

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 631

H.P. 445

House of Representatives, February 19, 2009

An Act To Amend the Laws Relating 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 BURNS of Whiting.
Cosponsored by Senator DAVIS of Cumberland and
Representatives: DAVIS of Sangerville, JOHNSON of Greenville, LEWIN of Eliot,
SAVIELLO of Wilton, SHAW of Standish, TILTON of Harrington, WHEELER of Kittery.

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

2 Sec. 1. 17-A MRSA §2, sub-§3-C is enacted to read:

3 3-C. Adult probation supervisor. "Adult probation supervisor" means any person
4 who:

5 A. Is an employee of the Department of Corrections;

6 B. Supervises adult probation officers; and

7 C. Is trained, qualified and authorized by the Commissioner of Corrections to use
8 deadly force.

9 Sec. 2. 17-A MRSA §2, sub-§17, as amended by PL 1989, c. 113, §2, is further
10 amended to read:

11 17. "Law enforcement officer" means any person who by virtue of public
12 employment is vested by law with a duty to maintain public order, to prosecute offenders,
13 to make arrests for crimes whether that duty extends to all crimes or is limited to specific
14 crimes, to perform probation functions or to perform intensive supervision functions or
15 who is an adult probation supervisor.

16 Sec. 3. 17-A MRSA §15, sub-§1, ¶A, as amended by PL 2007, c. 518, §4, is
17 further amended to read:

18 A. Any person who the officer has probable cause to believe has committed or is
19 committing:

20 (1) Murder;

21 (2) Any Class A, Class B or Class C crime;

22 (3) Assault while hunting;

23 (4) Any offense defined in chapter 45;

24 (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably
25 believes that the person may cause injury to others unless immediately arrested;

26 (5-A) Assault, criminal threatening, terrorizing, stalking, criminal mischief,
27 obstructing the report of a crime or injury or reckless conduct if the officer
28 reasonably believes that the person and the victim are family or household
29 members, as defined in Title 19-A, section 4002, subsection 4;

30 (5-B) Domestic violence assault, domestic violence criminal threatening,
31 domestic violence terrorizing, domestic violence stalking or domestic violence
32 reckless conduct;

33 (6) Theft as defined in section 357, when the value of the services is \$1,000 or
34 less if the officer reasonably believes that the person will not be apprehended
35 unless immediately arrested;

36 (7) Forgery, if the officer reasonably believes that the person will not be
37 apprehended unless immediately arrested;

- 1 (8) Negotiating a worthless instrument if the officer reasonably believes that the
- 2 person will not be apprehended unless immediately arrested;
- 3 (9) A violation of a condition of probation when requested by a probation officer
- 4 or juvenile community corrections officer;
- 5 (10) Violation of a condition of release in violation of Title 15, section 1026,
- 6 subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051,
- 7 subsection 2; and Title 15, section 1092;
- 8 (11) Theft involving a detention under Title 17, section 3521;
- 9 (12) Harassment, as set forth in section 506-A;
- 10 (13) Violation of a protection order, as specified in Title 5, section 4659,
- 11 subsection 2; Title 15, section 321, subsection 6; former Title 19, section 769,
- 12 subsection 2; former Title 19, section 770, subsection 5; Title 19-A, section 4011,
- 13 subsection 3; and Title 19-A, section 4012, subsection 5;
- 14 (14) A violation of a sex offender registration provision under Title 34-A,
- 15 chapter 15;
- 16 (15) A violation of a requirement of administrative release when requested by the
- 17 attorney for the State;
- 18 (16) A violation of a condition of supervised release for sex offenders when
- 19 requested by a probation officer; or
- 20 (17) A violation of a court-imposed deferment requirement of a deferred
- 21 disposition when requested by the attorney for the State; and
- 22 (18) A violation of a condition of release as provided in Title 15, section
- 23 3203-A, subsection 9;
- 24 (19) A violation of a condition of supervised community confinement granted
- 25 pursuant to Title 34-A, section 3036-A when requested by a probation officer;
- 26 (20) A violation of a condition of placement on community reintegration status
- 27 granted pursuant to Title 34-A, sections 3810 and 4112 when requested by a
- 28 juvenile community corrections officer; or
- 29 (21) A violation of a condition of furlough or other rehabilitative program
- 30 authorized under Title 34-A, section 3035 when requested by a probation officer
- 31 or juvenile community corrections officer; and

32 **Sec. 4. 17-A MRSA §1152, sub-§4**, as amended by PL 1981, c. 493, §101 and
 33 PL 2003, c. 689, Pt. B, §6, is further amended to read:

34 4. The provisions of this chapter shall do not deprive the court of any authority
 35 conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a
 36 person from office or impose any other civil penalty. An appropriate order exercising
 37 such authority may be included as part of the judgment of conviction. ~~Nor shall this~~ This
 38 chapter does not deprive the Department of Health and Human Services Corrections of
 39 any authority to grant furloughs and work releases or to transfer persons from one facility
 40 to another.

1 **Sec. 5. 17-A MRSA §1202, sub-§1-B**, as repealed and replaced by PL 2003, c.
2 657, §8, is amended to read:

3 **1-B.** Notwithstanding subsection 1, if the State pleads and proves that the
4 enumerated Class D or Class E crime was committed by the person against a family or
5 household member, and if the court orders the person to complete a certified batterers'
6 intervention program as defined in Title 19-A, section 4014, the person may be placed on
7 probation for a period not to exceed 2 years, except that the term of probation must be
8 terminated by the court when the probationer has served at least one year of probation,
9 has completed the certified batterers' intervention program, has paid in full any victim
10 restitution ordered and, from the time the period of probation commenced until the
11 motion for termination is heard, has met all other conditions of probation.

12 A. As used in this subsection, the following definitions apply.

13 (1) "Enumerated Class D or Class E crime" means any Class D crime in chapter
14 9, any Class D or Class E crime in chapter 11, the Class D crimes described in
15 sections 302 and 506-B and the Class D crimes described in sections 554, 555
16 and 758.

17 (2) "Family or household member" has the same meaning as in Title 19-A,
18 section 4002, subsection 4.

19 B. Termination under this subsection requires a judicial finding that the probationer
20 has served at least one year of probation, has successfully completed a certified
21 batterers' intervention program, has paid in full any victim restitution ordered and,
22 from the time the period of probation commenced until the motion for termination is
23 heard, has met all other conditions of probation.

24 **Sec. 6. 17-A MRSA §1204, sub-§1-A**, as amended by PL 2005, c. 389, §2, is
25 further amended to read:

26 **1-A.** The court shall attach as a condition of probation that the convicted person
27 pay, through the Department of Corrections, a supervision fee of between \$10 and \$50
28 per month, as determined by the court for the term of probation. The supervision fee is
29 \$10 per month unless the court sets a higher amount, not to exceed \$50 per month.
30 Notwithstanding the attachment of supervision fee conditions on more than one sentence,
31 a person on probation on concurrent sentences is required to pay only one supervision
32 fee. In determining the amount of the fee whether to set an amount higher than \$10 per
33 month, the court shall take into account the financial resources of the convicted person
34 and the nature of the burden its payment imposes. A person may not be sentenced to
35 imprisonment without probation solely for the reason the person is not able to pay the fee.
36 When a person on probation fails to pay the supervision fee, the court may revoke
37 probation as specified in section 1206, unless the person shows that failure to pay was not
38 attributable to a willful refusal to pay or to a failure on that person's part to make a good
39 faith effort to obtain the funds required for the payment. The court, if it determines that
40 revocation of probation is not warranted, shall issue a judgment for the total amount of
41 the fee and shall issue an order attaching a specified portion of money received by or
42 owed to the person on probation until the total amount of the fee has been paid. If the
43 person makes this showing, the court may allow additional time for payment within the

1 remaining period of probation or reduce the size of the fee to as low as \$10 per month,
2 but may not revoke the requirement to pay the fee unless the remaining period of
3 probation is 30 days or less.

4 **Sec. 7. 17-A MRSA §1256, sub-§1-A**, as enacted by PL 1985, c. 821, §14, is
5 amended to read:

6 **1-A.** Subsection 1 ~~shall apply~~ applies to prisoners on intensive supervision or
7 supervised community confinement pursuant to Title 34-A, section 3036-A. Other
8 ~~offenses committed by a prisoner on intensive supervision for which the sentence is to the~~
9 ~~Department of Corrections shall be governed by section 1266.~~

10 **Sec. 8. 17-A MRSA §1266**, as enacted by PL 1985, c. 821, §15, is repealed.

11 **Sec. 9. 25 MRSA §2801-B, sub-§1**, as amended by PL 2005, c. 519, Pt. XXX,
12 §3, is further amended to read:

13 **1. Exemption.** The training standards and requirements of section 2803-B do not
14 apply to a person defined by this chapter as a law enforcement officer who is:

15 A. An employee of the Department of Corrections with a duty to perform probation
16 functions or ~~to perform intensive supervision functions~~ who is an adult probation
17 supervisor as defined in Title 17-A, section 2, subsection 3-C or an investigative
18 officer as described in Title 34-A, section 3011;

19 B. An agent or a representative of the Department of Conservation, Bureau of Parks
20 and Lands whose law enforcement powers are limited to those specified in Title 12,
21 section 1806;

22 C. An agent or a representative of the Department of Conservation, Bureau of
23 Forestry whose law enforcement powers are limited to those specified by Title 12,
24 section 8901, subsection 3;

25 E. A harbor master;

26 F. A municipal shellfish conservation warden;

27 G. A security officer appointed by the Commissioner of Public Safety pursuant to
28 section 2908;

29 H. The State Fire Marshal;

30 J. A state judicial marshal or state judicial deputy marshal;

31 K. A contract officer appointed by the Commissioner of Public Safety pursuant to
32 Title 28-A, section 82-A; or

33 L. A transport officer.

34 This exemption does not include training requirements set out in this chapter that are
35 specific to the positions identified in this subsection or, in the case of an investigative
36 officer as described in Title 34-A, section 3011, training requirements set out in this
37 chapter other than those of section 2803-B.

1 **Sec. 10. 26 MRSA §962, sub-§6, ¶H**, as enacted by PL 1989, c. 654, §2 and
2 affected by §13, is amended to read:

3 H. Who is a prisoner employed by a public employer during the prisoner's term of
4 imprisonment, except for prisoners who are in a work release program or on intensive
5 supervision programs under Title 17-A, section 1261 or supervised community
6 confinement pursuant to Title 34-A, section 3036-A.

7 **Sec. 11. 26 MRSA §979-A, sub-§6, ¶K**, as amended by PL 1997, c. 773, §3 and
8 affected by §§7 and 8, is further amended to read:

9 K. Who is a prisoner employed by a public employer during the prisoner's term of
10 imprisonment, except for prisoners who are in a work release program or on intensive
11 supervision programs under Title 17-A, section 1261 or supervised community
12 confinement pursuant to Title 34-A, section 3036-A.

13 **Sec. 12. 28-A MRSA §2, sub-§13-A**, as enacted by PL 1993, c. 730, §8, is
14 amended to read:

15 **13-A. Law enforcement officer.** "Law enforcement officer" means any person who
16 by virtue of public employment is vested by law with a duty to maintain public order, to
17 prosecute offenders, to make arrests for crimes whether that duty extends to all crimes or
18 is limited to specific crimes, to perform probation functions and or to perform intensive
19 supervision functions or who is an adult probation supervisor as defined in Title 17-A,
20 section 2, subsection 3-C.

21 **Sec. 13. 34-A MRSA §1001, sub-§14**, as repealed and replaced by PL 1991, c.
22 314, §7, is amended to read:

23 **14. Prisoner.** "Prisoner" means an adult person sentenced and committed to,
24 transferred to or detained in the custody of the department, including, where the context
25 indicates, a person under intensive supervision or on supervised community confinement.

26 **Sec. 14. 34-A MRSA §1405, sub-§1**, as enacted by PL 2007, c. 653, Pt. A, §29,
27 is amended to read:

28 **1. Transfer.** The commissioner may transfer any adult inmate, pretrial whether
29 detained pending a trial or other court proceeding or sentenced, from one county jail to
30 another or between a county jail and a correctional facility:

31 **Sec. 15. 34-A MRSA §3011, sub-§1**, as amended by PL 2007, c. 102, §8, is
32 further amended to read:

33 **1. Exercise of law enforcement powers.** Investigative officers who are certified by
34 the Board of Trustees of the Maine Criminal Justice Academy as law enforcement
35 officers may exercise the powers of other law enforcement officers with respect to
36 offenses relating to the security or orderly management of a facility or community
37 program administered by the department, if authorized to exercise these powers by the
38 commissioner. Investigative officers may issue administrative subpoenas with respect to
39 offenses relating to the security or orderly management of a facility administered by the

1 department, if authorized to exercise these powers by the commissioner and by the
2 Attorney General or the Attorney General's designee. ~~Investigative officers may not~~
3 ~~exercise law enforcement or subpoena powers against other employees of the department.~~
4 These powers are in addition to any powers the officers may otherwise have as employees
5 of the department. Internal investigations of employees of the department must be
6 conducted pursuant to any applicable collective bargaining agreement.

7 **Sec. 16. 39-A MRSA §102, sub-§11, ¶E**, as enacted by PL 1991, c. 885, Pt. A,
8 §8 and affected by §§9 to 11, is amended to read:

9 E. "Employee" does not include any person who is a sentenced prisoner in actual
10 execution of a term of incarceration imposed in this State or any other jurisdiction for
11 a criminal offense, except in relation to compensable injuries suffered by the prisoner
12 during incarceration and while the prisoner is:

13 (1) A prisoner in a county jail under final sentence of 72 hours or less and is
14 assigned to work outside of the county jail;

15 (2) Employed by a private employer;

16 (3) Participating in a work release program;

17 (4) Sentenced to imprisonment with intensive supervision under Title 17-A,
18 section 1261; or

19 (5) Employed in a program established under a certification issued by the United
20 States Department of Justice under 18 United States Code, Section 1761; or

21 (6) Employed while in a supervised community confinement program pursuant
22 to Title 34-A, section 3036-A.

23 **Sec. 17. 39-A MRSA §203, sub-§1, ¶C**, as enacted by PL 1991, c. 885, Pt. A, §8
24 and affected by §§9 to 11, is amended to read:

25 C. Sentenced to imprisonment with intensive supervision under Title 17-A, section
26 1261; or

27 **Sec. 18. 39-A MRSA §203, sub-§1, ¶D**, as enacted by PL 1991, c. 885, Pt. A, §8
28 and affected by §§9 to 11, is amended to read:

29 D. Employed in a program established under a certification issued by the United
30 States Department of Justice under 18 United States Code, Section 1761; or

31 **Sec. 19. 39-A MRSA §203, sub-§1, ¶E** is enacted to read:

32 E. Employed while in a supervised community confinement program pursuant to
33 Title 34-A, section 3036-A.

34 SUMMARY

35 This bill makes changes to the laws relating to the Department of Corrections.

1 1. It adds adult probation supervisors to definitions of "law enforcement officer" for
2 the purposes of the Maine Criminal Code and the State's liquor laws.

3 2. It provides that pursuant to the Maine Criminal Code, a police officer may make a
4 warrantless arrest of a juvenile who violates a condition of release, as is presently
5 provided in the Maine Juvenile Code, and adds authority for police officers to arrest
6 without a warrant other persons who violate conditions of supervision by the Department
7 of Corrections.

8 3. It changes a reference from the Department of Health and Human Services to the
9 Department of Corrections.

10 4. It clarifies the provision requiring termination of probation for a person who has
11 completed a certified batterers' intervention program.

12 5. It sets a default monthly probation supervision fee of \$10 when a court fails to
13 specify an amount.

14 6. It exempts investigative officers of the Department of Corrections from certain
15 training standards and requirements.

16 7. It amends the provision permitting the Commissioner of Corrections to transfer
17 prisoners between facilities.

18 8. It eliminates the prohibition on the Department of Corrections' investigative
19 officers exercising power against other employees of the department.

20 9. It includes prisoners on supervised community confinement in the laws governing
21 multiple sentences of imprisonment.

22 10. It repeals the Maine Revised Statutes, Title 17-A, section 1266, which governs
23 the sentence for a crime committed by a prisoner on intensive supervision, because it is
24 no longer necessary due to changes in the language of Title 17-A, section 1256 since
25 section 1266 was enacted.

26 11. It allows prisoners who are in the community under the supervised community
27 confinement program to be able to collect workers' compensation benefits.