

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1497

H.P. 1094

House of Representatives, March 31, 2003

An Act To Amend the Laws Pertaining to the Department of Corrections

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BUNKER of Kossuth Township.
Cosponsored by Senator STRIMLING of Cumberland and
Representatives: CHURCHILL of Washburn, GERZOFSKY of Brunswick, LESSARD of
Topsham, MAIETTA of South Portland.

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

2
4 **Sec. 1. 5 MRSA §9057, sub-§6**, as amended by PL 1997, c. 271,
§1, is further amended to read:

6 **6. Confidential information.** Information may be disclosed
7 that is confidential pursuant to Title 22, chapters 958-A and
8 1071 and sections 7703 and 1828; Title 24, section 2506; and
9 Title 34-A, except for information, the disclosure of which is
10 absolutely prohibited under Title 34-A, section ~~3003~~ 1216.
11 Disclosure may be only for the determination of issues involving
12 unemployment compensation proceedings relating to a state
13 employee, state agency personnel actions and professional or
14 occupational board licensure, certification or registration.

16 A. For the purpose of this subsection, "hearing officer"
17 means presiding officer, judge, board ~~chairman~~ chair,
18 arbitrator or any other person considered responsible for
19 conducting a proceeding or hearing subject to this
20 subsection. In the case of the Civil Service Appeals Board,
21 the presiding officer is the entire board. "Employees of
22 the agency" means employees of a state agency or department
23 or members, agents or employees of a board who are directly
24 related to and whose official duties involve the matter at
25 issue.

26 B. The confidential information disclosed pursuant to this
27 subsection is subject to the following limitations:

30 (1) The hearing officer determines that introduction
31 of the confidential information is necessary for the
32 determination of an issue before the hearing officer;

34 (2) During the introduction of confidential
35 information, the proceeding is open only to the hearing
36 officer, employees of the agency, parties, parties'
37 representatives, counsel of record and the witness
38 testifying regarding the information, and access to the
39 information is limited to these people. Disclosure is
40 limited to information directly related to the matter
41 at issue;

42 (3) Witnesses are sequestered during the introduction
43 of confidential information, except when offering
44 testimony at the proceeding;

46 (4) The names or identities of reporters of
47 confidential information or of other persons may not be
48 disclosed, except when disclosure is determined
49 necessary and relevant by the hearing officer; and
50

2 (5) After hearing, the confidential information is
3 sealed within the record and may not be further
4 disclosed, except upon order of court.

6 **Sec. 2. 15 MRSA §1105**, as enacted by PL 2001, c. 318, §1, is
7 amended to read:

8 **§1105. Alcohol and drug treatment program**

10 As a condition of post-conviction release, the court may
12 impose the condition of participation in an alcohol and drug
13 treatment program for a period not to exceed 24 months pursuant
14 to Title 4, chapter 8. Upon request of the Department of
15 Corrections, the court shall require the defendant to pay a
16 substance abuse testing fee. If at any time the court finds
17 probable cause that a defendant released with a condition of
18 participation in an alcohol and drug treatment program has
19 intentionally or knowingly violated any requirement of the
20 defendant's participation in the alcohol or drug treatment
21 program, the court may suspend the order of bail for a period of
22 up to 7 days for any such violation. The defendant must be given
23 an opportunity to personally address the court prior to the
24 suspension of an order of bail under this section. A period of
25 suspension of bail is a period of detention under Title 17-A,
26 section 1253, subsection 2. This section does not restrict the
27 ability of the court to take actions other than suspension of the
28 order of bail for the violation of a condition of participation
29 in an alcohol and drug treatment program or the ability of the
30 court to entertain a motion to revoke bail under section 1098 and
31 enter any dispositional order allowed under section 1099-A. If
32 the court orders participation in a drug and alcohol treatment
33 program under this section, upon sentencing the court shall
34 consider whether there has been compliance with the program.

36 **Sec. 3. 15 MRSA §3009, sub-§2**, as enacted by PL 2001, c. 452,
37 §1, is amended to read:

38 **2. Release of information.** Upon the request of the
39 superintendent or the superintendent's designee under subsection
40 1, the Department of Corrections shall release information as
41 authorized under section 3308, subsection 7, paragraph B-1,
42 subparagraph (3) and Title 34-A, section ~~3003~~ 1216, subsection 1,
43 paragraph F to be used by the reintegration team. Information
44 received pursuant to this subsection is confidential and may not
45 be further disseminated, except as otherwise provided by law.

48 **Sec. 4. 17-A MRSA §752-A, sub-§1, ¶B**, as amended by PL 1983,
49 c. 408, §1, is further amended to read:

50

2 B. While in custody in--a--penal--institution--or--other
3 facility pursuant to an arrest or pursuant to a court order,
4 he the person commits an assault on a corrections officer,
5 corrections supervisor or another member of the staff of the
6 an institution or--facility while the staff member is
7 performing official duties. As used in this paragraph
8 "assault" means the crime defined in section 207, subsection
1, paragraph A.

10 **Sec. 5. 17-A MRSA §1231, sub-§6,** as enacted by PL 1999, c.
11 788, §7, is amended to read:

12
13 6. The court may revoke a period of supervised release
14 pursuant to section 1233. If the court revokes a period of
15 supervised release, the court may require the person to serve
16 time in prison under the custody of the Department of
17 Corrections. This time in prison may equal all or part of the
18 period of supervised release, without credit for time served on
19 post-release supervision, but may not exceed 1/3 of the straight
20 term of imprisonment imposed. The remaining portion of the
21 period of supervised release that is not required to be served in
22 prison remains in effect to be served after the person's release
23 and is subject to revocation at a later date.

24
25 **Sec. 6. 17-A MRSA §1253, sub-§2,** as amended by PL 1997, c.
26 464, §4, is further amended to read:

27
28 2. Each person sentenced to imprisonment who has previously
29 been detained for the conduct for which the sentence is imposed
30 in any state facility or county institution or facility or in any
31 local lockup awaiting trial, during trial, post-trial awaiting
32 sentencing or post-sentencing prior to the date on which the
33 sentence commenced to run either to await transportation to the
34 place of imprisonment specified, or pursuant to court order, and
35 not in execution of any other sentence of confinement, is
36 entitled to receive a day-for-day deduction from the total term
37 of imprisonment required under that sentence. Each person is
38 entitled to receive the same deduction for any such period of
39 detention in any federal, state or county institution, local
40 lockup or similar facility in another jurisdiction, including any
41 detention resulting from being a fugitive from justice, as
42 defined by Title 15, section 201, subsection 4, unless the person
43 is simultaneously being detained for non-Maine conduct.

44
45 For the purpose of calculating the day-for-day deduction
46 specified by this subsection, a "day" means 24 hours.

47
48 The total term required under the sentence of imprisonment is
reduced by the total deduction of this subsection prior to

2 applying any of the other deductions specified in this section or
in Title 30-A, section 1606.

4 ~~The attorney representing this State shall furnish the court, at~~
5 ~~the time of sentencing or within 10 days thereafter, a statement~~
6 ~~showing the total deduction of this subsection, to that point in~~
7 ~~time, and the statement must be attached to the official records~~
8 ~~of the commitment.~~

10 The sheriff or other person upon whom the legal duty is imposed
11 to deliver a sentenced person who ~~is entitled to a deduction for~~
12 ~~a period of detention post-sentencing~~ has been detained as
13 specified in this subsection shall, at the time of delivery,
14 furnish to the custodian a statement showing the length of that
15 ~~post-sentencing~~ detention. In addition, the transporter shall
16 furnish to the sentencing court the same statement that must be
17 attached to the official records of the commitment.

18 **Sec. 7. 20-A MRSA §1055, sub-§12,** as enacted by PL 2001, c.
19 452, §4, is amended to read:

22 **12. Reintegration team.** Within 10 days after receiving
23 information from the Department of Corrections pursuant to Title
24 15, section 3009, the superintendent shall convene a
25 reintegration team to carry out reintegration planning pursuant
26 to section 254, subsection 12. The reintegration team must
27 consist of the administrator of the school or the administrator's
28 designee; at least one classroom teacher to whom the student will
29 be assigned or who is involved in the school's student assistance
30 team; a parent, guardian or custodian of the student; and a
31 guidance counselor. The reintegration team is entitled to
32 receive the information described in Title 15, section 3308,
33 subsection 7, paragraph B-1, subparagraph (3) and Title 34-A,
34 section ~~3003~~ 1216, subsection 1, paragraph F. The reintegration
35 team shall also determine, on the basis of need, which school
36 employees may receive that information.

38 Confidentiality of the criminal justice information regarding
39 juveniles must be ensured at all times and the information may be
40 released by a member of the reintegration team only under the
41 conditions of this subsection. The superintendent shall ensure
42 that confidentiality training is provided to all school employees
43 who have access to the information.

44 **Sec. 8. 20-A MRSA §6001-B, sub-§3-A,** as enacted by PL 2001, c.
45 452, §14, is amended to read:

48 **3-A. Determination of status of juvenile applying for**
49 **admission; discretion of school to accept juvenile.** If the
50 receiving school administrative unit receives information under

2 Title 15, section 3308, subsection 7, paragraph B-1, subparagraph
3 (3) and Title 34-A, section 3003 1216, subsection 1, paragraph F
4 that a student is not in compliance with a condition of an
5 individualized plan for the juvenile's rehabilitation and that
6 condition is relevant to the juvenile's reintegration into the
7 school, the receiving school administrative unit may deny
8 admission or participation in public school programs, facilities
9 or activities as part of an equivalent instruction program
10 pursuant to section 5021 until the school administrative unit is
11 satisfied that the condition has been met.

12 **Sec. 9. 34-A MRSA §1203, sub-§5, ¶B**, as enacted by PL 1983, c.
13 459, §6, is amended to read:

14 B. The records and accounts may be released only as
15 provided in section 3003 1216.

16 **Sec. 10. 34-A MRSA §1216** is enacted to read:

17 **§1216. Confidentiality of information**

18 **1. Limited disclosure.** All orders of commitment, medical
19 and administrative records, applications and reports, and facts
20 contained in them, pertaining to any person receiving services
21 from the department must be kept confidential and may not be
22 disclosed by any person, except that public records must be
23 disclosed in accordance with Title 1, section 408; criminal
24 history record information may be disseminated in accordance with
25 Title 16, chapter 3, subchapter 8; and documents other than those
26 documents pertaining to information obtained by the department
27 for the purpose of evaluating a client's ability to participate
28 in a community-based program or from informants in a correctional
29 or detention facility for the purpose of determining whether
30 facility rules have been violated or pertaining to a victim's
31 request for notice of release may, and must upon request, be
32 disclosed:

33 A. To any person if the person receiving services, that
34 person's legal guardian, if any, and, if that person is a
35 minor, that person's parent or legal guardian give informed
36 written consent to the disclosure of the documents referred
37 to in this subsection after being given the opportunity to
38 review the documents sought to be disclosed;

39 B. To any state agency if necessary to carry out the
40 statutory functions of that agency;

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

2 D. To any criminal justice agency if necessary to carry out
3 the administration of criminal justice or the administration
4 of juvenile criminal justice or for criminal justice agency
5 employment;

6 E. To persons engaged in research if:

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

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

12 (3) Neither original records nor identifying data are
13 removed from the facility or office that prepared the
14 records.

16 The commissioner and the person doing the research shall
17 preserve the anonymity of the person receiving services from
18 the department and may not disseminate data that refer to
19 that person by name or number or in any other way that might
20 lead to the person's identification; or

22 F. To persons who directly supervise or report on the
23 health, behavior or progress of a juvenile, to the
24 superintendent of a juvenile's school and the
25 superintendent's designees and to agencies that are or might
26 become responsible for the health or welfare of a juvenile
27 if the information is relevant to and disseminated for the
28 purpose of creating or maintaining an individualized plan
29 for the juvenile's rehabilitation, including reintegration
30 into the school.

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

48 2. Release of certain information to victims.
49 Notwithstanding subsection 1, upon the request of a person who
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2 was the victim of a crime for which a client was incarcerated, as
3 verified by the department or the prosecuting attorney, the
4 department shall disclose the following information to the victim:

5 A. Whether the client has been charged with committing any
6 crime while incarcerated and, if so, the crime with which
7 the client has been charged; and

8 B. Whether the client has been disciplined while
9 incarcerated and, if so, the offense for which the
10 disciplinary action was taken and the type of disciplinary
11 action taken.

12 3. Civil violation. A person who discloses information in
13 violation of this section commits a civil violation for which a
14 fine not to exceed \$1,000 may be adjudged.

15 4. Disclosure of confidential information. The disclosure
16 of confidential information as provided by this section is also
17 governed by Title 5, section 9057, subsection 6.

18 5. Disclosure of information. Nothing in this section
19 permits or requires the disclosure of information to the extent
20 it is designated confidential by another provision of law.

21 6. Assessment tools. Documents in the possession of the
22 department used to screen or assess clients, including, but not
23 limited to, questionnaires and test materials, are not public
24 records for purposes of Title 1, chapter 13, subchapter 1. The
25 department shall release these documents on request to any other
26 state agency if necessary to carry out the statutory functions of
27 that agency and to any committee or study commission established
28 by the Legislature with authority to examine issues related to
29 mental health.

30 **Sec. 11. 34-A MRSA §3003**, as amended by PL 2001, c. 452, §15,
31 is repealed.

32 **Sec. 12. 34-A MRSA §3036**, as amended by PL 1999, c. 583, §13,
33 is repealed.

34 **Sec. 13. 34-A MRSA §3036-A, sub-§10**, as enacted by PL 2001, c.
35 141, §2, is amended to read:

36 **10. Terminally ill prisoner.** With the consent of the
37 prisoner, the commissioner may permit a prisoner committed to the
38 department to be transferred from a correctional facility to
39 supervised community confinement without meeting the requirements
40 of subsection 2, paragraphs B and C if the facility's treating
41 physician has determined that the prisoner is terminally ill and
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2 that care outside the correctional facility for the remainder of
the prisoner's illness is medically necessary appropriate. The
4 prisoner shall live in a hospital or other appropriate care
facility, such as a nursing facility or residential care
6 facility, approved by the commissioner. As approved by the
commissioner, the prisoner may receive hospice services from an
8 entity licensed pursuant to Title 22, chapter 1681, subchapter 1
1. The commissioner may exempt a prisoner transferred to
10 supervised community confinement pursuant to this subsection from
any mandatory condition under subsection 3 that the commissioner
determines to be inapplicable.

12 **Sec. 14. 34-A MRSA §5404, sub-§2, ¶B,** as amended by PL 1995,
14 c. 502, Pt. F, §37, is further amended to read:

16 B. Arrest and return to a correctional facility persons
released from the correctional facility under section 3035
18 ~~or 3036~~ or transferred from the facility under section
3036-A; and

20 **Sec. 15. 34-A MRSA §5404, sub-§3, ¶B,** as amended by PL 1995,
22 c. 502, Pt. F, §38, is further amended to read:

24 B. Supervise persons released from a correctional facility
under section 3035 ~~or 3036~~ and supervise persons transferred
26 to supervised community confinement under section 3036-A if
the commissioner directs;

30 SUMMARY

32 This bill provides that, upon the request of the Department
of Corrections, an adult in the drug court is required to pay a
34 substance testing fee. This is similar to a provision that
applies to adult probationers under the Maine Revised Statutes,
36 Title 17-A, section 1204.

38 The bill also amends the supervised community confinement
program to allow release to a hospice when medically
40 appropriate. Present language is too restrictive, as it requires
hospice care to be medically necessary.

42 The bill also specifies that the sheriff is to directly
44 provide all jail time credits to the department. Currently,
post-sentencing jail time credits are directly provided by the
46 sheriff, but presentence jail time credits are provided by the
prosecutor, who receives this information from the sheriff and
48 relays the information to the correctional facility. This change
eliminates a step in the process and makes the flow of
50 information more efficient and timely.

2 The bill also replaces the Maine Revised Statutes, Title
34-A, section 3003 with Title 34-A, section 1216. This provision
4 applies to probationers as well as prisoners, so it does not
belong in the Part of the Title that covers only correctional
6 facilities. The language of the provision is not changed.

8 The bill deletes the Maine Revised Statutes, Title 34-A,
section 3036 pertaining to halfway houses; this section is
10 obsolete and unnecessary. The department has other ways of
providing this service.

12
14 The bill also fixes cross-references to reflect the sections
of law repealed by this bill.