

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1360

H.P. 943

House of Representatives, March 17, 2005

An Act To Improve the Management and Safety of State Correctional Facilities

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 BLANCHETTE of Bangor.
Cosponsored by Senator CLUKEY of Aroostook and
Representatives: CHURCHILL of Washburn, GERZOFSKY of Brunswick, GREELEY of
Levant, PLUMMER of Windham.

1
2 **Be it enacted by the People of the State of Maine as follows:**

3
4 **Sec. 1. 15 MRSA §2162**, as amended by PL 1975, c. 771, §160,
is further amended to read:

5 **§2162. Commutation to jail**

6
7 When a person is sentenced ~~to confinement in the State~~
8 ~~Prison~~ and committed to the custody of the Department of
9 Corrections, the Governor may, if ~~he deems the Governor considers~~
10 it consistent with the public interest and the welfare of the
11 ~~convict~~ prisoner, commute ~~said that prisoner's~~ sentence to
12 imprisonment in any county jail, there to be supported at the
13 charge of the State at an expense not exceeding the price paid
14 for the support of other prisoners in ~~said that~~ county jail.

15
16 **Sec. 2. 17-A MRSA §757-B** is enacted to read:

17 **§757-B. Trafficking of alcoholic beverages in adult correctional**
18 **facilities**

19
20 **1. A person is guilty of trafficking of an alcoholic**
21 **beverage in an adult correctional facility if:**

22
23 **A. That person intentionally conveys or attempts to convey**
24 **an alcoholic beverage to a person confined in an adult**
25 **correctional facility; or**

26
27 **B. That person is confined in an adult correctional**
28 **facility and the person intentionally makes, obtains or**
29 **possesses an alcoholic beverage.**

30
31 **2. As used in this section, "adult correctional facility"**
32 **means a county jail or correctional facility other than a**
33 **juvenile facility under the control of the Department of**
34 **Corrections.**

35
36 **3. Trafficking of an alcoholic beverage in an adult**
37 **correctional facility is a Class E crime.**

38
39 **Sec. 3. 17-A MRSA §760** is enacted to read:

40 **§760. Failure to report sexual contact with or sexual assault of**
41 **person in custody**

42
43 **1. A member of the staff of a hospital, prison or other**
44 **institution who knows that a person detained in that institution**
45 **is the victim of a crime under section 253, subsection 2,**
46 **paragraph E or section 255-A, subsection 1, paragraph I or J but**
47 **does not report that crime to an appropriate criminal justice**
48 **authority.**

1
2 agency is guilty of failure to report unlawful sexual contact
3 with or gross sexual assault of a person in custody.

4 2. Failure to report unlawful sexual contact with or gross
5 sexual assault of a person in custody is a Class E crime.

6
7 **Sec. 4. 17-A MRSA §1256, sub-§1**, as amended by PL 1999, c.
8 458, §1, is further amended to read:

9
10 1. Other provisions of this section notwithstanding, when a
11 person subject to an undischarged term of imprisonment is
12 convicted of a violation of section 752-A, 755 ~~or~~, 757, 757-A or
13 757-B or of any other crime against the person of a member of the
14 staff of the institution in which the convicted person was
15 imprisoned ~~or~~; of a violation of section 806 involving government
16 property in the institution in which the convicted person was
17 imprisoned or any other crime against government property in the
18 institution in which the convicted person was imprisoned; or of a
19 violation of section 207 involving bodily injury to another
20 person imprisoned in the institution in which the convicted
21 person was imprisoned or any other crime involving bodily injury
22 to another person imprisoned in the institution in which the
23 convicted person was imprisoned, or of an attempt to commit any
24 of the crimes mentioned in this subsection, the sentence is not
25 concurrent with the undischarged terms of imprisonment. The
26 court may order that the undischarged terms of imprisonment be
27 tolled and service of the nonconcurrent sentence commence
28 immediately and the court shall so order if any undischarged term
29 of imprisonment is a split sentence. No portion of the
30 nonconcurrent sentence may be suspended. All sentences that the
31 convicted person receives as a result of the crimes mentioned in
32 this subsection must be nonconcurrent with all other sentences.

33 **Sec. 5. 25 MRSA §1575, sub-§2-A**, as enacted by PL 2003, c.
34 393, §4, is amended to read:

35
36 **2-A. Person to collect biological sample.** A person
37 described in subsection 2, a corrections officer or other staff
38 member of a county jail or Department of Corrections facility, a
39 probation officer or a juvenile community corrections officer may
40 collect a biological sample that is not a blood sample.

41
42 **Sec. 6. 28-A MRSA §2083**, as enacted by PL 1987, c. 45, Pt. A,
43 §4, is repealed.

44
45 **Sec. 7. 34-A MRSA §1216, sub-§6**, as enacted by PL 2003, c.
46 205, §10, is amended to read:

47
48 **6. Assessment tools.** Documents in the possession of the
49 department used to screen or assess clients, including, but not
50

2 limited to, questionnaires and test materials, ~~are not public~~
3 ~~records for purposes of Title 1, chapter 13, subchapter 1.~~ The
4 must be kept confidential, except that the department shall
5 release these documents on request to any other state agency if
6 necessary to carry out the statutory functions of that agency and
7 to any committee or study commission established by the
8 Legislature with authority to examine issues related to mental
health criminal justice.

10 **Sec. 8. 34-A MRSA §3032, sub-§5, ¶A,** as amended by PL 1999, c.
583, §10, is further amended to read:

12 A. Punishment at all correctional facilities, except
14 juvenile correctional facilities, may consist of warnings,
16 loss of privileges, restitution, finer, labor at any lawful
work, confinement to a cell, segregation or a combination of
these.

18 **Sec. 9. 34-A MRSA §3032, sub-§5-B** is enacted to read:

20 **5-B. Fines.** The imposition of fines at adult correctional
22 facilities is subject to the following conditions.

24 A. When a fine is imposed at a facility, a prisoner who is
26 subject to that fine and who is able to generate money shall
pay 25% of that money to the facility where the fine was
imposed. The facility shall collect that money and apply it
28 to defray the cost of holding disciplinary hearings.

30 B. A prisoner who is transferred to another facility
32 remains liable for any fine authorized under this chapter.
The facility receiving the prisoner shall collect the fine
and transfer it to the facility where the fine was imposed.

34 C. A prisoner who is discharged from a facility remains
36 liable for any fine authorized under this chapter. If the
38 prisoner is returned to the custody of the department, any
40 facility in which the prisoner resides shall collect the
fine and ensure that it is used to defray costs as set out
in this chapter.

42 D. A fine is not authorized if its imposition would create
44 an excessive financial hardship, as determined by the
46 department, on the dependents of the prisoner. Any payments
48 made for the support of the dependents that are required by
the Department of Health and Human Services may not be used
for fine payments.

2 **Sec. 10. 34-A MRSA §3032, sub-§6**, as amended by PL 1991, c.
314, §39, is further amended to read:

4 **6. Impartial hearing.** If the punishment may affect the term
5 of commitment, sentence or parole eligibility or may involve
6 restitution, fines, labor at any lawful work or segregation, the
7 chief administrative officer of the facility shall, before
8 imposing punishment, provide an impartial hearing at which the
client has the following rights.

10 A. The client is entitled to be informed in writing of the
12 specific nature of the alleged misconduct.

14 B. The client is entitled to the right to be present at the
15 hearing, except that the client may be prevented from
16 attending or be removed if the client's behavior indicates
18 that the client is in danger of self-injury or a danger to
other persons or property.

20 C. The client is entitled to present evidence on the
client's behalf.

22 D. The client is entitled to call one or more witnesses,
24 which right may not be unreasonably withheld or restricted.

26 E. The client is entitled to question any witness who
28 testifies at the hearing, which right may not be
unreasonably withheld or restricted.

30 F. The client is entitled to be represented by counsel
32 substitute as prescribed in the rules.

34 G. A record must be maintained of all disciplinary
complaints, hearings, proceedings and dispositions.

36 H. The client is entitled to appeal the final disposition,
38 before imposition of punishment, to the chief administrative
officer of the facility.

40 I. If, at any stage of the proceedings, the client is
42 cleared of the charges in a complaint, or the complaint is
withdrawn, all documentation relating to the complaint must
44 be expunged.

46 **Sec. 11. 34-A MRSA §3036-A, sub-§2, ¶C**, as amended by PL 2003,
c. 711, Pt. A, §21 and affected by Pt. D, §2, is further amended
48 to read:

C. ~~Except as provided in paragraph C-1,~~ a A prisoner may

not be transferred to supervised community confinement unless the prisoner has no more than ~~one--year~~ 2 years remaining on the term of imprisonment or, in the case of a split sentence, on the unsuspended portion, after consideration of any deductions that the prisoner has received and retained under Title 17-A, section 1253.

Sec. 12. 34-A MRSA §3036-A, sub-§2, ¶C-1, as enacted by PL 2003, c. 711, Pt. A, §22 and affected by Pt. D, §2, is repealed.

Sec. 13. 34-A MRSA §3038, as amended by PL 1991, c. 314, §43, is repealed.

Sec. 14. 34-A MRSA §3039, sub-§1, as amended by PL 1991, c. 314, §45, is further amended to read:

1. Accounts. The ~~chief administrative officer~~ commissioner shall ~~promulgate~~ adopt rules for use of the clients' account. These rules must include a provision allowing a client to remove that client's money from the clients' account and place it in any type of investment outside the facility chosen by the client. The chief administrative officer shall keep a record of all money in the clients' account and is responsible for safekeeping of the money while the client is in the custody of the department and for the delivery of that money to the client upon the client's discharge.

Sec. 15. 34-A MRSA §3069, sub-§1, as amended by PL 2003, c. 482, Pt. B, §1, is further amended to read:

1. Involuntary. When an ~~inmate~~ prisoner of a correctional ~~or-detention~~ facility has been determined by a competent medical authority to require inpatient treatment for mental illness, the chief administrative officer of that facility shall make application in accordance with Title 34-B, section 3863.

A. Any person with respect to whom an application and certification under Title 34-B, section 3863 are made may be admitted to either state mental health institute.

B. Except as otherwise specifically provided in this section, Title 34-B, chapter 3, subchapter ~~IV~~ 4, Article ~~III~~ 3 is applicable to the person as if the admission of the person were applied for under Title 34-B, section 3863.

C. A copy of the document by which the person is held in the facility must accompany the application for admission.

D. If the sentence being served at the time of admission

1 has not expired or commitment has not been terminated in
2 accordance with law at the time the person is ready for
3 discharge from hospitalization, the person must be returned
4 by the appropriate officers of the correctional ~~ex-detention~~
5 facility.

6
7 E. Admission to a hospital under this section has no effect
8 upon a sentence then being served or a commitment then in
9 effect. The sentence continues to run and the commitment
10 remains in force, unless terminated in accordance with law.

11 **Sec. 16. 34-A MRSA §9887 is enacted to read:**

12 **§9887. Supervision fee**

13 The department may impose on a person accepted for
14 supervision under this compact a supervision fee of between \$10
15 and \$50 per month, as determined by the department, for the term
16 of supervision by the department. In determining the amount of
17 the fee, the department shall take into account the financial
18 resources of the person and the nature of the burden the payment
19 imposes. A request for transfer of supervision may not be denied
20 solely because the person is not able to pay the fee. When a
21 person fails to pay the supervision fee, the department may
22 request the person's return to the sending state unless the
23 failure to pay was not attributable to the person's willful
24 refusal to pay or to a failure on the person's part to make a
25 good faith effort to obtain the funds required for the payment.

26
27 **SUMMARY**

28 This bill proposes several changes to improve staff and
29 prisoner safety at correctional facilities. The bill authorizes
30 consecutive sentences for certain crimes committed within a state
31 correctional facility: trafficking in alcohol and tobacco and
32 assault against other prisoners. The bill requires correctional
33 staff to report sexual misconduct by other staff with a prisoner
34 or resident. Failure to do so is a Class E crime. The bill
35 amends the DNA collection statute to expand who is authorized to
36 collect DNA samples to any Department of Corrections or county
37 jail staffs who are trained to do so.

38 The bill also amends current law to change archaic and
39 inappropriate references.

40 The bill eliminates a provision referring to special nursing
41 rules as there are no such rules.

2 The bill increases the eligibility of prisoners for
3 supervised community confinement by allowing a transfer to the
4 program when a prisoner has 2 years remaining on the
5 incarceration portion of the sentence, instead of one year.

6 The bill also creates a supervision fee payment provision
7 for probationers and parolees transferred to Maine from other
8 states that is analogous to the supervision fee payment provision
9 for probationers placed under the supervision of the department
10 by Maine courts.

11 The bill allows the imposition of a fine as a punishment for
12 a prisoner committing a disciplinary offense.

13 The bill requires the Commissioner of Corrections, instead
14 of each facility's chief administrative officer, to adopt rules
15 for the prisoners' account.

16 Finally, the bill ensures that prisoners will not have
17 access to, and thus the ability to manipulate, documents used to
18 screen or assess prisoners.
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