

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1492

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H.P. 1123

House of Representatives, March 8, 2001

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**An Act to Improve Treatment of Persons with Mental Illness in Maine's  
Jails and Prisons.**

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

*Millicent M. MacFarland*

MILLICENT M. MacFARLAND, Clerk

Presented by Representative POVICH of Ellsworth.  
Cosponsored by Senator PENDLETON of Cumberland and  
Representatives: BAKER of Bangor, BROOKS of Winterport, McKENNEY of Cumberland,  
QUINT of Portland, SAVAGE of Buxton, SULLIVAN of Biddeford, Senators: CATHCART  
of Penobscot, McALEVEY of York.

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

2  
3       Sec. 1. 25 MRSA §2804-J is enacted to read:

4  
5       §2804-J. Mental illness and substance abuse or dependence  
6               training

7               1. Training standards. The board shall establish training  
8               in the areas of mental illness and substance abuse or  
9               dependence. The training must include:

10               A. Training in signs and symptoms of serious mental illness  
11               and substance abuse or dependence;

12               B. Appropriate intervention to facilitate mental health  
13               services within jails and correctional facilities; and

14               C. How best to respond to minor infractions of the law  
15               committed by a person with mental illness or suffering from  
16               substance abuse or substance dependence.

17               2. Preservice. Preservice law enforcement training  
18               standards established under section 2804-B must include a minimum  
19               of 12 hours of training described in subsection 1.

20               3. Basic corrections training. Basic corrections training  
21               standards established under section 2804-D must include a minimum  
22               of 12 hours of training described in subsection 1.

23               4. In-service law enforcement training. In-service law  
24               enforcement training standards established under section 2804-E  
25               must include a minimum of 3 hours of training described in  
26               subsection 1.

27               5. In-service corrections training. In-service corrections  
28               training standards established under section 2804-F must include  
29               a minimum of 3 hours of training described in subsection 1.

30               6. Officers certified as of October 1, 2001. Law  
31               enforcement officers and corrections officers certified as  
32               meeting training requirements as of October 1, 2001 must complete  
33               12 hours of mental illness and substance abuse and dependence  
34               training by July 1, 2003.

35       Sec. 2. 30-A MRSA §1558-A is enacted to read:

36       §1558-A. Transfer of prisoners with mental illness

37       A county jail may not transfer a prisoner or accept custody  
38       of a transferred prisoner solely as a mechanism to treat, control  
39

2 or otherwise respond to that prisoner's psychiatric condition or  
3 symptoms.

4 **Sec. 3. 30-A MRSA §1559, sub-§2**, as enacted by PL 1987, c.  
5 737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c.  
6 9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

8 **2. Limitations on administration of medication.** The  
9 sheriff or the sheriff's delegate may not administer any  
10 prescription or nonprescription medication to any prisoner who  
11 has been incarcerated in the county jail for less than 24 hours,  
12 ~~unless the sheriff or the delegate has consulted with and~~  
13 ~~received permission to administer that medication from a licensed~~  
14 physician. The sheriff or the sheriff's delegate shall ensure  
15 that a prisoner who has received medication is assessed by  
16 medical or psychiatric staff, licensed to prescribe medication,  
17 within 72 hours of admission.

18 **Sec. 4. 30-A MRSA §1561-A** is enacted to read:

20 **§1561-A. Psychiatric care and expenses**

22 **1. Right to treatment.** A person incarcerated in a county  
23 jail has the right to adequate psychiatric care, which includes  
24 care for a serious psychiatric disorders, as defined in the  
25 Diagnostic and Statistical Manual of Mental Disorders published  
26 by the American Psychiatric Association.

28 **2. Mental health examination.** Every prisoner must be  
29 examined for a mental health condition immediately upon  
30 admission, including an assessment of whether the prisoner is  
31 suicidal. The sheriff may require an additional mental health  
32 examination at any time. A family member or other concerned  
33 person may petition the sheriff regarding the need for a mental  
34 health examination of a prisoner and the sheriff shall respond to  
35 that petition within 5 business days.

38 **3. Treatment.** Treatment for serious psychiatric disorders  
39 as described in subsection 1 must include:

40 A. Access to the most effective and appropriate medication  
41 recommended by the treating psychiatrist;

44 B. Informed consent for medication;

46 C. Psychiatric or psychological individual contact as  
47 clinically indicated;

48 D. Monitoring of medication compliance and required  
50 laboratory testing;

- 2           E. Medication education for the prisoner;
- 4           F. Retention of counseling and programming by community  
6           providers; and
- 8           G. Access to adequate out-of-cell time and outdoor  
10          recreation. Unless clinically contraindicated, prisoners  
12          with mental illnesses must be provided with out-of-cell time  
14          equal to that of prisoners of the same security level  
16          without mental illnesses.

18          4. Least restrictive setting. All psychiatric treatment  
20          must be provided in the least restrictive setting possible. In  
22          no case may a prisoner be placed in isolation when that placement  
24          is because the person is experiencing symptoms of a mental  
26          illness unless psychiatric treatment is also provided. For the  
28          purposes of this subsection, "psychiatric treatment" means  
30          medication management, individual counseling and development and  
32          implementation of a treatment plan. When the symptoms that led  
34          to the isolation have remitted, the prisoner must be returned to  
36          the prisoner's original placement within 48 hours of the  
38          remission.

40          5. Expenses. A prisoner may not be charged a fee for  
42          psychiatric services and treatment provided while incarcerated.

44            **Sec. 5. 30-A MRSA §1601, first ¶,** as enacted by PL 1987, c.  
46            737, Pt. A, §2 and Pt. C, §106 and amended by PL 1989, c. 6, c.  
48            9, §2 and c. 104, Pt. C, §§8 and 10, is further amended to read:

50            The county commissioners may authorize the employment of  
52            prisoners committed for crime, for the benefit of the county or  
54            of their dependent families, in some suitable manner not  
56            inconsistent with their security and the discipline of the  
58            prison. The commissioners may pay the proceeds of that labor,  
60            less a reasonable sum to be deducted for the cost of maintenance  
62            of those prisoners, to the dependent families of the prisoners.  
64            The sheriff shall provide for the employment of a prisoner  
66            committed to the county jail in order to teach that inmate a  
68            useful trade or profession and to improve the prisoner's mental  
70            condition. Employment may include work for public restitution  
72            purposes.

74            **Sec. 6. 30-A MRSA §1607** is enacted to read:

76            **§1607. Family support**

78            1. Child support. If a prisoner has dependent children, the  
80            prisoner may not participate in a work program under section 1605  
82            or any other program administered by the sheriff by which a

2 prisoner is able to generate money unless the prisoner consents  
3 to pay at least 25% of that money for the support of that  
4 prisoner's dependent child if the other parent, legal guardian or  
5 legal custodian of that prisoner's dependent child requests that  
6 payment. Upon the written request of a parent, legal guardian or  
7 legal custodian, the sheriff of the county jail where the  
8 prisoner is incarcerated shall collect and disburse to the other  
9 parent, legal guardian or legal custodian that portion of the  
10 prisoner's money to be paid for the support of that prisoner's  
11 dependent child. This subsection does not apply to any prisoner  
12 making payments for the support of a dependent child pursuant to  
13 a support order issued by a court or by the Department of Human  
14 Services.

15 2. Support services. Prisoners and their families must be  
16 permitted to join family support services such as those offered  
17 by national and statewide organizations designed to help maintain  
18 and support continued relationships with family members unless  
19 such participation would jeopardize the security of the jail.  
20 For the purposes of this subsection, "family" means kin related  
21 by blood or individuals that serve in the role of kin.

22 **Sec. 7. 30-A MRSA §1651-A is enacted to read:**

23 **§1651-A. Accreditation of jails**

24 County jails must be accredited by a nationally recognized  
25 accreditation body with standards for the delivery of mental  
26 health services to jail prisoners by January 1, 2005 and annually  
27 thereafter.

28 **Sec. 8. 30-A MRSA §1658-A is enacted to read:**

29 **§1658-A. Procedures for prisoners with mental illness**

30 1. Prisoner list. The sheriff shall maintain a list of all  
31 prisoners receiving mental health treatment. A prisoner assessed  
32 to have a serious psychiatric disorder as defined in section 1561  
33 and who is receiving treatment for that disorder must be included  
34 on the list.

35 2. Services of mental health staff. The prisoners on the  
36 mental health treatment list must have the involvement of a  
37 mental health professional whenever use-of-force situations or  
38 disciplinary charges arise.

39 3. Disciplinary hearings. The sheriff, jail administrator  
40 or designee shall give the person in charge of mental health  
41 services in the jail the names of all prisoners with pending  
42 charges of misconduct before any hearing takes place. The  
43

2 person in charge of mental health services in the jail shall  
3 provide any relevant information regarding the relation of the  
4 prisoner's mental disorder to the pending charge to the sheriff,  
5 jail administrator or designee who shall decide whether or not to  
6 request a psychiatric or psychological evaluation to be  
7 considered when deciding what punishment to impose on the  
8 prisoner. The sheriff, jail administrator or designee may refer  
9 a prisoner for appropriate mental health care and treatment.

10 **4. Mental health status.** In the event that a prisoner is  
11 confined in disciplinary segregation and suffers a deterioration  
12 in mental health status as determined by the person in charge of  
13 mental health services at the jail, that person shall refer the  
14 matter to the sheriff, jail administrator or designee. If  
15 continued confinement is determined to be harmful to the  
16 prisoner's mental health, the prisoner must be released to a  
17 treatment cell in the jail.

18  
19 **Sec. 9. 34-A MRS §1205, sub-§1,** as enacted by PL 1983, c.  
20 459, §6, is amended to read:

21  
22 **1. Purpose.** The purpose of this section is to provide the  
23 means and procedure for the development, expansion and  
24 improvement of correctional programs throughout the State and to  
25 encourage participation in correctional programs by persons,  
26 unincorporated associations, charitable nonstock corporations,  
27 local and county governmental units and state agencies. In  
28 accordance with this purpose all adult correctional facilities  
29 and juvenile facilities operated by the State must be accredited  
30 by a nationally recognized correctional accrediting body by  
31 January 1, 2005 and annually thereafter.

32  
33 **Sec. 10. 34-A MRS §1208,** as enacted by PL 1983, c. 581, §§10  
34 and 59, is amended by inserting at the end a new paragraph to  
35 read:

36  
37 The standards established must comply with those required by  
38 a nationally recognized correctional accrediting body. Each  
39 county and municipal detention facility must be fully accredited  
40 by a nationally recognized correctional accrediting body by  
41 January 1, 2005 and annually thereafter.

42  
43 **Sec. 11. 34-A MRS §3002,** as amended by PL 1989, c. 503, Pt.  
44 B, §159, is further amended to read:

45 **§3002. Boards of visitors**

46  
47 **1. Appointment.** The Governor shall appoint a board of 5  
48 visitors for each correctional facility under the department, as  
49 authorized by Title 5, section 12004-I, subsection 5. The boards  
50

2 of visitors must be representative of a broad range of  
3 professionals, family members and citizens interested in the  
4 well-being of prisoners, including representatives of advocacy  
5 groups for human and civil rights, representatives of advocacy  
6 groups for persons with disabilities, medical and psychiatric  
7 professionals, persons who have served in corrections settings in  
8 educational, vocational or rehabilitative capacities and other  
9 interested citizens.

10 A. The terms of the members of the boards of visitors are  
11 for one year.

12 B. Members of the boards of visitors are eligible for  
13 reappointment at the expiration of their terms.

14 C. No member of the Legislature may serve on any board of  
15 visitors.

16 D. Each member of the boards of visitors shall--be is  
17 compensated according to the provisions of Title 5, chapter  
18 379.

19 **2. Powers.** Each board of visitors may shall name one member  
20 to participate in the correctional facility's review of policy  
21 development and implementation who shall attend meetings. Each  
22 board of visitors annually shall inspect the correctional  
23 facility to which it is assigned and may make recommendations on  
24 the management of the facility to the commissioner.

25 **3. Duties.** Boards of visitors have the following duties.

26 A. Boards of visitors shall annually send copies of all  
27 recommendations to the members of the joint standing  
28 committee of the Legislature having jurisdiction over health  
29 and-institutional-services corrections matters.

30 B. Each board of visitors shall appear before the joint  
31 standing committee of the Legislature having jurisdiction  
32 over health--and-institutional--services corrections matters  
33 upon request and may appear at such time as the board of  
34 visitors determines appropriate to report recommendations in  
35 a public hearing.

36 C. Each board of visitors may participate in the review and  
37 implementation of policy of the correctional facility.

38 **Sec. 12. 34-A MRSA §3031, sub-§§7 and 8,** as enacted by PL 1983,  
39 c. 459, §6, are amended to read:

40 **7. Area for personal effects.** A reasonably secure area for  
41 the maintenance of permitted personal effects; and



2           **8. Visitation.** A reasonable opportunity to visit with  
3 relatives and friends, in accordance with departmental policies  
4 and institutional procedures, provided that the department may  
5 restrict or prohibit visits when the restriction or prohibition  
6 is necessary for the security of the institution; and

8           **Sec. 13. 34-A MRS §3031, sub-§§9 and 10** are enacted to read:

10           **9. Psychiatric care.** Adequate psychiatric care as follows.

12           A. Every client has the right to adequate psychiatric care,  
13 which includes care for a serious psychiatric disorder  
14 defined as a substantial disorder of thought, mood,  
15 perception, orientation or memory, such as those that meet  
16 DSM IV criteria for Axis I disorders or persistent and  
17 disabling Axis 2 disorders.

18           B. All clients must be examined for a mental health  
19 condition immediately upon admission, including assessment  
20 of whether the client is suicidal.

22           C. Treatment for serious psychiatric disorders must include:

24                   (1) Access to the most effective and appropriate  
25 medication recommended by the treating psychiatrist;

28                   (2) Informed consent for medication;

30                   (3) Psychiatric or psychological individual contact as  
31 clinically indicated;

32                   (4) Monitoring of medication compliance and required  
33 laboratory testing;

36                   (5) Medication education for the client;

38                   (6) Retention of counseling and programming by  
39 community providers; and

40                   (7) Access to adequate out-of-cell time and outdoor  
41 recreation. Unless clinically contraindicated, clients  
42 with mental illnesses must be provided with  
43 out-of-cell time equal to that of clients of the same  
44 security level without mental illnesses.

46           D. All psychiatric treatment must be provided in the least  
47 restrictive setting possible. In no case may a client be  
48

2 placed in isolation when that placement is because the  
3 client is experiencing symptoms of a mental illness unless  
4 psychiatric treatment is also provided. For the purposes of  
5 this section, "psychiatric treatment" means medication  
6 management, individual counseling, and development and  
7 implementation of a treatment plan. When the symptoms that  
8 lead to the isolation have remitted, the client must be  
9 returned to the client's original placement within 48 hours  
10 of the remission.

11 E. A client may not be charged a fee for psychiatric  
12 services and treatment provided while incarcerated; and

13 **10. Mental health care.** Mental health care as set out in  
14 this section. The following procedures apply to clients with  
15 mental health needs.

16 A. The prison warden shall maintain a list of all clients  
17 receiving mental health treatment. A client assessed to  
18 have a serious psychiatric disorder as defined in this  
19 section and who is receiving treatment for that disorder,  
20 must be included on the list.

21 B. The clients on the mental health treatment list must  
22 have the involvement of mental health personnel whenever use  
23 of force situations or disciplinary charges arise.

24 C. Correctional facility disciplinary officers will give  
25 the administrator of mental health services the names of all  
26 clients with pending disciplinary charges before the  
27 disciplinary hearings take place. The mental health staff  
28 shall provide any relevant information regarding the impact  
29 of the client's mental disorder on the pending charge to the  
30 hearing officers who will decide whether or not to request a  
31 psychiatric or psychological evaluation to be considered  
32 when deciding what punishment to impose on the client. The  
33 hearing officers may refer a client for appropriate mental  
34 health care and treatment.

35 D. In the event that a client is confined in disciplinary  
36 segregation and suffers a deterioration in mental health  
37 status as determined by mental health staff, the mental  
38 health staff shall refer the matter to the prison warden.  
39 If continued confinement is determined to be harmful to the  
40 client's mental health the client must be released to a  
41 treatment cell in the correctional or detention facility.

42 **Sec. 14. 34-A MRSA §3037, sub-§1,** as amended by PL 1991, c.  
43 314, §42, is further amended to read:

44 **1. Requirement.** The commissioner may shall require a  
45 physical and mental examination of any-client all newly admitted  
46 to the facility.

2 clients and may require a physical or mental examination of any  
3 client at any time. If a family member or other concerned person  
4 petitions the commissioner regarding the need for a physical or  
5 mental examination of a client, the commissioner shall respond to  
6 that petition within 5 business days. When a client transfer is  
7 requested for medical or psychiatric reasons, a medical or  
8 psychiatric evaluation must be completed by a medical doctor or  
9 mental health professional and that evaluation determines the  
10 need for the transfer and the least restrictive setting  
11 appropriate for the transfer.

12 **Sec. 15. 34-A MRSA §3039-A**, as enacted by PL 1997, c. 358,  
13 §4, is repealed and the following enacted in its place:

14 **§3039-A. Family support**

15 **1. Child support.** If a client has a dependent child, the  
16 client may not participate in an industry program under section  
17 1403, a work program under section 3035 or any other program  
18 administered by the department by which a client is able to  
19 generate money unless the client consents to pay at least 25% of  
20 that money for the support of any dependent child if the other  
21 parent, legal guardian or legal custodian of the child requests  
22 that payment. Upon the written request of a parent, legal  
23 guardian or legal custodian, the chief administrative officer of  
24 the correctional facility where the client is incarcerated shall  
25 collect and disburse to the parent, legal guardian or legal  
26 custodian that portion of the client's money to be paid for the  
27 support of the dependent child. This subsection does not apply  
28 to any client making payments for the support of a dependent  
29 child pursuant to a support order issued by a court or by the  
30 Department of Human Services.

31 **2. Support services.** Clients and their families must be  
32 permitted to join family support services such as those offered  
33 by national and statewide organizations designed to help maintain  
34 and support continued relationships with family members unless  
35 such participation would jeopardize the security of the  
36 correctional facility. For the purposes of this subsection,  
37 "family" means kin related by blood or individuals that serve in  
38 the role of kin.

39 **Sec. 16. 34-A MRSA §3061, sub-§1**, as amended by PL 1991, c.  
40 845, §5, is further amended to read:

41 **1. Transfer.** The commissioner may transfer any client from  
42 one correctional or detention facility or program, including  
43 prerelease centers, work release centers, halfway houses,  
44 supervised community confinement or specialized treatment  
45 facilities, to another, except that no a juvenile may not be

2 transferred to another facility or program for adult offenders  
3 and a client may not be transferred to a maximum security prison  
4 isolation cell as a mechanism to treat, control or otherwise  
5 respond to that client's psychiatric condition or symptoms.

6 **Sec. 17. 34-A MRSA §3063-A**, as amended by PL 1997, c. 464,  
7 §13, is further amended to read:

8  
9 **§3063-A. Transfer from jails**

10 The commissioner may accept custody of ~~persons~~ a person  
11 transferred to the department from ~~a county jails jail~~ under  
12 Title 30-A, section 1557-A, except that the commissioner may not  
13 accept custody of a person transferred to the department from a  
14 county jail if that person is transferred as a mechanism to  
15 treat, control or otherwise respond to that person's psychiatric  
16 condition or symptoms.

17  
18 **Sec. 18. Application to current prisoners.** All prisoners in all  
19 county jails on the effective date of this Act must be assessed  
20 by a mental health professional within 6 months of the effective  
21 date of this Act.

22  
23 **Sec. 19. Application to current clients.** All clients of all adult  
24 correctional facilities and juvenile facilities on the effective  
25 date of this Act must be assessed by a mental health professional  
26 within 6 months of the effective date of this Act.

27  
28  
29 **SUMMARY**

30  
31  
32 This bill requires that all law enforcement and corrections  
33 officers receive training in mental illness and substance abuse  
34 issues and requires psychiatric evaluation of all inmates  
35 incarcerated in county jails and state correctional facilities.  
36 The bill establishes standards for the care, treatment and  
37 transfer of inmates with a psychiatric disorder. The bill also  
38 requires that all county jails and state correctional facilities  
39 be nationally accredited by January 1, 2005 and annually  
40 thereafter.