

# MAINE STATE LEGISLATURE

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Report C

**CRIMINAL JUSTICE AND PUBLIC SAFETY**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
124TH LEGISLATURE  
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "B" to H.P. 1139, L.D. 1611, Bill, "An Act To Ensure Humane Treatment for Special Management Prisoners"

Amend the bill by striking out all of section 1 and inserting the following:

'Sec. 1. 34-A MRSA §1406 is enacted to read:

**§1406. Minimum standards governing the humane treatment of special management prisoners**

The commissioner shall ensure that special management prisoners are treated in accordance with the minimum standards for humane treatment established in this section.

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Serious mental illness" means schizophrenia, bipolar disorder, schizoaffective disorder, major depression or any other psychiatric condition that is recognized by a statewide association of psychiatric physicians that would tend to cause a prisoner's emotional stability to deteriorate if confined in a special management unit for an extended period.

B. "Special management prisoner" means a prisoner housed in a special management unit.

C. "Special management unit" means a high-security unit within a prison facility that houses a prisoner assigned by the commissioner to a high-risk management status, an administration segregation status or a disciplinary segregation status.

2. Special management unit criteria for prisoners with serious mental illness. A prisoner determined to be suffering from a serious mental illness may not be confined in a special management unit. Prisoners confined in a special management unit must be evaluated by a licensed mental health professional in private within 48 hours of placement and at least every 7 days thereafter. Such evaluations must be conducted in person, not through a cell door, with audio privacy and must assess the current mental status and condition of the prisoner and the current risk of suicide or other self-harming

**COMMITTEE AMENDMENT**

1 behavior and include a review of the prisoner's inpatient and outpatient treatment history.  
2 A prisoner determined to suffer from a serious mental illness at the time of an evaluation  
3 must be removed from the special management unit within 7 days. If the prisoner is  
4 subsequently transferred to a psychiatric or mental health unit or a hospital, the  
5 commissioner shall ensure that the prisoner is held in conditions that do not violate this  
6 section.

7 **3. Limitation on confinement; rights to a hearing.** A prisoner may not remain  
8 confined in a special management unit for more than 45 consecutive calendar days unless  
9 it is determined by a hearing that within the previous 45 days the prisoner has committed  
10 or attempted to commit a sexual assault, an escape from confinement or an act of serious  
11 physical violence or that housing the prisoner in the general population of a correctional  
12 facility would pose an immediate and unacceptable risk to the safety of staff or other  
13 prisoners. The hearing must be conducted by a panel of at least 3 persons appointed by  
14 the commissioner, one of whom must be a clinician representing the mental health staff at  
15 the facility in which the prisoner is housed. At such hearings, the department has the  
16 burden of proof by a preponderance of the evidence. The following provisions apply to a  
17 hearing conducted under this subsection:

18 A. The commissioner shall provide written notice to the prisoner at least 72 hours  
19 before the hearing. That written notice must set forth the factual basis for the  
20 continued placement in the special management unit and must provide notice that the  
21 prisoner has the right to appear in person at the hearing, the right to submit evidence  
22 in the prisoner's defense, the right to call relevant witnesses and the right to be  
23 represented at the hearing by an attorney if secured and paid for by the prisoner;

24 B. The commissioner shall make an audiovisual recording of the hearing and shall  
25 maintain all records of the hearing, including the audiovisual record and all written  
26 records, until at least 120 days after the release of the prisoner from incarceration;

27 C. The panel conducting the hearing shall issue a written decision within 5 days after  
28 the hearing and provide a copy of that decision to the prisoner, including the reasons  
29 for the decision;

30 D. If the panel authorizes the commissioner to continue holding the prisoner for  
31 longer than 45 days in the special management unit based on a finding of one of the  
32 conditions in this subsection, the decision of the panel must include guidance to the  
33 prisoner as to what the prisoner must do to gain release from the special management  
34 unit and inform the prisoner that the panel must review its decision every 30 days to  
35 determine if the prisoner should continue to be housed in the special management  
36 unit; and

37 E. A prisoner may appeal a decision of the panel under paragraph C to the chief  
38 administrative officer after notice of the decision is received by the prisoner. The  
39 chief administrative officer shall respond in writing to an appeal within 7 days. A  
40 decision by the chief administrative officer on an appeal or a failure by the chief  
41 administrative officer to issue a decision within 7 days is a final agency action as  
42 defined in Title 5, section 8002, and the prisoner is entitled to judicial review of that  
43 decision under the provisions of Title 5, chapter 375, subchapter 7.

1 4. Other disciplinary restrictions. A special management prisoner's access to food,  
2 medical or sanitary facilities, mail or legal assistance may not be restricted.

3 5. Listing of special management prisoners. The commissioner shall maintain a  
4 current list of all special management prisoners that includes the date of confinement in  
5 the special management unit, the date of the last review, the date of the last mental health  
6 evaluation, the reasons for placement in the special management unit and, in cases when  
7 the prisoner has been housed in that unit for more than 60 days, a written statement of the  
8 criteria relied upon to support that extended confinement. The commissioner shall  
9 provide the board of visitors for each correctional facility appointed under section  
10 3001-A, the State Board of Corrections and the joint standing committee of the  
11 Legislature having jurisdiction over corrections matters with a copy of that list on a  
12 quarterly basis.

13 6. Annual review. The State Board of Corrections shall annually conduct a  
14 comprehensive review of the policies, standards and treatment of special management  
15 prisoners to determine the effectiveness of those policies and standards and the degree to  
16 which the treatment of special management prisoners complies with this section. The  
17 State Board of Corrections shall include its findings under this subsection in the annual  
18 report to the joint standing committee of the Legislature having jurisdiction over  
19 corrections matters required by section 3001-A.'

## 20 SUMMARY

21 This amendment is one of 2 committee minority amendments and establishes  
22 minimum standards for the humane treatment of special management prisoners of the  
23 Department of Corrections. As defined in this amendment, a "special management  
24 prisoner" is a prisoner assigned to disciplinary, high-risk or administrative segregation  
25 and confined in a special management unit. The amendment amends the definition of  
26 "severe mental illness" to mean schizophrenia, bipolar disorder, schizoaffective disorder,  
27 major depression or any other psychiatric condition that is recognized by a statewide  
28 association of psychiatric physicians that would tend to cause the prisoner's emotional  
29 stability to deteriorate if confined in a special management unit for an extended period.

30 The amendment amends the provision addressing special management unit criteria  
31 for persons with serious mental illness by adding the requirement that evaluations must  
32 be conducted with audio privacy.

33 The minimum standards established in the amendment include limiting a prisoner's  
34 confinement to a special management unit to 45 days unless it is determined at a hearing  
35 that within the previous 45 days the prisoner has committed or attempted to commit a  
36 sexual assault, an escape from confinement, an act of serious physical violence or that  
37 housing the prisoner in the general population of a correctional facility would pose an  
38 immediate and unacceptable risk to the safety of staff or other prisoners. At hearings, the  
39 department has the burden of proof by a preponderance of the evidence. The amendment  
40 prohibits the confinement of prisoners with serious mental illness to a special  
41 management unit and requires that a special management prisoner determined to be  
42 suffering from serious mental illness be removed from the special management unit  
43 within 7 days. The amendment strikes language that addresses corporal punishment and  
44 restrictions on transferring prisoners out of state.

1 The amendment also authorizes the calling of relevant witnesses and having an  
2 attorney at hearings, but requires that these be secured and paid for by the prisoner. The  
3 amendment requires panel review of a placement decision every 30 days instead of every  
4 7 days and specifies that appeals are made to the chief administrative officer of the  
5 facility and not to the Commissioner of Corrections. The amendment also clarifies that  
6 holding a prisoner for more than 45 days must be based on a finding as outlined in the  
7 Maine Revised Statutes, Title 34-A, section 1406, subsection 3.

8 The amendment also requires the Commissioner of Corrections to maintain a current  
9 list of all special management prisoners and, when the prisoner has been retained for  
10 more than 60 days in one or more of the units of the special management unit, to also  
11 retain a written statement of the criteria relied upon to support that extended confinement.  
12 The commissioner shall provide the boards of visitors, the State Board of Corrections and  
13 the joint standing committee of the Legislature having jurisdiction over corrections  
14 matters with a copy of that list on a quarterly basis.

15 The amendment further requires the State Board of Corrections to annually conduct a  
16 comprehensive review of the policies, standards and treatment of special management  
17 prisoners to determine the effectiveness of those policies and standards and the degree to  
18 which the treatment of special management prisoners complies with the law. The State  
19 Board of Corrections is required to include its findings in its annual report to the joint  
20 standing committee of the Legislature having jurisdiction over corrections matters.

21 The amendment maintains the requirement of the bill that the Commissioner of  
22 Corrections review the status of all special management prisoners in the State to  
23 determine whether prisoners confined to special management units should remain in  
24 those units and to ensure that prisoners held in special management units more than 45  
25 days receive a hearing. The commissioner is also required to review all policies in effect  
26 on the effective date of the bill relating to special management prisoners and update those  
27 policies as necessary to conform to the law.

FISCAL NOTE REQUIRED  
(See attached)



# 124th MAINE LEGISLATURE

LD 1611

LR 2289(03)

## An Act To Ensure Humane Treatment for Special Management Prisoners

Fiscal Note for Bill as Amended by Committee Amendment "B"

Committee: Criminal Justice and Public Safety

Fiscal Note Required: Yes

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### Fiscal Note

Current biennium cost increase - General Fund

#### Fiscal Detail and Notes

The Department of Corrections will require significant additional General Fund appropriations beginning in fiscal year 2010-11 for the additional costs at the Maine State Prison that result from this bill. Prohibiting a prisoner determined to be suffering from a serious mental illness from being confined in a special management unit will require the department to reassign these prisoners into 2 existing 56-bed units presently used for close security prisoners and necessitate the construction of a new close security housing unit at the Maine State Prison to house the inmates who are displaced. If the department were authorized to issue securities for the construction of a new pod, the debt service on \$12,600,000 is estimated to be approximately \$1,500,000 a year for 10 years. The additional staffing cost associated with the reassignment of prisoners to the existing units is estimated to be \$3,300,000 annually. The annual cost associated with staffing a new 56-bed housing unit is estimated to be \$2,600,000 per year.

This bill also expands a prisoner's right to a hearing which results in the need for additional Hearing Officer positions and additional Correctional Officer positions to escort prisoners to these hearings. The annual cost of these positions and hearing-related expenses is estimated to be \$975,000 annually. The Department of Corrections will also require funding for the one-time costs of additional audio and video equipment.

The timing of the General Fund appropriations required by the Department of Corrections will depend on how quickly the department will be able to reassign prisoners and the timing of separate legislation authorizing the issuance of securities to construct a new housing unit at the Maine State Prison. Therefore, no appropriations are made at this time.