

# MAINE STATE LEGISLATURE

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# 120th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2001

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Legislative Document

No. 1758

S.P. 580

In Senate, March 28, 2001

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### An Act to Amend the Laws Pertaining to the Department of Corrections.

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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.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator McALEVEY of York.  
Cosponsored by Representatives: BLANCHETTE of Bangor, GERZOFKY of Brunswick.

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

2  
4       **Sec. 1. 17-A MRSA §101, sub-§5,** as enacted by PL 1981, c. 324,  
§24, is amended to read:

6       5. For purposes of this chapter, use by a law enforcement  
officer ~~or~~ a corrections officer or a corrections supervisor of  
8       chemical mace or any similar substance composed of a mixture of  
gas and chemicals which has or is designed to have a disabling  
10       effect upon human beings is use of nondeadly force.

12       **Sec. 2. 17-A MRSA §107, sub-§5,** as amended by PL 1995, c. 215,  
§2, is repealed.

14       **Sec. 3. 17-A MRSA §107, sub-§5-A,** as amended by PL 1995, c.  
16       215, §3, is repealed.

18       **Sec. 4. 17-A MRSA §107-A** is enacted to read:

20       **§107-A. Physical force upon prisoners**

22       1. As used in this section, unless the context otherwise  
24       indicates, "prisoner" means a person confined in a correctional  
or detention facility of the Department of Corrections, county or  
26       municipal jail, holding facility or short-term detention area  
pursuant to an order of court or as the result of an arrest.

28       2. A corrections officer, corrections supervisor, law  
30       enforcement officer or another person responsible for the  
custody, care or treatment of prisoners is justified in using a  
32       reasonable degree of nondeadly force against a prisoner:

34       A. When and to the extent the person reasonably believes it  
necessary to prevent an escape from custody, apprehend an  
36       escapee from custody or enforce the rules of the facility; or

38       B. To defend the person or a 3rd person from what the  
person reasonably believes is the imminent use of nondeadly  
40       force.

42       3. A corrections officer, corrections supervisor, law  
enforcement officer or another person responsible for the  
44       custody, care or treatment of prisoners is justified in using  
deadly force against a prisoner when the person reasonably  
46       believes that force is necessary to defend the person or a 3rd  
person from what the person reasonably believes is the imminent  
48       use of deadly force.

50       4. A corrections officer, corrections supervisor or law  
enforcement officer is justified in using deadly force against a

2 prisoner when the officer or supervisor reasonably believes that  
3 any such force is necessary to prevent an escape from custody or  
4 apprehend an escapee from custody when the officer or supervisor  
5 reasonably believes that the prisoner has committed a crime  
6 involving the use or threatened use of deadly force, is using a  
7 dangerous weapon in attempting to escape from custody or prevent  
8 apprehension, or otherwise indicates that the prisoner is likely  
9 to seriously endanger human life or to inflict serious bodily  
10 injury unless the escape is prevented or the prisoner is  
11 apprehended without delay, and:

12 A. The officer or supervisor has made reasonable efforts to  
13 advise the prisoner that the officer or supervisor is an  
14 officer or supervisor attempting to prevent an escape or  
15 apprehend an escapee and the officer or supervisor has  
16 reasonable grounds to believe that the prisoner is aware of  
17 this advice; or

18 B. The officer or supervisor reasonably believes that the  
19 prisoner otherwise knows that the officer or supervisor is  
20 an officer or supervisor attempting to prevent an escape or  
21 apprehend an escapee.

22 For purposes of this paragraph, "a reasonable belief that a  
23 prisoner has committed a crime involving use or threatened use of  
24 deadly force" means a reasonable belief in facts, circumstances  
25 and the law which, if true, would constitute such an offense by  
26 that prisoner. If the facts and circumstances reasonably  
27 believed would not constitute such an offense, an erroneous but  
28 reasonable belief that the law is otherwise justifies the use of  
29 deadly force to prevent an escape or apprehend an escapee.

30 5. A corrections officer, corrections supervisor or law  
31 enforcement officer is justified in using deadly force against a  
32 person confined in the Maine State Prison or the Maine  
33 Correctional Institution - Warren when the officer or supervisor  
34 reasonably believes that deadly force is necessary to prevent an  
35 escape from custody or apprehend an escapee from custody. The  
36 officer or supervisor shall make reasonable efforts to advise the  
37 prisoner that if the attempt to escape does not stop immediately  
38 or the prisoner does not submit to apprehension immediately,  
39 deadly force will be used. This subsection does not authorize a  
40 corrections officer, corrections supervisor or law enforcement  
41 officer who is not employed by a state agency to use deadly force.

42 **Sec. 5. 17-A MRSA §757, sub-§2, as repealed and replaced by PL**  
43 **1977, c. 510, §65, is amended to read:**

44 **2. As used in this section, "official custody" has the same**  
45 **meaning as in section 755. As used in this section, "contraband"**

2 has the same meaning as in section 756. In addition, as used in  
3 this section, "contraband" includes tobacco and tobacco products  
4 if a person has been committed to the official custody of the  
5 Department of Corrections or of a sheriff who has banned the use  
6 of tobacco and tobacco products by prisoners in the sheriff's  
7 custody.

8 **Sec. 6. 17-A MRSA §1202, sub-§1-B**, as enacted by PL 1999, c.  
9 492, §1, is amended to read:

10 **1-B.** Notwithstanding subsection 1, the period of probation  
11 for a person convicted of a Class D or Class E crime involving  
12 domestic violence must be 2 years, except that the term of  
13 probation must be terminated at the time the probationer  
14 completes a certified batterers' intervention program as defined  
15 in Title 19-A, section 4014, unless there is another condition of  
16 probation that has yet to be met.

17 **Sec. 7. 19-A MRSA §4012, sub-§2**, as enacted by PL 1995, c.  
18 694, Pt. B, §2 and affected by Pt. E, §2, is repealed.

19 **Sec. 8. 22 MRSA §2883**, as amended by PL 1995, c. 560, Pt. K,  
20 §82 and affected by §83, is further amended by adding at the end  
21 a new paragraph to read:

22 As used in this section, "burial" includes cremation and  
23 burial of the cremated remains of the body.

24 **Sec. 9. 25 MRSA §2801-A, sub-§2, ¶A**, as enacted by PL 1989, c.  
25 521, §§2 and 17, is amended to read:

26 A. For state agencies, the following class titles and their  
27 successor titles:

- 28 (1) Training School Counselor I and II;
- 29 (2) Training School Counselor Supervisor;
- 30 (3) Corrections Officer I, II and III;
- 31 (4) Guard;
- 32 (5) Guard Sergeant;
- 33 (6) Guard Lieutenant; and
- 34 (7) Guard Captain; and
- 35 (8) Correctional Trade Instructor; and

2                   **Sec. 10. 25 MRSA §2801-B, sub-§3** is enacted to read:

3                   **3. Juvenile facilities.** The training standards and  
4 requirements of this chapter do not apply to the persons defined  
5 by this chapter as corrections officers who are employees of the  
6 Department of Corrections employed at a juvenile facility. The  
7 Commissioner of Corrections shall provide adequate education and  
8 training for all such corrections officers. The board shall  
9 advise the commissioner concerning appropriate and adequate  
10 training.

11                   **Sec. 11. 32 MRSA §7154, 2nd ¶**, as amended by PL 1979, c. 541,  
12 Pt. B, §41, is further amended to read:

13                   It shall--be is unlawful for any a polygraph examiner  
14                   conducting a polygraph examination to ask any questions  
15                   pertaining to sexual behavior of any type or questions that could  
16                   be construed as being sexually oriented, unless the examination  
17                   is conducted in the course of either a criminal investigation by  
18                   law enforcement officials or in the course of civil litigation in  
19                   which sexual behavior is at issue or is conducted for the purpose  
20 of ensuring compliance with court-ordered sex offender  
21 treatment. This prohibition does not apply to polygraph  
22 examinations for applicants for positions in law enforcement  
23 agencies. If the polygraph examination is conducted for the  
24 purpose of ensuring compliance with court-ordered sex offender  
25 treatment, the results of the examination are not admissible into  
26 evidence in a court proceeding.

27                   **Sec. 12. 34-A MRSA §1205, sub-§§1 and 2**, as enacted by PL 1983,  
28 c. 459, §6, are repealed.

29                   **Sec. 13. 34-A MRSA §1205, sub-§3, ¶¶A and B**, as enacted by PL  
30 1983, c. 459, §6, are repealed.

31                   **Sec. 14. 34-A MRSA §1205-A** is enacted to read:

32                   **§1205-A. Correctional Medical Services Fund**

33                   This section establishes the Correctional Medical Services  
34 Fund to provide the means for the development, expansion,  
35 improvement and support of correctional medical services.

36                   **1. Commissioner's powers.** The commissioner may receive and  
37 use, for the purpose of this section, money appropriated by the  
38 State, grants from the United States and funds from other sources.

39                   **2. Correctional Medical Services Fund.** All funds  
40 appropriated for the purpose of this section and all grants and  
41 other funds received by the department for the purpose of this  
42

2 section must be credited to a special account in the department  
3 to be known as the Correctional Medical Services Fund. State  
4 funds appropriated to this special account that are unexpended at  
5 the end of the fiscal year for which the funds are appropriated  
6 do not lapse, but must carry forward into subsequent fiscal years  
7 to be expended for the purpose of this section.

8 **Sec. 15. 34-A MRSA §1403, sub-§2, ¶C**, as amended by PL 1999,  
9 c. 731, Pt. G, §2, is further amended to read:

10 C. The commissioner shall appoint the following officials  
11 to serve at the pleasure of the commissioner:

12 (1) Associate Commissioner for Adult Services;

13 (1-A) Associate Commissioner for Juvenile Services; and

14 ~~(2) Assistant to the Commissioner; and~~

15 (3) Associate Commissioner for Legislative and Program  
16 Services.

17 **Sec. 16. 34-A MRSA §3003, sub-§1**, as amended by PL 1997, c.  
18 714, §2, is further amended by amending the first paragraph to  
19 read:

20 **1. Limited disclosure.** All orders of commitment, medical  
21 and administrative records, applications and reports, and facts  
22 contained in them, pertaining to any a person receiving services  
23 from the department, must be kept confidential and may not be  
24 disclosed by any a person, except that public records must be  
25 disclosed in accordance with Title 1, section 408, criminal  
26 history record information may be disseminated in accordance with  
27 Title 16, chapter 3, subchapter VIII, and documents, other than  
28 those documents pertaining to information obtained by the  
29 department for the purpose of evaluating a client's person's  
30 ability to participate in a community-based program or from  
31 informants in a correctional or detention facility for the  
32 purpose of determining whether facility rules have been violated,  
33 ex a victim's request for notice of release, or a screening or  
34 assessment tool used by a correctional or detention facility,  
35 may, and must upon request, be disclosed:

36 **Sec. 17. 34-A MRSA §3031-A** is enacted to read:

37 **§3031-A. Transportation outside the State for medical care**

38 **1. Transportation.** A person residing in a correctional or  
39 detention facility may be transported by the department for  
40 medical care outside the State if the facility's treating  
41 physician certifies that the person requires medical care  
42 outside the State.





- 2           7. It adds tobacco trafficking to the prison contraband law;
- 4           8. It repeals the temporary certification requirement for  
batterers' intervention programs;
- 6           9. It removes Assistant to the Commissioner of Corrections  
8           from positions that serve at the pleasure of the commissioner;
- 10          10. It adds Correctional Trade Instructor to the definition  
of corrections officer;
- 12          11. It allows polygraph testing of sex offenders in  
14          court-ordered treatment;
- 16          12. It clarifies use of force relating to corrections  
personnel; and
- 18          13. It clarifies termination of probation provisions for  
those who complete batterers' intervention programs.