

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 186

S.P. 61

In Senate, January 27, 2015

An Act To Reverse Jail Consolidation

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in black ink, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator DAVIS of Piscataquis.
Cosponsored by Representative BLACK of Wilton and
Senators: SAVIELLO of Franklin, WHITTEMORE of Somerset, Representatives:
BUCKLAND of Farmington, GILBERT of Jay, HEAD of Bethel, McCABE of Skowhegan,
SKOLFIELD of Weld, STETKIS of Canaan.

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

2 **Sec. 1. 1 MRSA §402, sub-§3, ¶Q**, as amended by PL 2013, c. 339, §1, is further
3 amended to read:

4 Q. Security plans, staffing plans, security procedures, architectural drawings or risk
5 assessments prepared for emergency events that are prepared for or by or kept in the
6 custody of the Department of Corrections or a county jail if there is a reasonable
7 possibility that public release or inspection of the records would endanger the life or
8 physical safety of any individual or disclose security plans and procedures not
9 generally known by the general public. Information contained in records covered by
10 this paragraph may be disclosed to state and county officials if necessary to carry out
11 the duties of the officials, or the Department of Corrections ~~or members of the State~~
12 ~~Board of Corrections~~ under conditions that protect the information from further
13 disclosure;

14 **Sec. 2. 4 MRSA §1057, sub-§3-A**, as amended by PL 2013, c. 598, §1, is
15 repealed.

16 **Sec. 3. 5 MRSA §1591, sub-§4**, as amended by PL 2013, c. 598, §2, is repealed.

17 **Sec. 4. 5 MRSA §12004-G, sub-§6-C**, as enacted by PL 2007, c. 653, Pt. A, §3,
18 is repealed.

19 **Sec. 5. 14 MRSA §5545, 2nd ¶**, as amended by PL 2007, c. 653, Pt. A, §4, is
20 further amended to read:

21 Whenever, under this section or under any other section in this chapter, a court issues
22 a writ of habeas corpus ordering before it a prisoner confined in any penal or correctional
23 institution under the control of the Department of Health and Human Services or the
24 Department of Corrections, or confined in any county jail, its order as to the
25 transportation of the prisoner to and from the court must be directed to the sheriff of the
26 county in which the court is located. It is the responsibility of the sheriff or any one or
27 more of the sheriff's authorized deputies pursuant to any such order to safely transport a
28 prisoner to and from the court and to provide safe and secure custody of the prisoner
29 during the proceedings, as directed by the court. At the time of removal of a prisoner
30 from an institution, the transporting officer shall leave with the head of the institution an
31 attested copy of the order of the court, and upon return of the prisoner shall note that
32 return on the copy. This paragraph as it relates to the responsibility for transportation is
33 applicable to transfers from the county jail to any other county jail or to a state
34 correctional facility under Title ~~34-A~~ 30-A, section ~~4405~~ 1656.

35 **Sec. 6. 30-A MRSA §101, sub-§6-B**, as enacted by PL 2007, c. 653, Pt. A, §5, is
36 repealed.

37 **Sec. 7. 30-A MRSA §406**, as amended by PL 2011, c. 374, §§1 to 3 and corrected
38 by RR 2011, c. 1, §46, is repealed.

1 **Sec. 8. 30-A MRSA §701, sub-§2**, as repealed and replaced by PL 2009, c. 415,
2 Pt. A, §14, is repealed and the following enacted in its place:

3 **2. Preparation of estimates.** In order to assess a county tax, the county
4 commissioners, prior to November 7th in each year, shall prepare estimates of the sums
5 necessary to pay the expenses that have accrued or may probably accrue for the coming
6 year, including the building and repairing of jails, courthouses and appurtenances, with
7 the debts owed by their counties.

8 The estimates must be drawn so as to authorize the appropriations to be made to each
9 department or agency of the county government for the year. The estimates must provide
10 specific amounts for personal services, contractual services, commodities, debt service
11 and capital expenditures.

12 **Sec. 9. 30-A MRSA §701, sub-§2-A**, as amended by PL 2013, c. 598, §3, is
13 repealed.

14 **Sec. 10. 30-A MRSA §701, sub-§2-B**, as enacted by PL 2007, c. 653, Pt. A, §9,
15 is repealed.

16 **Sec. 11. 30-A MRSA §706-A, sub-§1**, as amended by PL 2007, c. 653, Pt. A,
17 §10, is further amended to read:

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

20 A. "Average real personal income growth" has the same meaning as under Title 5,
21 section 1531, subsection 2.

22 B. "County assessment" means: total annual county appropriations reduced by all
23 resources available to fund those appropriations other than the county tax.

24 ~~(1) For the tax year of any county that began prior to January 1, 2009, total~~
25 ~~annual county appropriations reduced by all resources available to fund those~~
26 ~~appropriations other than the county tax; or~~

27 ~~(2) For the tax year of any county that begins on or after January 1, 2009, total~~
28 ~~annual county appropriations for noncorrectional related services as established~~
29 ~~in section 701, reduced by all resources available to fund those appropriations~~
30 ~~other than the county tax.~~

31 C. "Forecasted inflation" has the same meaning as under Title 5, section 1531,
32 subsection 6.

33 D. "Property growth factor" means the percentage equivalent to a fraction,
34 established by a county, whose denominator is the total valuation of all
35 municipalities, plantations and unorganized territory in the county, and whose
36 numerator is the amount of increase in the assessed valuation of any real or personal
37 property in those jurisdictions that became subject to taxation for the first time, or
38 taxed as a separate parcel for the first time for the most recent property tax year for
39 which information is available, or that has had an increase in its assessed valuation
40 over the prior year's valuation as a result of improvements to or expansion of the

1 property. ~~The State Tax Assessor shall provide to the counties forms and a~~
2 ~~methodology for the calculation of the property growth factor, and the counties shall~~
3 ~~use those forms and the methodology to establish the property growth factor.~~

4 E. "State and local tax burden" has the same meaning as under Title 5, section 1531,
5 subsection 9.

6 **Sec. 12. 30-A MRSA §709**, as amended by PL 2011, c. 374, §4, is repealed.

7 **Sec. 13. 30-A MRSA §710**, as amended by PL 2013, c. 598, §§4 to 6, is repealed.

8 **Sec. 14. 30-A MRSA §932, sub-§3**, as amended by PL 2009, c. 391, §4, is
9 repealed.

10 **Sec. 15. 30-A MRSA §1557-B** is enacted to read:

11 **§1557-B. Transfer from jails**

12 **1. Transfer.** A sheriff may transfer a prisoner serving a sentence in a county jail
13 from one jail to another to serve any part of that sentence upon the request of the sheriff
14 of the sending jail and the approval of the sheriff of the receiving jail. A sheriff may
15 transfer a prisoner serving a sentence in a county jail to the Department of Corrections to
16 serve any part of that sentence upon the request of the sheriff and the approval of the
17 Commissioner of Corrections.

18 **2. Transfer cost.** The county of the sending jail shall pay the cost of the transfer or
19 return of the prisoner.

20 **3. Reimbursement.** The county responsible for the support of a prisoner transferred
21 under this section while the prisoner was incarcerated in the county jail shall pay, directly
22 to the receiving county jail or the Department of Corrections upon the request of the
23 sheriff of the receiving jail or the department, an amount computed at a per diem per
24 capita rate established by the receiving county jail or the department. The county also
25 shall reimburse the receiving county jail or the department for any costs incurred in the
26 provision of extraordinary medical or surgical treatment to the person transferred. The
27 payment amount provided for in this section may be adjusted or dispensed with upon
28 terms mutually agreeable to the sheriff of the sending jail and the sheriff of the receiving
29 jail or the department if the sending jail houses any prisoners for the receiving jail or the
30 department.

31 **4. Transferee subject to rules.** A person transferred under this section is subject to
32 the general rules of the facility to which the person is transferred, except that:

33 A. The term of the original sentence remains the same unless altered by the court;

34 B. The person becomes eligible for meritorious good time as provided in Title 17-A,
35 section 1253 for a person sentenced to imprisonment in a county jail;

36 C. The person becomes eligible for release and discharge as provided in Title 17-A,
37 section 1254 for a person sentenced to imprisonment in a county jail;

1 D. The person is entitled to have the time served in the facility under this section
2 deducted from the sentence; and

3 E. A person transferred under this section becomes eligible for furloughs, work or
4 other release programs, participation in public works and charitable projects and
5 home-release monitoring as authorized by sections 1556, 1605, 1606 and 1659-A and
6 may apply pursuant to the rules governing the sending jail.

7 **5. Return of prisoner.** A prisoner transferred pursuant to this section must be
8 returned to the sending jail upon the request of the sheriff of the sending jail, the sheriff
9 of the receiving jail or the Commissioner of Corrections.

10 **6. Commissioner of Corrections to determine temporary housing assignments.**
11 If a county that does not have a jail or has a jail that is not fully certified is unable to
12 locate space in any other county facility for an adult or juvenile, that county may contact
13 the Commissioner of Corrections for approval to obtain temporary housing in a
14 correctional or detention facility operated by the Department of Corrections. The sending
15 county shall contact each other county facility in a continuing effort to locate placement
16 in a county facility. When the sending county locates available space in a county facility,
17 the sheriff of the sending county shall transfer the person from the department's
18 correctional or detention facility and place the person in the county facility.

19 **Sec. 16. 30-A MRSA §1558**, as repealed by PL 2007, c. 653, Pt. A, §15, is
20 reenacted to read:

21 **§1558. Transfer from state correctional facilities**

22 The sheriffs may accept custody of prisoners transferred to their jail from state
23 correctional facilities under Title 34-A, section 3063.

24 **Sec. 17. 30-A MRSA §1656**, as repealed by PL 2007, c. 653, Pt. A, §16, is
25 reenacted to read:

26 **§1656. Transfer of prisoners when jail unfit or insecure**

27 **1. Transfer of prisoners when jail unfit or insecure.** Whenever complaint on oath
28 is made to a Justice of the Superior Court that a prisoner or prisoners should be removed
29 from a jail to another jail or to the Department of Corrections because that jail is unfit for
30 occupation or is insufficient for the secure keeping of a person charged with a crime and
31 committed to await trial or awaiting sentencing, the Justice of the Superior Court shall:

32 A. Schedule the time and place for a hearing on this complaint;

33 B. Have not less than 3 days' notice of that hearing given to the sheriff or sheriffs of
34 the county jail or jails involved and, if transfer to the Department of Corrections is
35 anticipated, to the Commissioner of Corrections;

36 C. Order removal, at the expense of the sending county, of the prisoner or prisoners
37 to the Department of Corrections pending hearing, as long as the Commissioner of
38 Corrections and the sending sheriff agree; and

39 D. Conduct a hearing and if the matter complained of is found true;

1 (1) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of
2 the sending county, to any jail; or

3 (2) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of
4 the sending county, to the Department of Corrections.

5 A warrant for transfer may be issued only when the Justice of the Superior Court
6 finds that the receiving jail or the Department of Corrections is able to resolve the
7 problem causing the need to transfer, the nature of the offense committed or alleged
8 to have been committed by the prisoner is so severe that it requires transfer and the
9 security of the sending facility is inadequate to handle the problem.

10 **2. Emergency.** In the event of an emergency, regardless of whether a complaint on
11 oath has been made to a Justice of the Superior Court, the sheriff, with the agreement of
12 the Commissioner of Corrections, may immediately, at the expense of the sending
13 county, remove a person charged with a crime and committed to await trial or awaiting
14 sentencing from the county jail to the Department of Corrections. If removal is made
15 under this section, a complaint on oath must be made to a Justice of the Superior Court
16 within 24 hours, excluding Saturdays, Sundays and legal holidays, and a hearing must be
17 conducted in accordance with the requirements in subsection 1, paragraph D.

18 **3. Transfer of prisoners when jail unfit due to casualty.** If by fire or other
19 casualty any jail is destroyed or rendered unfit for use, any Justice of the Superior Court
20 may, upon being notified by the district attorney of the county where the jail was or is
21 located, issue an order to the sheriff and the deputies and constables of that county to
22 have all prisoners who might be liable to imprisonment in that county imprisoned in the
23 jail of some adjoining county or in any other place of confinement. The order must be
24 printed in the newspapers having general circulation in that county.

25 **4. Reimbursement for transferred prisoners.** The county responsible for the
26 support of the person transferred under this section while incarcerated in the county jail
27 shall pay directly to the receiving county jail or the Department of Corrections upon the
28 request of the receiving sheriff or the department an amount computed at a per diem per
29 capita rate established by the receiving county jail or the department. The county shall
30 also reimburse the receiving county jail or the department for any costs incurred in the
31 provision of extraordinary medical or surgical treatment to the person transferred.

32 **5. Review of information prior to transfer.** If a prisoner is transferred to the
33 Department of Corrections, the Commissioner of Corrections or the commissioner's
34 designee shall review all relevant information, including any available mental health
35 information, prior to determining the prisoner's initial place of confinement.

36 **Sec. 18. 30-A MRSA §1659-A, first ¶,** as enacted by PL 2009, c. 391, §6, is
37 amended to read:

38 The sheriff of each county shall establish a program to permit certain inmates to serve
39 a portion of their sentence of imprisonment in community confinement monitored by the
40 county or a contract agency or another county or its contract agency. The county may
41 contract only with a community confinement monitoring agency approved by the ~~State~~
42 ~~Board~~ Department of Corrections.

1 **Sec. 19. 30-A MRSA §1659-A, sub-§2, ¶D**, as enacted by PL 2009, c. 391, §6,
2 is amended to read:

3 D. The inmate has a verified security classification level of "medium" or "minimum"
4 and scores "moderate" or "less" on a validated risk assessment tool as defined by the
5 ~~State Board~~ Department of Corrections;

6 **Sec. 20. 30-A MRSA §1659-A, sub-§§6 and 7**, as enacted by PL 2009, c. 391,
7 §6, are amended to read:

8 **6. Minimum standards supervision of inmates in the community confinement**
9 **monitoring program.** The ~~State Board~~ Department of Corrections shall establish
10 minimum policy standards for the monitoring of inmates in the community confinement
11 monitoring program.

12 **7. Program funding.** Funds collected pursuant to this section must be forwarded to
13 an account designated by the ~~State Board~~ Department of Corrections for the purpose of
14 supporting pretrial, diversion or reentry activities. Community confinement monitoring
15 program funds must be accounted for by the county through the normal budget process.

16 **Sec. 21. 30-A MRSA §1671, sub-§1**, as amended by PL 2007, c. 653, Pt. A, §17,
17 is further amended to read:

18 **1. Establishment.** Each county, or each county working jointly with another county
19 or other counties or with the Department of Corrections, may establish a local criminal
20 justice planning committee, referred to in this subchapter as "the committee." Only a
21 county that establishes or participates as a member of a criminal justice planning
22 committee may apply for funds from the Community Corrections Incentive Fund
23 distributed pursuant to Title 34-A, section 1210-D.

24 **Sec. 22. 30-A MRSA §1671, sub-§3, ¶A**, as amended by PL 2007, c. 653, Pt. A,
25 §18, is repealed.

26 **Sec. 23. 30-A MRSA §1671, sub-§5**, as repealed by PL 2007, c. 653, Pt. A, §20,
27 is reenacted to read:

28 **5. Collaboration.** Regardless of how a criminal justice planning committee is
29 established pursuant to subsection 1, a county may collaborate with another county or
30 counties with which it has not formed a committee to work together to seek grants or
31 establish community corrections programs or initiatives.

32 **Sec. 24. 34-A MRSA §1210-D** is enacted to read:

33 **§1210-D. Community Corrections Incentive Fund**

34 There is established the nonlapsing Community Corrections Incentive Fund. The
35 department shall approve applications and award and administer to counties competitive
36 grants from the fund. Grants must be used for initiatives to expand community
37 corrections, regional programs and other efforts to improve the efficiency and
38 effectiveness of the correctional system. Awards must be made in correctional areas that

1 include but are not limited to pretrial diversion, pretrial release, transition, specialty jails,
2 regional cooperation and deferred disposition programs. Grants must also be awarded
3 based on considerations of improved efficiency, offender and court docket reduction,
4 consolidation of resources, reduced recidivism and improved methods for the delivery of
5 services. When applicable, grant applications and awards must be based on established
6 evidence-based correctional practices. Only a county that establishes or participates as a
7 member of a criminal justice planning committee under Title 30-A, section 1671 may
8 apply for grants distributed pursuant to this section.

9 **Sec. 25. 34-A MRSA §1210-E** is enacted to read:

10 **§1210-E. Community Corrections Fund and County Jail Prisoner Support Fund**

11 **1. Establishment of Community Corrections Fund.** The Community Corrections
12 Fund is established for the purpose of providing state funding for establishing and
13 maintaining community corrections. Notwithstanding any provision of law to the
14 contrary, at least \$12,202,104 in state funding must be appropriated annually. For
15 purposes of this subsection, "community corrections" means the delivery of correctional
16 services for adults in the least restrictive manner that ensures the public safety by the
17 county or for the county under contract with a public or private entity. "Community
18 corrections" includes, but is not limited to, preventive or diversionary correctional
19 programs, pretrial release or conditional release programs, alternative sentencing or
20 housing programs, electronic monitoring, residential treatment and halfway house
21 programs, community correctional centers and temporary release programs from a facility
22 for the detention or confinement of persons convicted of crimes. Twenty percent of the
23 funds collected from surcharges under Title 4, section 1057 that are appropriated pursuant
24 to subsection 3 must be dedicated to the purpose of community corrections and deposited
25 in the Community Corrections Fund.

26 **2. Establishment of County Jail Prisoner Support Fund.** The County Jail
27 Prisoner Support Fund is established for the purpose of providing state funding for a
28 portion of the counties' costs of the support of prisoners detained or sentenced to county
29 jails. Eighty percent of the funds collected from surcharges under Title 4, section 1057
30 that are appropriated pursuant to subsection 3 must be dedicated to the purpose of
31 subsidizing the counties' costs of the support of prisoners detained or sentenced to county
32 jails and deposited in the County Jail Prisoner Support Fund.

33 **3. Distribution.** Beginning October 1, 2015 and annually thereafter, the department
34 shall distribute to the counties amounts dedicated to the Community Corrections Fund
35 under subsection 1 and to the County Jail Prisoner Support Fund under subsection 2. The
36 department may distribute amounts to each county based on each county's percentage of
37 statewide jail inmate days, which must be calculated for the last fiscal year for which data
38 is available.

39 **4. Cost-of-living adjustment for equitable distribution.** In addition to funds
40 received pursuant to subsection 3, a 3% cost-of-living adjustment on the annual
41 appropriation for the community corrections county jail prisoner support funds must be
42 dedicated to the County Jail Prisoner Support Fund until each county has achieved the
43 appropriate subsidy in this fund based on its percentage of statewide jail inmate days.

1 Once equity has been achieved, the cost-of-living adjustment must be distributed between
2 the Community Corrections Fund and County Jail Prisoner Support Fund pursuant to
3 subsections 1 and 2.

4 **5. County community corrections fund.** Each county treasurer shall place the
5 funds received from the department pursuant to subsection 1 into a separate community
6 fund. A county may use funds placed in this account only for community corrections as
7 defined in subsection 1.

8 Before distributing to a county that county's entire distribution from the collection of
9 surcharges pursuant to Title 4, section 1057, the department shall require that county to
10 submit appropriate documentation verifying that the county expended 20% of its prior
11 distribution for the purpose of community corrections as defined in subsection 1. If a
12 county fails to submit appropriate documentation verifying that the county expended 20%
13 of its prior distribution for the purpose of community corrections, the department shall
14 distribute to that county only 80% of its distribution. The department shall distribute the
15 20% not distributed to that county to all other counties that submit appropriate
16 documentation verifying compliance with the 20% expenditure requirement for the
17 purpose of community corrections. The department shall distribute these funds to those
18 qualifying counties in an amount equal to each county's percent distribution pursuant to
19 subsection 3.

20 **6. Surcharge imposed.** In addition to the 14% surcharge collected pursuant to Title
21 4, section 1057, an additional 1% surcharge must be added to every fine, forfeiture or
22 penalty imposed by any court in this State, which for the purposes of collection and
23 collection procedures is considered a part of the fine, forfeiture or penalty. All funds
24 collected pursuant to this subsection are nonlapsing and must be deposited monthly in the
25 County Jail Prisoner Support Fund under subsection 2 and the Community Corrections
26 Fund under subsection 1.

27 **Sec. 26.** 34-A MRSA §1404, as amended by PL 2013, c. 598, §7, is repealed.

28 **Sec. 27.** 34-A MRSA §1405, as amended by PL 2009, c. 142, §15 and c. 391,
29 §10, is repealed.

30 **Sec. 28.** 34-A MRSA c. 1, sub-c. 5, as amended, is repealed.

31 **Sec. 29.** 34-A MRSA §3063, as repealed by PL 2007, c. 653, Pt. A, §31, is
32 reenacted to read:

33 **§3063. Transfer to jails**

34 **1. Transfer of prisoner.** The commissioner may transfer a prisoner serving a
35 sentence in a correctional facility to a county jail, upon the request of the chief
36 administrative officer and the approval of the sheriff of the jail.

37 **2. Cost of transfer.** The department shall pay the cost of the transfer or the return of
38 the prisoner.

1 **3. Reimbursement.** Upon the request of the sheriff of the jail receiving a prisoner
2 pursuant to this section, the department shall pay directly to the jail an amount computed
3 at a per diem per capita rate established by the jail. The department shall reimburse the
4 jail for costs incurred in the provision of extraordinary medical or surgical treatment to
5 the person transferred. The payment amount provided for in this section may be adjusted
6 or dispensed with on terms mutually agreeable to the department and the sheriff, if the
7 department houses any prisoners for the jail.

8 **4. Transferee subject to rules.** A person transferred under this section is subject to
9 the general rules of the facility to which the person is transferred, except that:

10 A. The term of the original sentence remains the same unless altered by the court;

11 B. The person becomes eligible for meritorious good time as provided in Title 17-A,
12 section 1253 for a person committed to the department;

13 C. The person becomes eligible for release and discharge as provided in Title 17-A,
14 section 1254 for a person committed to the department;

15 D. The person is entitled to have the time served in the jail under this section
16 deducted from the sentence; and

17 E. A person transferred under this section becomes eligible for furloughs, work or
18 other release programs, and supervised community confinement as authorized by
19 sections 3035 and 3036-A and may apply pursuant to the rules governing the
20 correctional facility from which the prisoner was transferred.

21 **5. Return of prisoner.** A prisoner transferred pursuant to this section must be
22 returned to the department upon the request of the commissioner or the sheriff.

23 **Sec. 30. 34-A MRSA §3063-B** is enacted to read:

24 **§3063-B. Transfer from jails**

25 The commissioner may accept custody of persons transferred to the department from
26 county jails under Title 30-A, section 1557-B.

27 **SUMMARY**

28 Public Law 2007, chapter 653, the so-called jail consolidation law, enacted changes
29 to the correctional laws, including creating a State Board of Corrections, for the purpose
30 of developing and implementing a unified correctional system. The public law
31 established a cap on tax assessments for correctional services for each county based on
32 the fiscal year 2007-08 county tax assessment for correctional-related expenditures and
33 prohibited the counties from collecting taxes from the municipalities for the purpose of
34 retiring any correctional services debt issued after July 1, 2008.

35 This bill repeals the changes that were made by Public Law 2007, chapter 653,
36 eliminating the State Board of Corrections and all of its duties, and returns the law to the
37 form it was in prior to jail consolidation. This bill requires that the State continue to

1 provide funding to the counties in the same amount that it did in fiscal year 2014-15,
2 \$12,202,104.