

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1611

H.P. 1139

House of Representatives, December 23, 2009

An Act To Ensure Humane Treatment for Special Management Prisoners

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Received by the Clerk of the House on December 21, 2009. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative SCHATZ of Blue Hill.
Cosponsored by Senator MARRACHÉ of Kennebec and
Representatives: BERRY of Bowdoinham, HINCK of Portland, LAJOIE of Lewiston,
MITCHELL of the Penobscot Nation, Speaker PINGREE of North Haven, PIOTTI of Unity,
WAGNER of Lewiston, Senator: GERZOFKY of Cumberland.

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

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

3 **§1406. Minimum standards governing the humane treatment of special**
4 **management prisoners**

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

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

9 A. "Serious mental illness" means a substantial disorder of thought or mood that
10 significantly impairs judgment, behavior, capacity to recognize reality or ability to
11 cope with the ordinary demands of life. "Serious mental illness" includes, but is not
12 limited to, disorders that involve an individual's repeated attempt to self-harm,
13 disorders that induce psychiatric distress or other impairment to an individual
14 confined in segregated housing, and any illness defined as an Axis I psychotic or
15 mood disorder as defined in the Diagnostic and Statistical Manual of Mental
16 Disorders, 4th edition, published by the American Psychiatric Association.

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

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

22 **2. Special management unit criteria for prisoners with serious mental illness.** A
23 prisoner determined to be suffering from a serious mental illness may not be confined in a
24 special management unit. Prisoners confined in a special management unit must be
25 evaluated by a licensed mental health professional in private within 48 hours of
26 placement and at least every 7 days thereafter. Such evaluations must be conducted in
27 person, not through a cell door, and must assess the current mental status and condition of
28 the prisoner and the current risk of suicide or other self-harming behavior and include a
29 review of the prisoner's inpatient and outpatient treatment history. A prisoner determined
30 to suffer from a serious mental illness at the time of an evaluation must be removed from
31 the special management unit within 7 days. If the prisoner is subsequently transferred to a
32 psychiatric or mental health unit or a hospital, the commissioner shall ensure that the
33 prisoner is held in conditions that do not violate this section.

34 **3. Limitation on confinement; rights to a hearing.** A prisoner may not remain
35 confined in a special management unit for more than 45 consecutive calendar days unless
36 it is determined by a hearing that within the previous 45 days the prisoner has, while
37 incarcerated, committed or attempted to commit a sexual assault, an escape from
38 confinement or an act of violence. The hearing must be conducted by a panel of at least 3
39 persons appointed by the commissioner, one of whom must be a clinician representing the
40 mental health staff at the facility in which the prisoner is housed. At such hearings, the

1 department has the burden of proof. The following provisions apply to a hearing
2 conducted under this subsection:

3 A. The commissioner shall provide written notice to the prisoner at least 72 hours
4 before the hearing. That written notice must set forth the factual basis for the
5 continued placement in the special management unit and must provide notice that the
6 prisoner has the right to appear in person at the hearing, the right to submit evidence
7 in the prisoner's defense, the right to call relevant witnesses and the right to be
8 represented at the hearing by an attorney;

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

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

15 D. If the panel authorizes the commissioner to continue holding the prisoner for
16 longer than 45 days in the special management unit, the decision of the panel must
17 include guidance to the prisoner as to what the prisoner must do to gain release from
18 the special management unit and inform the prisoner that the panel must review its
19 decision every 7 days to determine if the prisoner should continue to be housed in the
20 special management unit; and

21 E. A prisoner may appeal a decision of the panel under paragraph C to the
22 commissioner after notice of the decision is received by the prisoner. The
23 commissioner shall respond in writing to an appeal within 7 days. A decision by the
24 commissioner on an appeal or a failure by the commissioner to issue a decision
25 within 7 days is a final agency action as defined in Title 5, section 8002, and the
26 prisoner is entitled to judicial review of that decision under the provisions of Title 5,
27 chapter 375, subchapter 7.

28 **4. Corporal punishment, physical restraints, chemical agents and forcible**
29 **extraction.** Corporal punishment of a prisoner in a special management unit is
30 prohibited. A prisoner may not be subjected to the use of chemical agents or forcible
31 extraction from the prisoner's cell unless an audiovisual record of that process is made
32 and the procedure is conducted in the presence of appropriate medical staff. The
33 audiovisual record of such procedures must be preserved until at least 120 days after the
34 release of the prisoner from incarceration. Instruments of physical restraint, including but
35 not limited to handcuffs, chains, leg shackles, restraint chairs and 4-point restraints, may
36 not be used on a special management prisoner.

37 **5. Other disciplinary restrictions.** A special management prisoner's access to food,
38 medical or sanitary facilities, mail or legal assistance may not be restricted for
39 disciplinary reasons.

40 **6. Listing of special management prisoners.** The commissioner shall maintain a
41 current list of all special management prisoners that includes the date of confinement in
42 the special management unit, the date of the last review, the reasons for placement in the
43 special management unit and, in cases when the prisoner has been housed in that unit for

1 more than 60 days, a written statement of the criteria relied upon to support that extended
2 confinement. The commissioner shall provide the board of visitors for each correctional
3 facility appointed under section 3001-A with a copy of that list on a quarterly basis.

4 7. Transfer to out-of-state facilities. To the extent allowed under an interstate
5 compact in effect at the time, the commissioner may not transfer a prisoner to an out-of-
6 state facility unless the administrator of that out-of-state facility has agreed in writing to
7 adhere to the provisions of this section with respect to the treatment of that prisoner. If
8 the commissioner determines that a prisoner transferred to an out-of-state facility is not
9 being treated in a manner consistent with this section, the commissioner shall take all
10 legal steps necessary to secure the return of that prisoner to a correctional facility in the
11 State.

12 8. Annual review. The board of visitors for each correctional facility appointed
13 under section 3001-A shall annually conduct a comprehensive review of the policies,
14 standards and treatment of special management prisoners to determine the effectiveness
15 of those policies and standards and the degree to which the treatment of special
16 management prisoners complies with this section. The board shall include its findings
17 under this subsection in the annual report to the joint standing committee of the
18 Legislature having jurisdiction over criminal justice and public safety matters required by
19 section 3001-A.

20 **Sec. 2. Review of current status of special management prisoners.** The
21 Commissioner of Corrections shall review the status of all special management prisoners
22 in the State within 45 days after the effective date of this Act to determine whether
23 prisoners confined to special management units should remain in those units and to
24 ensure that prisoners held in special management units more than 45 days receive a
25 hearing as provided in the Maine Revised Statutes, Title 34-A, section 1406. The
26 commissioner shall report the results of this evaluation to the joint standing committee of
27 the Legislature having jurisdiction over criminal justice and public safety matters no later
28 than January 15, 2011.

29 **Sec. 3. Review of existing policies.** The Commissioner of Corrections shall
30 review all policies of the Department of Corrections in effect on the effective date of this
31 Act relating to special management prisoners and update those policies as necessary to
32 conform to this Act.

33 SUMMARY

34 This bill establishes minimum standards for the humane treatment of special
35 management prisoners of the Department of Corrections. As defined in this bill, a
36 "special management prisoner" is a prisoner assigned to one of several high-risk
37 categories and confined in a secure special management unit.

38 The minimum standards established in this bill include limiting a prisoner's
39 confinement to a special management unit to 45 days unless it is determined at a hearing
40 that the prisoner has committed or attempted to commit a sexual assault, an escape from
41 confinement or an act of violence within the previous 45 days. The bill also prohibits the

1 confinement of prisoners with serious mental illness to a special management unit and
2 requires that a special management prisoner determined to be suffering from serious
3 mental illness be removed from the special management unit within 7 days. The bill also
4 prohibits corporal punishment of special management prisoners and the use of chemical
5 agents or instruments of physical restraint on special management prisoners. The bill also
6 prohibits the Commissioner of Corrections, to the extent permitted by an interstate
7 compact in effect at the time, from transferring a prisoner to an out-of-state facility unless
8 the administrator of that out-of-state facility has agreed in writing to adhere to the
9 provisions of this section with respect to the treatment of that prisoner, and requires the
10 commissioner to return that prisoner to Maine if those standards are not met.

11 The bill also requires the Commissioner of Corrections to maintain a current list of all
12 special management prisoners and requires the board of visitors of each correctional
13 facility to annually conduct a comprehensive review of the policies, standards and
14 treatment of special management prisoners to determine the effectiveness of those
15 policies and standards and the degree to which the treatment of special management
16 prisoners complies with the law. The board is required to include its findings in its
17 annual report to the joint standing committee of the Legislature having jurisdiction over
18 criminal justice and public safety matters.

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