; and

(4) All other purposes;

C. The number of inmates who requested and were denied the
 privilege of release for each of the following purposes and
 the nature of the crimes committed by those inmates:

(1) Employment;

- 2 (2) Participation in public works-related projects;
4 (3) Participation in a home-release monitoring
6 program; and
8 (4) All other purposes;
10 D. With respect to each inmate who was granted the
12 privilege of release and who subsequently had the privilege
14 revoked;

- 16 (1) The total number of such inmates;
18 (2) The purpose for which the release was granted;
20 (3) The entity that revoked the privilege;
22 (4) The reasons for the revocation; and
24 (5) Whether the revocation was appealed and the result
26 of that appeal; and

28 E. Any other information that the Commissioner of
30 Corrections believes appropriate to accurately inform the
32 Legislature about sheriffs' handling of release decisions.'

34 Further amend the bill by inserting at the end before the
36 summary the following:

38 **FISCAL NOTE**

40 The additional costs associated with the report requirement
42 can be absorbed by the Department of Corrections utilizing
44 existing budgeted resources.'

46 **SUMMARY**

48 This amendment replaces the bill. This amendment makes the
following substantive changes to the bill.

1. It removes those portions of the bill that repeal provisions of law providing rights of appeal for an inmate whose privilege of release from jail has been revoked; under this amendment, the rights of appeal provided in current law are maintained.

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2 2. It changes the law governing the disbursement of an
inmate's employment wages; under current law, the court
4 determines the disbursement according to certain guidelines
established in law; under this amendment the sheriff makes the
determination according to the same guidelines.

6
8 3. It changes the law governing the prorating of an
inmate's sentence for participation in public-works related
10 projects; under current law an inmate's sentence must be reduced
one day for each 16 hours worked; under this amendment, the
sentence may be reduced up to one day for each 16 hours worked.

12
14 4. It modifies that portion of the bill that repeals the
authority of a court to withdraw an inmate's privilege to
16 participate in a home-release monitoring program; under this
amendment, the court may withdraw the privilege but must first
provide an opportunity for the sheriff to comment.

18
20 5. It modifies that portion of the bill that repeals the
authority of a court to determine whether the inmate is
22 responsible for the cost of participating in the home-release
program, based on the inmate's ability to pay; under this
24 amendment, the sheriff is granted the authority to make this
determination.

26 6. It changes the law that directs the court to require the
inmate under a home-release program to pay certain fees related
28 to the costs of the program unless the inmate does not have the
financial resources to pay these fees; under this amendment, the
30 sheriff is directed to undertake this responsibility.

32 7. It adds a requirement that the Commissioner of
Corrections submit an annual report to the joint standing
34 committee of the Legislature having jurisdiction over criminal
justice matters concerning the management by sheriffs of inmate
36 releases under these new provisions.

38 8. It repeals the provisions transferring the
decision-making authority with respect to releases of prisoners
40 from the county jails from the courts to the sheriffs; 90 days
after the adjournment of the First Regular Session of the 121st
42 Legislature this authority reverts back to the courts.

44 9. It adds a fiscal note to the bill.