

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND ELEVENTH LEGISLATURE

FIRST REGULAR SESSION
December 1, 1982 to June 24, 1983
Chapters 453-End

AND AT THE
FIRST SPECIAL SESSION
September 6, 1983 to September 7, 1983
Chapters 583-588

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J.S. McCarthy Co., Inc.
Augusta, Maine
1983

PUBLIC LAWS
OF THE
STATE OF MAINE
AS PASSED AT THE
FIRST REGULAR SESSION
CONTINUED
and
FIRST SPECIAL SESSION
of the
ONE HUNDRED AND ELEVENTH LEGISLATURE
1983

The commission may accept funds from any agency of the United States.

Effective September 23, 1983.

CHAPTER 459

H.P. 583 - L.D. 832

AN ACT to Recodify the Statutes
Relating to Corrections and Mental Health
and Mental Retardation.

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

Sec. 1. 15 MRSA c. 409, as amended, is repealed.

Sec. 2. 22 MRSA c. 404 is enacted to read:

CHAPTER 404

PRIVATE MENTAL HOSPITALS

§1781. License; visitation; penalty

The Department of Human Services may license any suitable person to establish and keep a private hospital or private house for the reception and treatment of patients who are mentally deranged. The hospital or private house shall be subject to visitation by the department or any member thereof.

Whoever establishes or keeps the private hospital or private house without a license, or after revocation or during suspension of the license, shall be fined not more than \$500.

§1782. Visitation

Each of the licensed hospitals or houses shall be visited at least once a year, and oftener if the Commissioner of Human Services so directs, by a member of the Department of Human Services, who shall carefully inspect every part of the hospital or house visited with reference to its cleanliness and sanitary conditions and who shall make a report to the department with such recommendations to improve conditions as the department deems necessary.

§1783. Revocation or suspension of license after hearing

When the Department of Human Services believes a license should be suspended or revoked, it shall file a statement or complaint with the Administrative Court Judge, designated in the Maine Administrative Procedure Act, Title 5, chapter 375. A person aggrieved by the refusal of the department to issue a license may file a statement or complaint with the Administrative Court Judge.

Sec. 3. 22 MRSA c. 405-B is enacted to read:

CHAPTER 405-BTUBERCULOSIS SANATORIUMS§1871. Establishment and maintenance

The State shall maintain by building, lease or by purchase one or more sanatoriums in such districts of the State as seems best to serve the needs of the people for the care and treatment of persons affected with tuberculosis. If at any time the number of persons requiring such care and treatment in these sanatoriums decreases to a level which, in the judgment of the Commissioner of Human Services, makes continued operation and maintenance of a sanatorium impracticable, the commissioner, with the advice and consent of the Governor, may close any or all sanatoriums. In the event that all sanatoriums are closed as provided, any funds from the sanatorium accounts and appropriations may, with the advice and consent of the Governor, be made available to the Commissioner of Human Services for the purpose of providing alternative treatment and care for those patients needing treatment and care. Where lease or purchase is made, the State shall have the right to enlarge or otherwise adapt the property to meet the needs of the situation. These additions or improvements shall be considered permanent. At the expiration of the original lease of any property for use as a tuberculosis sanatorium, the State shall have the right of renewal or of purchase.

Without regard to the matter of sanatorium closure, the commissioner also may purchase care for tuberculosis patients from private practitioners and private medical institutions. In making payments for care, he shall take into consideration payments that may be available through insurance or other 3rd parties.

§1872. Admission; charges

Patients may be admitted to these sanatoriums upon application to the Department of Human Services, if found to be suffering from tuberculosis or if suspected of having tuberculosis. All patients in the sanatoriums, the parents of minor children or the spouse, shall pay to the State for treatment, including board, supplies and incidentals necessary to the prescribed medical and surgical treatment both for inpatient and outpatient services, the amount determined by the department. The department may, if it finds that the patient or relatives liable by law are unable to pay the amount determined, in whole or in part, waive payment or so much thereof as the circumstances appear to warrant.

All funds collected from this source shall be credited to the General Fund. No pauper disabilities shall be created by reason of any aid or assistance given under this section.

This section does not apply to persons who may be committed under section 1022.

Sec. 4. 30 MRSA c. 13 is enacted to read:

CHAPTER 13

COUNTY JAILS AND JAILERS

SUBCHAPTER I

OFFICIALS AND PERSONNEL

§1701. Custody of jail and prisoners; jailer

The sheriff has the custody and charge of the jail in his county and of all prisoners therein and shall keep it himself, or by his deputy as jailer, master or keeper. The jailer, master or keeper shall appoint, subject to the requirements of section 64-A, all subordinate assistants and employees. Subordinate assistants and employees shall be appointed for the same period that is provided for deputy sheriffs under section 951. The professional qualifications required of them shall emphasize training or experience in or knowledge of corrections. The pay of the jailer, master or keeper and all subordinate assistants and employees shall be fixed by the county commissioners and paid by their several counties, except when otherwise provided by law. The jailer and his subordinate assistants and employees may be deputy sheriffs.

§1702. Jailer's duties when office of sheriff vacant

When a vacancy occurs in the office of sheriff, the jailer lawfully acting continues in office and shall retain charge of the jail and of all prisoners therein or committed thereto, and his official neglects and misdoings are a breach of his principal's official bond until a new sheriff is qualified, or the Governor removes that jailer and appoints another, which he may do. The jailer so appointed shall give bond in the manner required of a sheriff for the faithful discharge of his duties.

§1703. Offices of jailer and sheriff vacant; appointment by county commissioners

If the office of jailer becomes vacant while the office of sheriff is vacant, the county commissioners may appoint a jailer, who shall give bond as a sheriff is required to do and continue in office, if his appointment is confirmed at the commissioners' next meeting, during the vacancy in the office of sheriff or until he is removed and a new jailer appointed.

§1704. Jailer to return list of prisoners at each criminal session of court

Every jailer, at the opening of every criminal term of the Superior Court for his county, shall return a list of prisoners in his custody and afterwards a list of all committed during the session, certifying the cause for which and the person by whom committed, and shall have the calendar of prisoners in court for its inspection. For neglecting to do so, the court may impose a reasonable fine.

§1705. Official papers filed and kept with calendar and delivered to successor

All warrants, mittimus, processes and other official papers by which any prisoner is committed or liberated, or attested copies thereof, shall be regularly filed in order of time and with the calendar safely kept and when the sheriff vacates his office, they shall be, by the sheriff or his personal representative, delivered to his successor on penalty of forfeiting \$200 to the county.

§1706. Sheriff answerable for delivery of prisoners to successors

Every sheriff is answerable for the delivery to his successor of all prisoners in his custody at the time of his removal, and for that purpose shall

retain the keeping of the jail in his county and the prisoners therein until his successor enters on the duties of his office.

§1707. Liability of sheriff for escape

When a prisoner escapes through the insufficiency of the jail or the negligence of the sheriff or jailer, the sheriff is chargeable to the creditor or other person at whose suit he was committed or to whose use any forfeiture was adjudged against that prisoner.

§1708. Escape through insufficiency of jail; sum paid; reimbursed

When an escape happens through the insufficiency of the jail, the county commissioners may order the county treasurer to pay to the sheriff the amount paid by him to that party. If they do not make an order within 6 months after the demand is laid before them, the sheriff may bring his action against the inhabitants of that county, to be tried therein or in an adjoining county, and service shall be made as in other actions.

§1709. Appointment of agent to defend county; execution

The commissioners may appoint an agent to appear and defend the action. If they have no meeting between the time of service and the time within which the answer is required to be served, it shall be continued for such time as the court directs, saving all advantages to the defendants. If judgment is rendered against the county, the execution may be levied on the estate of any inhabitant, who has his remedy against the county to recover the amount so levied.

§1710. Liability of keeper and sheriff for escape

If any jail keeper, through negligence, suffers a prisoner charged with an offense to escape, he shall be fined according to the nature of the offense charged against the escaped prisoner, but if a person committed for debt escapes from jail and the sheriff or jail keeper, within 3 months thereafter, returns him thereto, the sheriff is liable only for the costs of any action commenced against him therefor.

§1711. Administration of medication

1. Administration of medication by sheriff or deputy. The sheriff of any county may administer to any prisoner in his custody and charge any oral or

topical medication as prescribed by a licensed physician or dentist or, if requested by a prisoner, any nonprescription medication in accordance with the directions on its container. The sheriff may delegate this authority to administer medication to his deputy who is in charge of the county jail or to the master or keeper of the county jail.

2. Limitations on administration of medication. The sheriff or his delegate shall not administer any prescription or nonprescription medication to any prisoner who has been incarcerated in the county jail for less than 24 hours, unless the sheriff or his delegate has consulted with and received permission to administer that medication from a licensed physician.

3. Insulin injections. No provision under this section may prevent any prisoner from self-administering insulin injections, provided that:

A. A duly licensed physician has authorized that self-administration; and

B. That self-administration takes place in the presence of the sheriff or his delegate.

4. Statement by prisoner. Before administering any nonprescription medication to any prisoner who has been incarcerated in the county jail for 24 hours or longer, the sheriff or his delegate shall secure a written statement signed by the prisoner, which states that the prisoner has requested that medication and had no previous adverse allergic reaction to that medication.

5. Records of medication administered. Every sheriff or his delegate shall maintain for at least 2 years a record which shall include a description of each prescription and nonprescription medication administered in the county jail and the identity of each person to whom that medication is administered.

6. Administration of medication not a violation. The administration of medication to prisoners, as provided in this section, shall not be a violation of Title 32, section 2102, subsection 2, paragraph D, or Title 32, section 3270, or any other law.

SUBCHAPTER II

PRISONERS AND THEIR CONDUCT

§1751. Pay for labor of prisoners before sentence

Any person charged with crime or awaiting sentence who, while confined in any jail where provision for labor has been made, chooses to labor as provided for persons under sentence, shall receive therefor such sum as, in the judgment of the commissioners of that county, he has earned.

§1752. Positions of trust for certain prisoners

Positions of trust may be granted by a sheriff only to a prisoner confined in a jail who was sentenced to serve his term in that particular jail or who was transferred to that particular jail from another correctional facility where he was serving a sentence.

§1753. Treatment of prisoners for debt and minors

Every jail keeper shall keep prisoners committed for debt separate from prisoners charged with felony or infamous crimes, and shall keep all minors so committed and all prisoners upon a first charge, before or after conviction, separate from notorious offenders and those convicted more than once of felony or infamous crimes, so far as the construction or state of the jail admits.

§1754. Violations or furnishing liquor to prisoners

If any jail keeper violates section 1753 or voluntarily or negligently suffers any prisoner in his custody, charged with or convicted of any offense, to have any intoxicating liquor, unless the physician authorized to attend the sick in that jail in writing certifies that the prisoner's health requires it and prescribes the quantity, he forfeits in each case, for the first offense, \$25; and for the 2nd offense, \$50; to be recovered for the county by indictment, or by any person suing therefor, to his own use; and shall be removed from office and shall be incapable of holding the office of sheriff, deputy sheriff or jailer for 5 years.

§1755. Federal prisoners

The keepers of the several jails shall receive and safely keep all prisoners committed under authority of the United States until discharged, under the penalties provided for the safekeeping of prisoners under the laws of this State.

§1756. Prisoners to attend funerals

Prisoners at the several county jails may, at the discretion of the sheriff, attend funerals of their legally considered mother, father, husband, wife, son

or daughter, if the funeral is held within the State. Prisoners shall pay the cost of transportation and the fee and expenses of the officer who takes them to the funeral.

§1757. Disposal of body of person who died in jail

When a person dies in jail, the jailer or sheriff shall deliver the body to his friends, if requested. Otherwise, he shall dispose of it for anatomical purposes, as provided in Title 22, chapter 709, unless the deceased at any time requested to be buried, in which case he shall bury the body in the common burying ground and the expenses thereof shall be paid by the town in which he had a settlement, if he had any in the State and, if not, by the State.

§1758. Record of persons committed

Every sheriff shall keep in a suitable bound book a true and exact calendar containing, distinctly and fairly registered, the names of all prisoners committed to the jail under his charge, their places of abode, additions, time of their commitments, for what cause and by what authority, and a particular description of the persons of those committed for offenses. He shall register in that book the name and description, the time when and the authority by which any prisoner was discharged, and the time and manner of any prisoner's escape.

§1759. Assistance to discharged prisoners

The sheriff or his deputy keeping the jail may, at the expense of the county, give a prisoner about to be discharged from jail a sum of money not exceeding \$2 and wearing apparel to the value of not exceeding \$10 and may furnish to that discharged prisoner a railroad ticket, nontransferable, to any place to which the fare does not exceed \$8. All sums so expended by the sheriff or jailer shall be repaid to him from the county treasury after the account thereof has been audited and the amount found correct by the county commissioners.

SUBCHAPTER III

PRISON LABOR

§1801. Employment of prisoners generally

The county commissioners may authorize the employment, for the benefit of the county or of dependent families of prisoners committed for crime, in some suitable manner not inconsistent with their

security and the discipline of the prison, and may pay the proceeds of that labor, less a reasonable sum to be deducted therefrom for the cost of maintenance of those prisoners, to the families of such person or persons as may be dependent upon them for support.

This section does not apply to sections 1802 and 1803.

§1802. Charitable organizations

The county commissioners may authorize the use of such prisoners to provide assistance in the improvement of property owned by charitable organizations as may be approved by the county commissioners, provided that the charitable organizations pay for the transportation of the prisoners and for the transportation and per diem compensation for any guards who accompany the prisoners.

§1803. Contracts subject to cancellation or suspension

Any contract for the employment of prisoners not provided for in section 1802, which may be made by the county commissioners of any county with any person, firm or corporation, shall be made subject to the right of the county commissioners to withdraw, cancel or suspend the contract in whole or in part.

§1804. Employment of county jail prisoners

1. Order of release; purpose. Any person sentenced or committed to a county jail for crime, non-payment of a fine or forfeiture or court order, or criminal or civil contempt of court, may be granted the privilege of leaving the jail during necessary and reasonable hours for any of the following purposes:

A. Employment;

B. Conducting his or her own business or occupation, including, in the case of a person primarily responsible for the housekeeping and domestic needs of his or her family, housekeeping and attending the needs of his or her family;

C. Attendance at a weekly religious service;

D. Attendance at an educational institution;

E. Medical treatment;

F. Voluntary services within the county in which the jail is located; or

G. To work or provide service to the victim of his crime in accordance with Title 17-A, chapter 54, but only with the express approval of the victim.

2. Petition; withdrawal. Unless a privilege is expressly granted by the court, the prisoner is sentenced to ordinary confinement. The court may grant that privilege at the time of sentence or commitment or thereafter. The court may withdraw the privilege at any time by order entered with or without notice of hearing.

3. Wages, self-employment income; collection. If a prisoner is employed for wages or salary, the sheriff shall collect the wages or salary or require the prisoner to turn over his wages or salary in full when received and, if the prisoner is self-employed, his self-employment income shall be turned over to the sheriff as may be ordered by the court, and the sheriff shall deposit the income in a trust checking account and shall keep a ledger showing the status of the account of each prisoner. The wages or salaries are not subject to trustee process in the hands of either the employer or the sheriff, and the self-employment income is not subject to trustee process in the hands of the sheriff during the prisoner's term and shall be disbursed only as provided in this section; but for tax purposes they are income of the prisoner.

4. Board; transportation. Every prisoner gainfully employed is liable for the cost of his board in the jail, as fixed by the county commissioners. If necessarily absent from jail at a mealtime, he shall at his request be furnished with an adequate nourishing lunch to carry to work. The sheriff shall charge his account, if he has one, for his board.

If the prisoner is gainfully self-employed, he shall pay the sheriff for his board, in default of which his privilege under this section is automatically forfeited.

If the jail food is furnished directly by the county, the sheriff shall account for and pay over these board payments to the county treasurer. The county commissioners may provide that the county furnish or pay for the transportation of prisoners employed under this section to and from the place of employment.

5. Disbursements. By order of the court, the wages or salaries of employed prisoners and employment income of self-employed prisoners shall be disbursed by the sheriff for the following purposes, in

the order stated:

A. The board of the prisoner;

B. Necessary travel expense to and from work and other incidental expenses of the prisoner;

C. Support of the prisoner's dependents, if any;

D. Payment, either in full or ratably, of restitution, and of the prisoner's obligations, acknowledged by him in writing, in accordance with Title 17-A, chapter 54, or which have been reduced to judgment; and

E. The balance, if any, to the prisoner upon his release.

6. Employment in other county. The court may by order authorize the sheriff, to whom the prisoner is committed, to arrange with another sheriff for the employment of the prisoner in the other's county, and while so employed to be in the other's custody, but in other respects to be and continue subject to the commitment.

7. Evaluation of need of dependents. The welfare director or the overseers of the poor of the municipality in which the prisoner's dependents reside, or the Department of Human Services, shall at the request of the court investigate and report to the court the amount necessary for the support of the prisoner's dependents.

8. Denial of privilege. The sheriff may refuse to permit the prisoner to exercise his privilege to leave the jail, as provided in subsection 1, for any breach of discipline or other violation of jail regulations. Any prisoner so disciplined may petition either the District Court or the Superior Court for a review of that disciplinary action. The court, after review, shall make such order as it deems appropriate.

9. Violations. Any person who willfully violates the terms of his release in relation to the time for reporting to his place of employment or to any other place to which he is authorized to be released under subsection 1, paragraphs A to E, or for reporting back to the county jail may be punished by imprisonment for not more than 60 days. If the prisoner does not return to the county jail within 48 hours from the time scheduled to return, he shall be guilty of escape under Title 17-A, section 755.

10. Rules of procedure. Proceedings under this

section shall be subject to the rules of procedure adopted under Title 4, section 9.

§1805. Furloughs

The sheriff is authorized to establish regulations for and to permit a prisoner under the final sentence of a court a furlough from the county jail in which he is confined. Furlough may be granted for not more than 3 days at one time in order to permit the prisoner to visit a dying relative or to obtain medical services, which may be for a period of longer than 3 days if medically required or for any other reason consistent with the rehabilitation of an inmate or prisoner which is consistent with the laws, rules or regulations of the department.

Any such prisoner permitted furlough under this section from the county jail shall be furnished a copy of the regulations of the county jail applicable to his furlough and receipt of the copy shall be attested by the prisoner.

Any such prisoner who willfully violates the terms of his release under this section in relation to the time for reporting to his place of furlough, the activities he is authorized to conduct while on furlough, or his time of reporting back to the county jail, may be punished by imprisonment for not more than 60 days; except that any prisoner who does not return to the county jail within 24 hours from the time he is scheduled to return may be prosecuted for escape under Title 17-A, section 755. He shall be prosecuted therefor in the county in which the jail to which he was sentenced is located.

Any person over the age of 18 years who willfully obstructs, intimidates or otherwise abets any prisoner on furlough under this section, and thereby contributes to or causes the prisoner's violation of the terms and conditions of his furlough, after having been warned by the sheriff to cease and desist in that relationship or association with the prisoner, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

§1806. Prisoner participation in municipal public works projects

The sheriff in charge of a county jail may, in his discretion, permit certain inmates of that jail to participate in public works-related projects in the county where the jail is located. Before an inmate is permitted to participate in this type of

project, the judge or justice who originally sentenced the inmate to the county jail shall sign his approval to the inmate's participation.

Any inmate participating in a public works-related project under this section shall have his sentence to the jail prorated at the rate of one day removed from the sentence for every 16 hours of participation in the project.

Participation in this type of project shall not be deemed employment under section 1804, subsections 3 to 7.

SUBCHAPTER IV

MISCELLANEOUS PROVISIONS

§1851. Examination of jails

At the commencement of each session required by law, the county commissioners shall examine the prison, take necessary precaution for the security of prisoners, for the prevention of infection and sickness and for their accommodations.

§1852. Jails to be clean and healthful

The sheriff shall see that the jail in his county is kept as clean and healthful as may be, cause the walls to be whitewashed in April or May annually and as often as the county commissioners order, at the expense of the county, and pay strict attention to the personal cleanliness of the prisoners.

§1853. Bible, books and instruction for prisoners

The jailer, at the expense of the county, shall furnish to each prisoner who is able to read a copy of the Bible, and to all, on Sundays, such religious instruction as he may be able to obtain without expense, and to those who may be benefited hereby, instruction in reading, writing and arithmetic one hour every evening except on Sunday. It shall be his duty to receive for their use from whatever source, by loan or contribution, any books or literature of a moral or religious tone and to exclude those of opposite tendencies.

§1854. Supplies for jails; accounts audited

The county commissioners of the several counties shall, without extra charge or commission to themselves or to any other person, procure all necessary supplies, including necessary food, fuel, bedding and

clothing for the jails and the prisoners therein, to be furnished and purchased under their direction and at the expense of the counties. No county commissioner may be interested directly or indirectly in the purchase of any such supplies or in any contract therefor made by the board of which and while he is a member thereof, and all contracts made in violation hereof are void. A suitable person shall be employed to prepare the foods of the prisoner in each county at the expense of the county, and the service of the food to the prisoners shall be under the general direction of the jailer, master or keeper. The person employed to prepare the food of the prisoners shall be appointed by the sheriff in each county, subject to the approval of the county commissioners. The county commissioners may at any time direct specific rations or articles of food, clothing, soap, fuel or other necessities to be furnished and served to the prisoners. The bills and accounts for supplies furnished and the items of expense incurred in preparing and serving the same shall be audited by the Department of Audit, as provided by Title 5, section 243, subsection 2.

§1855. Cumberland commissioners annually advertise for supplies

The county commissioners of the County of Cumberland may each year, as soon after January 1st as may be, make an estimate of the amount of food, fuel, clothing and supplies as far as practicable which will be required by the county jail and for the support of the prisoners therein for the current year, and advertise for sealed proposals for furnishing the same according to specifications furnished by them, in the daily papers of the City of Portland, 3 days successively, at least 14 days before the time limited for the reception of those proposals, at which time they shall examine all the proposals and award the contract to the lowest responsible bidder. The county commissioners shall procure such other necessary supplies and articles for the foregoing purposes as may not be furnished by contract and account for the same in the manner provided for in section 1854.

§1856. Transfer of prisoners when jail unfit or insecure

Whenever complaint on oath is made to a Justice of the Superior Court that any jail is unfit for occupation or is insufficient for the secure keeping of any person charged with crime and committed to await trial or under sentence, he shall cause not less than 3 days' notice of that complaint to be given to the jailer or sheriff of the county and to

the warden or chief administrative officer of the state correctional facility, if transfer to a state facility is anticipated, to appear at the time and place fixed in that notice. If on examination the matter complained of is found true, and the proposed transfer is to a county jail, he may issue his warrant for the transfer of that prisoner at the expense of the county to any jail. If the complaint is found true and the proposed transfer is to a state correctional facility, the Justice of the Superior Court may issue a warrant for the transfer of the prisoner at the expense of the county to a state correctional facility, provided that he also finds that the transfer is for the good of the inmate, the receiving institution is able to resolve the problem causing the need to transfer, the nature of the offense committed by the prisoner is so severe that it requires sending to the receiving institution and the security of the sending facility is inadequate to handle the problem. If by fire or other casualty any jail is destroyed or rendered unfit for use, any Justice of the Superior Court may, upon being notified by the district attorney of the county where that jail was or is located, issue his order to the sheriff and his deputies and constables of that county to cause all prisoners who might be liable to imprisonment in that county to be imprisoned in the jail of some adjoining county or in any other place of confinement, the order to be printed in the newspapers of that county.

§1857. Fines applied to building and repair of jail

All fines imposed by this chapter and chapter 1, subchapter VI; Title 14, section 555; and Title 14, chapter 203, subchapter IV, not otherwise appropriated, shall be applied to building and repairing the jails in the county where the offense is committed.

§1858. Additional accommodations

The county commissioners may make such additions in workshops, fences and other suitable accommodations in, adjoining or appurtenant to the jails in the several counties as may be found necessary for the safekeeping, governing and employing of offenders committed thereto by authority of the State or the United States. For the better employing of these offenders, they may lease or purchase necessary lands or buildings anywhere within their respective counties and may authorize the employment on those lands for the benefit of the county or of dependent families of prisoners committed for crime, as provided in section 1801. Whenever the county commissioners shall determine that the use of these land and buildings is unnecessary for that use, they may sell and

dispose of the land and buildings in the manner required by law. The county commissioners may raise by loan of their several counties, or otherwise, a total sum not exceeding \$5,000 to make those purchases, alterations and improvements, and may expend so much thereof as is necessary.

Sec. 5. 34 MRSA, as amended, is repealed.

Sec. 6. 34-A MRSA is enacted to read:

TITLE 34-A

CORRECTIONS

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER I

DEFINITIONS

§1001. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the following meanings.

1. Chief administrative officer of a correctional facility. "Chief administrative officer of a correctional facility" means the head of a correctional facility, including, but not limited to:

A. The Warden of the Maine State Prison;

B. The Superintendent of the Maine Correctional Center;

C. The Director of the Charleston Correctional Facility; and

D. The Superintendent of the Maine Youth Center.

2. Commissioner. "Commissioner" means the Commissioner of Corrections or his designee, except that, when the term "commissioner and only the commissioner" is used, the term applies only to the person appointed Commissioner of Corrections and not to any designee.

3. Committed offender. "Committed offender" means a prisoner, juvenile client, probationer or parolee.

4. Contract agency. "Contract agency" means a

facility or program outside the jurisdiction of the department, providing services under contract to the department.

5. Contract client. "Contract client" means a committed offender residing in a facility or participating in a program outside the jurisdiction of the department under an agreement between the department and the contract agency.

6. Correctional facility. "Correctional facility" means the Maine State Prison, Maine Correctional Center, Charleston Correctional Facility, Maine Youth Center or any other entity which falls under the jurisdiction of the department, but does not include a county jail, holding facility or short-term detention area.

7. Correctional program. "Correctional program" includes, but is not limited to, probation and parole, court intake and jail inspection.

8. Department. "Department" means the Department of Corrections.

9. Holding facility. "Holding facility" means a facility, or part of a building, used for the temporary detention of pretrial detainees prior to arraignment, release or transfer to another facility or authority, but not for the serving of sentences. Holding facilities are classified as follows:

A. Those in which the maximum time of detention is 12 hours; and

B. Those in which the maximum time of detention is 48 hours.

10. Informally adjusted juvenile. "Informally adjusted juvenile" means a juvenile participating in a program of informal adjustment, as defined in Title 15, section 3003, subsection 10.

11. Juvenile client. "Juvenile client" means a juvenile committed to the Maine Youth Center who is either residing at the center or is under aftercare supervision.

12. Parking area. "Parking area" means land maintained by the State at the correctional facilities which may be designated as parking areas by the chief administrative officers of the correctional facilities.

13. Prison. "Prison" means the Maine State Prison.

14. Prisoner. "Prisoner" means an adult person committed to any correctional facility, county jail, holding facility or short-term detention area, except the Maine Youth Center.

15. Public way. "Public way" means a road or driveway on land maintained by the State at the correctional facilities.

16. Segregation. "Segregation" means the separation of a committed offender from the general population of a correctional facility for administrative or punitive reasons.

17. Short-term detention area. "Short-term detention area" means a section of a building used for the detention of pretrial detainees for periods of up to 4 hours.

18. Written political material. "Written political material" means flyers, handbills or other nonperiodical publications, which are subject to the restrictions of Title 21, chapter 35.

SUBCHAPTER II

DEPARTMENT

§1201. Legislative intent

Recognizing the need to firmly control all of the state's correctional facilities, provide for the safety of guards and committed offenders, undertake appropriate programming for the classification, education, rehabilitation and maintenance of committed offenders and assure an effective system for the supervision of parolees and probationers, it is the intent of the Legislature to create a Department of Corrections to improve the administration of correctional facilities, programs and services for committed offenders.

§1202. Establishment

There is established a Department of Corrections to be responsible for the direction and general administrative supervision, guidance and planning of adult and juvenile correctional facilities and programs within the State.

1. Cabinet level. The department is a cabinet-level department.

2. Commissioner. The department is under the control and supervision of the Commissioner of Corrections.

§1203. Office of Advocacy

1. Establishment. The Office of Advocacy is established within the department to investigate the claims and grievances of committed offenders, informally adjusted juveniles and contract clients and to advocate for compliance by the department, any correctional facility or any contract agency with all laws, administrative rules and institutional and other policies relating to the rights and dignity of committed offenders, informally adjusted juveniles and contract clients.

2. Chief advocate. A chief advocate shall direct and coordinate the program of the office.

A. The chief advocate shall report only to the commissioner.

B. The chief advocate shall, with the approval of the commissioner, select other advocates needed to carry out the intent of this section and who shall report only to the chief advocate.

C. The chief advocate and all other advocates shall be classified state employees.

3. Duties. The Office of Advocacy, through the chief advocate and the other advocates, shall:

A. Receive or refer complaints made by committed offenders, informally adjusted juveniles and contract clients;

B. Intercede on behalf of these persons with officials of the department, any correctional facility or any contract agency or assist these persons in the initiation of grievance proceedings established by the commissioner under section 1402, subsection 5;

C. As an information source regarding the rights of these persons, keep informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of these persons and about relevant legal decisions and other developments related to the field of corrections, both in this State and in other parts of the country; and

D. Make and publish reports necessary to the performance of the duties described in this section, except that only the chief advocate may report any findings of the office to groups outside the department, such as legislative bodies, advisory committees to the Governor, boards of

visitors, law enforcement agencies and the press.

4. Powers. The Office of Advocacy, through the chief advocate and the other advocates, may:

A. Take action only on complaints which it deems not to be trivial or moot or for which there is clearly not another remedy available; and

B. Have access, limited only by the law, to the files, records and personnel of the department, any correctional facility or any contract agency.

5. Confidentiality. Requests for action by the office shall be treated confidentially as follows.

A. Any request by a committed offender, informally adjusted juvenile or contract client for action by the office and all written records or accounts related to the request shall be confidential as to the identity of the requesting person.

B. The records and accounts may be released only as provided in section 3003.

§1204. Maine Correctional Advisory Commission

There is established the Maine Correctional Advisory Commission.

1. Composition. The commission shall consist of 12 members to be appointed as follows:

A. One member from the House of Representatives appointed by the Speaker of the House;

B. One member from the Senate appointed by the President of the Senate; and

C. Ten representative citizens appointed by the Governor, including at least one full-time nonadministrative employee from the correctional system and at least one former inmate of the correctional system.

2. Chairman. The Governor shall designate the chairman of the commission.

3. Duration of appointments. The duration of appointments is determined as follows.

A. Of the first gubernatorial appointments, 4 shall be for terms of 3 years, 3 shall be for terms of 2 years and 3 shall be for terms of one year.

B. Appointments after the first gubernatorial appointments shall be for terms of 3 years, plus the time period until a successor is appointed.

C. Legislative appointments shall be for the legislative term of office of the person appointed.

4. Expenses. Commission expenses shall be treated as follows.

A. Each member of the commission may receive his actual and necessary expenses incurred in the performance of duties pertaining to his office.

B. The commission may receive public and private grants to aid in defraying the expenses of its operation.

5. Duties. The commission shall:

A. Act in an advisory capacity to the commissioner in assessing present programs, in planning future programs and in developing ongoing policies to meet the correctional needs of the State;

B. Regularly advise the executive, legislative and judicial branches of government concerning correctional policy;

C. Issue a report containing the results of its studies to the Legislature, the Governor and the commissioner on December 31st of each year;

D. Meet as often as necessary, at the discretion of its chairman; and

E. Adopt its own rules of procedure necessary to carry out its duties.

§1205. Statewide correctional program improvement

1. Purpose. The purpose of this section is to provide the means for the development, expansion and improvement of correctional programs throughout the State and to encourage participation in correctional programs by persons, unincorporated associations, charitable nonstock corporations, local and county governmental units and state agencies.

2. Commissioner's powers. The commissioner has the following powers.

A. The commissioner may provide or assist in the provision of correctional services relating to all facets of rehabilitation and community life

adjustment, but the services shall be limited to:

- (1) Services to the courts;
- (2) Predelinquency services;
- (3) Diversionary services;
- (4) Prerelease and halfway house services;
and
- (5) Aftercare and post-release services.

B. To accomplish the purpose of paragraph A, the commissioner may cooperate with persons, unincorporated associations, charitable nonstock corporations, municipalities, other governmental units and state agencies.

C. The commissioner may promulgate and enforce rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, for the administration of all services delivered and funded under this section.

D. The commissioner may receive and use, for the purposes of this section, money appropriated by the State, grants from the United States and funds from any other sources.

E. The commissioner may make grants of funds to any person or entity described in this section who applies for the funds, to be used in the management and delivery of 'correctional services' programs approved by, or approved and supervised by, the commissioner.

F. The commissioner may, by contract, purchase professional and other specialized services when necessary to the provision of direct services under this section.

3. Correctional Program Improvement Fund. All funds appropriated for the purposes of this section and all grants and other funds received by the department for the purposes of this section shall be credited to a special revenue account in the department to be known as the Correctional Program Improvement Fund.

A. Any state funds appropriated to this special revenue account unexpended at the end of the fiscal year for which the funds are appropriated do not lapse, but shall carry forward into subsequent fiscal years to be expended for the pur-

poses of this section.

B. No funds appropriated or received under this section may be used for the construction of new facilities or for the reconstruction, renovation or expansion of any existing facilities, except that the funds may be used for minor renovations necessary to meet state or local licensing requirements.

§1206. Agreements with community agencies

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

A. "Agreement" means a legally binding document between 2 parties, including documents commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement or purchase of service.

B. "Community agency" means a person, a public or private nonprofit organization or a firm, partnership or business corporation operated for profit, which:

(1) Operates a human service program at the community level; and

(2) Is not an administrative unit of the Federal Government or State Government.

C. "Funds" means any and all general funds, dedicated funds, fees, special revenue funds, 3rd party reimbursements, vendor payments or other funds available for expenditure by the department in support of the provision of a human service.

D. "Human service" means any alcoholism, children's community action, corrections, criminal justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, mental retardation, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure for the department.

E. "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of

which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood, community, region or the State.

2. Commissioner's powers. The commissioner may disburse funds to a community agency for the purpose of financially supporting a human service, only if the disbursement is covered by a written agreement between the department and the agency, specifying at least the following:

A. The human service to be provided by the community agency;

B. The method of payment by the department to the community agency; and

C. The criteria for monitoring and evaluating the performance of the community agency in the provision of the human service.

3. Commissioner's duties. The commissioner's duties are as follows.

A. The commissioner shall promulgate rules, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, consistent with and necessary for the effective administration of this section.

B. When making agreements with community agencies for the provision of a human service, the commissioner shall use uniform agreement forms and shall develop uniform procedures.

C. When disbursing funds pursuant to an agreement, the commissioner shall require uniform accounts payable forms or uniform supporting documentation and information.

D. When accounting for funds disbursed under an agreement, the commissioner shall use uniform accounting principles, policies and procedures.

§1207. Out-of-state prison-made goods

1. Purpose. The purpose of this section is to take advantage of the so-called Hawes-Cooper bill, entitled "AN ACT to Divest Goods, Wares, and Merchandise Manufactured, Produced, or Mined by Convicts or Prisoners of Their Interstate Character in Certain Cases" and to prohibit the sale or use within the State of any goods, wares or merchandise produced in penal institutions outside of the State and trans-

ported into the State.

2. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person commits the civil violation of sale of out-of-state prison-made goods if he sells within this State any goods, wares or merchandise manufactured, produced or mined, wholly or in part, by nonparoled convicts or prisoners, or in any penal or reformatory institution, in another state and transported into this State.

B. A person commits the civil violation of use of out-of-state prison-made goods if he uses, consumes or stores within this State any goods, wares or merchandise manufactured, produced or mined, wholly or in part, by nonparoled convicts or prisoners, or in any penal or reformatory institution, in another state and transported into this State.

SUBCHAPTER III

COMMISSIONER

§1401. Office

1. Appointment. The Governor shall appoint the Commissioner of Corrections, subject to review by the joint standing committee of the Legislature having jurisdiction over health and institutional services and to confirmation by the Senate, to serve at the pleasure of the Governor.

2. Vacancy. Vacancies in the office of the commissioner shall be filled as follows.

A. Any vacancy in the office of commissioner shall be filled by appointment under subsection 1.

B. If the office of the commissioner is vacant or if the commissioner is absent or disabled, the associate commissioner shall perform the duties and have the powers provided by law for the commissioner.

3. Qualifications. To qualify for appointment as commissioner, a person must have training and experience in correctional administration or satisfactory experience in the direction of work of a comparable nature.

§1402. Duties

In addition to other duties set out in this Title, the commissioner has the following duties.

1. General. The commissioner shall have general supervision, management and control of the research and planning, grounds, buildings, property, officers, employees and committed offenders of any correctional facility or correctional program..

2. Enforcement of laws. The commissioner shall enforce all laws concerning correctional facilities, unless specific law enforcement duties are given by law to other persons.

3. Rules. Rules shall be established as follows.

A. The commissioner shall establish, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, such rules as he determines appropriate or necessary for the care and management of the property of all correctional facilities, for the production and distribution of industrial products of the correctional facilities and for the execution of the statutory purposes and functions of correctional facilities or correctional programs.

B. The central principle underlying all rules, regulations, procedures and practices relating to committed offenders is that the committed offenders shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law.

4. Vocational education. Establishment of vocational education shall be as follows.

A. The commissioner shall establish and maintain suitable courses for vocational education in the correctional facilities.

(1) The commissioner shall install equipment necessary to carry out this duty.

(2) The commissioner shall employ suitable and qualified instructors necessary to carry out this duty, subject to the approval of the Associate Commissioner of the Bureau of Vocational Education.

B. The expenses of carrying out this subsection shall be paid from the appropriations for the correctional facilities.

5. Grievance procedures. The commissioner shall establish procedures for hearing grievances of committed offenders, informally adjusted juveniles and contract clients as described in section 1203.

6. County jail, holding facility and short-term detention area standards. County jail, holding facility and short-term detention area standards are governed as follows.

A. The commissioner shall establish standards for all county jails, holding facilities and short-term detention areas which shall approximate, insofar as possible, the standards established by the Inspector of Jails of the Federal Bureau of Prisons.

B. The commissioner shall inspect all county jails, holding facilities and short-term detention areas at least once a year and may make more frequent inspections.

(1) The commissioner shall report to the Governor before December 1st of each year on the condition of the county jails, holding facilities and short-term detention areas.

(2) The commissioner may contract with any qualified person to serve as a consultant to the department for the purpose of inspections under this section and to inspect the county jails, holding facilities and short-term detention areas and, any law to the contrary notwithstanding, the qualified person may be an officer or employee of the department.

C. If a failure of the county commissioners to maintain the standards established under this section is discovered during a jail inspection conducted under this section, the commissioner shall report in writing to the county commissioners of the county in which the jail is located, specifying deficiencies and departures from the standards and ordering their correction.

(1) The county commissioners shall cause the deficiencies to be corrected and the standards to be restored within 6 months from the receipt of the report and order of the commissioner.

(2) If the county commissioners fail to comply with the order, the commissioner may order the county jail to be closed and the prisoners transferred to the nearest county

jail or jails meeting the prescribed standards and having available room for the prisoners.

(3) The cost of transfer, support and return of the prisoners shall be paid by the county from whose jail the prisoners are transferred, as provided in section 3068.

§1403. Powers

In addition to other powers granted in this Title, the commissioner has the following powers.

1. General powers. The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of committed offenders or may purchase residential services when the department's correctional facilities do not provide the appropriate services for the committed offender.

2. Appointments. The commissioner's appointment powers are as follows.

A. The commissioner may appoint, subject to the Personnel Law and except as otherwise provided, any employees who may be necessary.

B. The commissioner may appoint and set the salary for an associate commissioner to assist in carrying out the responsibilities of the department.

(1) The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

(2) To be eligible for appointment as an associate commissioner, a person must have training and experience in general management.

3. Delegation. The commissioner's delegation powers are as follows.

A. Unless a specific statute otherwise directs, the commissioner may delegate powers and duties given under this Title to the associate commissioner and to chief administrative officers of correctional facilities.

B. The commissioner may empower the associate commissioner and chief administrative officers of correctional facilities to further delegate powers and duties delegated to them by the com-

missioner.

4. Funding sources. The commissioner may use the following funding sources.

A. The commissioner may accept for the State any federal funds appropriated under federal law relating to the juvenile offender and may do whatever is necessary to carry out the federal law.

B. The commissioner may accept, from any other agency of government, person, group or corporation, any funds which may be available in carrying out this Title.

C. The commissioner may apply for and receive federal funds under the United States Housing Act of 1954, Public Law 560, Title 7.

5. Lease of unused buildings. The commissioner may, with the approval of the Director of Public Improvements, lease unused buildings at the correctional facilities for the purposes of providing services to committed offenders.

A. The leases shall be for a period not to exceed one year.

B. The commissioner shall submit a plan of the proposed leases and their impact on the correctional facilities and committed offenders to the joint standing committee of the Legislature having jurisdiction over health and institutional services no later than January 31st of each year.

CHAPTER 3

CORRECTIONAL FACILITIES

SUBCHAPTER I

GENERAL PROVISIONS

ARTICLE I

ADMINISTRATIVE PROVISIONS

§3001. Chief administrative officers

1. Appointment. The commissioner may appoint chief administrative officers of correctional facilities as necessary for the proper performance of the functions of the department.

A. To be eligible for appointment as a chief administrative officer of a correctional facility, a person must be experienced in the management of the particular type of correctional facility to which he is assigned.

B. Chief administrative officers of correctional facilities shall report directly to the commissioner.

2. Acting chief administrative officer. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve as the acting chief administrative officer of any correctional facility, if the office of the chief administrative officer of the facility is vacant.

A. The acting chief administrative officer shall serve for a period not to exceed 180 days.

B. Service as the acting chief administrative officer of a correctional facility is considered a temporary additional duty for the person so delegated.

§3002. Boards of visitors

1. Appointment. The Governor shall appoint a board of 5 visitors for each correctional facility under the department.

A. The terms of the members of the boards of visitors are for one year.

B. Members of the boards of visitors are eligible for reappointment at the expiration of their terms.

C. No member of the Legislature may serve on any board of visitors.

D. Members of the boards of visitors are not entitled to compensation.

2. Powers. Each board of visitors may inspect the correctional facility to which it is assigned and may make recommendations on the management of the facility to the commissioner.

3. Duties. Boards of visitors have the following duties.

A. Boards of visitors shall send copies of all recommendations to the members of the joint standing committee of the Legislature having

jurisdiction over health and institutional services.

B. Each board of visitors shall appear before the joint standing committee of the Legislature having jurisdiction over health and institutional services upon request.

§3003. Confidentiality of information

1. Limited disclosure. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any person receiving services from the department, shall be kept confidential and may not be disclosed by any person, except that:

A. A person receiving services, his legal guardian, if any, or, if he is a minor, his parent or legal guardian may give his informed written consent to the disclosure of information, if he has been given the opportunity to review the information sought to be disclosed;

B. Information may be disclosed if necessary to carry out any of the statutory functions of the department;

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503; and

D. Inmate financial records. The Commissioner of Corrections may provide information on inmate employment and earnings to other state agencies and the Federal Government for the purposes of determining inmate tax liability or child support obligations.

2. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person is guilty of unlawful disclosure of information if he discloses information in violation of this section.

B. Unlawful disclosure of information is a Class D crime.

§3004. Legal actions

1. Contract actions. Actions founded on any contract made with the State Purchasing Agent, or with any official of the department under the authority granted by the State Purchasing Agent, on behalf of a correctional facility may be brought by the

official making the contract or his successor in office.

2. Actions for injuries to property. Actions for injuries to the real or personal property of the State, used by any correctional facility and under the management of an officer of the facility, may be prosecuted in the name of the officer or his successor in office.

§3005. Emergencies

When emergency situations are certified by the chief administrative officer to exist at a correctional facility, the commissioner may, with the approval of the Governor, assign personnel as may be necessary from another facility or division of the department to assist in controlling the emergency situation.

1. Temporary assignment. The assignment of personnel shall be only for the period during which the emergency exists.

2. Compensation. Any personnel transferred are entitled to receive compensation as required by the Personnel Law, rules and contract terms.

§3006. Improper conduct of correctional facility officers

The commissioner may inquire into any improper conduct imputed to correctional facility officers in relation to the concerns of their facilities and for that purpose may:

1. Subpoenas. Issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal;

2. Examination of witnesses. Examine witnesses under oath; and

3. Adjudication. Adjudicate cases of alleged improper conduct in a manner similar to and with similar effect as cases of arbitration.

§3007. Posting of political material

The chief administrative officer of each correctional facility shall provide in at least one accessible area in each facility an appropriate space for the posting of written political material sent for that purpose to the chief administrative officer by candidates for state office or federal office in this

State.

1. One item limit. No more than one item of written political material may be posted in one place on behalf of any one candidate.

2. Removal. Written political material shall be removed after the elections for which it is intended for use.

3. Voting place. If there is a voting place within the facility, the posting place may not be located within 250 feet of the entrance to the voting place.

4. Violation. The posting of written political material under this section is not a violation of Title 21, section 1575-A, or Title 21, section 1579, subsection 7.

§3008. Reallocation of correctional facility appropriations

In administering the policy and purposes of this Title, the commissioner may expend correctional facility appropriations on committed offenders participating in halfway house, prerelease, vocational training, educational, drug treatment or other correctional programs being administered physically apart from the facilities to which the persons were originally sentenced or committed to defray the costs of the persons' participation in the programs.

§3009. Public ways and parking areas

1. Rules. The chief administrative officers of correctional facilities may promulgate and enforce rules, subject to the approval of the commissioner, governing the use of public ways and parking areas maintained by the State at the facilities.

A. The rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

B. The Secretary of State shall forward a copy of the rules, attested under the Great Seal of the State of Maine, to the District Court in the area of jurisdiction.

2. Special police officers. The chief administrative officers of correctional facilities may appoint and employ, subject to the Personnel Law, special police officers for the purpose of enforcing rules promulgated under subsection 1.

A. The special police officers shall:

(1) Patrol all the public ways and parking areas subject to this section;

(2) Enforce rules promulgated under this section; and

(3) Arrest and prosecute violators of the rules.

B. The State Police, sheriffs, deputy sheriffs, police officers and constables who have jurisdiction over the areas in which the correctional facilities are located shall, insofar as possible, cooperate with the special police officers in the enforcement of the rules promulgated under subsection 1.

3. Court procedure. The District Court, in the areas in which the correctional facilities are located, has jurisdiction in all proceedings brought under this section.

A. The District Court shall take judicial notice of all rules promulgated under subsection 1.

B. In any prosecution for a violation of the rules, the complaint may allege the offense as in prosecutions under a general statute and need not recite the rule.

4. Prohibited acts; fines. Prohibited acts and fines under this section are governed as follows.

A. A person is guilty of a public ways or parking violation if he violates any rule promulgated pursuant to this section.

B. Upon conviction of a public ways or parking violation, a person shall pay a fine as follows:

(1) For the first offense in any calendar year, a fine of \$1;

(2) For the 2nd offense in any calendar year, a fine of \$2; and

(3) For each offense in excess of 2 in any calendar year, a fine of \$5.

C. Notwithstanding any other law, the fines and costs of court paid under this section shall inure to the municipality in which the proceedings take place.

D. Offenses not covered by the rules promulgated under subsection 1 shall be dealt with as otherwise provided by law.

ARTICLE II

COMMITTED OFFENDERS GENERALLY

§3031. Rights

Any person residing in a correctional facility has a right to:

1. Food. Nutritious food in adequate quantities;

2. Medical care. Adequate professional medical care;

3. Living conditions. An acceptable level of sanitation, ventilation and light;

4. Sleeping space. A reasonable amount of space per person in any sleeping area;

5. Exercise and recreation. A reasonable opportunity for physical exercise and recreational activities;

6. Protection from abuse. Protection against any physical or psychological abuse;

7. Area for personal effects. A reasonably secure area for the maintenance of permitted personal effects; and

8. Visitation. A reasonable opportunity to visit with relatives and friends, in accordance with departmental policies and institutional procedures, provided that the department may restrict or prohibit visits when the restriction or prohibition is necessary for the security of the institution.

§3032. Disciplinary action

The commissioner shall promulgate rules describing disciplinary offenses and punishments in correctional facilities under the general administrative supervision of the department and establishing a fair and orderly procedure for processing disciplinary complaints. The rules shall conform to the following requirements.

1. Fairness and equity. The rules shall ensure the maintenance of a high standard of fairness and equity.

2. Corporal punishment. Corporal punishment may not be imposed.

3. Segregation. The imposition of segregation at all correctional facilities, except the Maine Youth Center, shall be subject to the following conditions.

A. All punishments involving segregation shall be first approved by the chief administrative officer of the correctional facility.

B. The prisoner shall be provided with a sufficient quantity of wholesome and nutritious food.

C. Adequate sanitary and other conditions required for the health of the prisoner shall be maintained.

D. When segregation exceeds 24 hours, the chief administrative officer of the correctional facility shall cause the facility's physician or a member of the facility's medical staff to visit the person forthwith and, at least once in each succeeding 24-hour period of confinement, to examine the person's state of health.

(1) The chief administrative officer shall give full consideration to recommendations of the physician or medical staff member as to the person's dietary needs and the conditions of the person's confinement required to maintain his health.

(2) If the recommendations of the physician or medical staff member regarding a person's dietary or other health needs while in segregation are not carried out, the chief administrative officer shall send a written report of that fact to the commissioner.

(3) The segregation shall be discontinued if the physician states that it is harmful to the mental or physical health of the person.

E. If a person is held in segregation or solitary confinement for more than 5 days, the chief administrative officer shall send a report of the confinement to the commissioner, giving the reasons for the confinement.

4. Loss of earned good time. All punishments involving loss of earned good time shall be first approved by the chief administrative officer.

5. Specific facilities. Punishment at specific correctional facilities is governed as follows.

A. Punishment at all correctional facilities, except the Maine Youth Center, may consist of warnings, loss of privileges, confinement to a cell, segregation or a combination of these.

B. Punishment at the Maine Youth Center may consist of seclusion, in accordance with section 3809, warnings and loss of privileges.

6. Impartial hearing. If the punishment may affect the term of commitment, sentence or parole eligibility or may involve segregation, the chief administrative officer of the facility shall, before imposing punishment, provide an impartial hearing at which the committed offender has the following rights.

A. He is entitled to be informed in writing of the specific nature of his alleged misconduct.

B. He is entitled to the right to be present.

C. He is entitled to present evidence on his own behalf.

D. He is entitled to call one or more witnesses, which right may not be unreasonably withheld or restricted.

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

F. He is entitled to be represented by counsel substitute as prescribed in the rules.

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

H. He is entitled to appeal the final disposition, before imposition of punishment, to the chief administrative officer of the correctional facility.

I. If, at any stage of the proceedings, he is cleared of the charges in a complaint, or the complaint is withdrawn, all documentation relating to the complaint shall be expunged.

§3033. Work assignments

1. Public works. The commissioner may authorize

the employment of able-bodied prisoners in the prison or Maine Correctional Center in the construction and improvement of highways or other public works within the State under such arrangements as may be made with the Department of Transportation or with another department or commission of the State, county or municipality in charge of these public works, and the commissioner may prescribe whatever rules and conditions he deems expedient to insure the proper care and treatment of the prisoners while so employed and to ensure their safekeeping and return.

2. Fire or disaster. The commissioner may authorize the training and use of able-bodied prisoners in the prison or in the Maine Correctional Center by the Bureau of Forestry or the Bureau of Civil Emergency Preparedness to fight fires or provide assistance during or after a civil disaster.

3. Charitable property improvement. The commissioner may authorize the use of able-bodied prisoners in the prison or Maine Correctional Center to provide assistance in the improvement of property owned by charitable organizations, as may be approved by the commissioner, if the charitable organizations pay for the transportation of the prisoners and for the transportation and per diem compensation of any guards who accompany the prisoners.

4. Prohibited act. A person is guilty of escape under Title 17-A, section 755, if he escapes from any assignments described in this section or from any other assignment beyond the walls of the prison or off the grounds of the Maine Correctional Center.

§3034. Prisoner labor

The keeper of the jail, workhouse or house of correction or, in the case of a sentence to a town farm or almshouse, the overseers of the poor of the town or the keeper or agent of the town farm or almshouse may:

1. Work requirement. Require a prisoner to labor at any lawful work within the town in which the institution is located;

2. Keeper. Appoint any suitable person keeper over the prisoner;

3. Collection of wages. Collect and receive the wages, compensation or profits of the prisoner's labor; and

4. Payment. At the expiration of his sentence, pay to the prisoner reasonable compensation for his

labor, deducting from that amount the costs of commitment.

§3035. Rehabilitative programs

The commissioner may adopt, implement and establish rules for rehabilitative programs, including work release, restitution and furlough, as authorized by Title 17-A, chapter 54, within the correctional facilities under his control.

1. Work release and restitution. The chief administrative officer of a correctional facility may permit any committed offender considered to be worthy of trust to participate in activities outside the facility under the following conditions.

A. Activities may include training and employment.

B. Activities are subject to rules promulgated by the commissioner.

C. Activities shall, in the judgment of the chief administrative officer, contribute to the reformation of the committed offender and assist in preparing him for eventual release.

2. Furlough. The commissioner may grant to a committed offender furlough from the facility in which he is confined under the following conditions.

A. Furlough may only be granted subject to rules adopted by the commissioner.

B. Furlough may be granted for not more than 10 days at one time for a visit to a dying relative, for attendance at the funeral of a relative, for the contacting of prospective employers or for any other reason consistent with the rehabilitation of a committed offender.

C. Furlough may be granted for the obtaining of medical services for a period longer than 10 days if medically required.

3. Copy of rules. Copies of rules shall be provided to committed offenders as follows.

A. The chief administrative office of a facility adopting a rehabilitative program under this section shall provide, to any committed offender permitted outside a facility under this section, a copy of the rules of the commissioner applicable to the program in which he is permitted to participate, or to his furlough.

B. The committed offender shall attest to the receipt of the copy of the rules.

4. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person who has passed his 17th birthday is guilty of interference with a rehabilitative program or furlough if he willfully obstructs, intimidates or otherwise abets any committed offender participating in a program, or on furlough, under this section, and thereby contributes or causes the committed offender to violate the terms of his program participation or furlough, after having been warned by the chief administrative officer of the facility to end the relationship or association with the committed offender.

B. Interference with a rehabilitative program or furlough is a Class E crime, except that, notwithstanding Title 17-A, the court may sentence a person to imprisonment for not more than 11 months.

§3036. Halfway house program

1. Establishment. The commissioner may promulgate rules establishing a halfway house program to provide an environment of community living and control.

2. Participation. Committed offenders at any correctional facility or at any county jail may be paroled, furloughed, transferred or entrusted to participate in the halfway house program in accordance with applicable provisions of law.

§3037. Physical and mental examination

1. Requirement. The commissioner may require a physical and mental examination of any committed offender.

2. Examiners. The commissioner shall designate competent examiners.

§3038. Administration of medication

The administration of medication in correctional facilities operated by the department shall be in accordance with rules established by the State Board of Nursing.

1. Maine Administrative Procedure Act. The State Board of Nursing shall establish rules in ac-

cordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Considerations. In establishing rules for each type of facility, the State Board of Nursing shall consider, among other factors:

A. The general health of the persons likely to receive medication;

B. The number of persons served by the facility; and

C. The number of persons employed at the facility.

§3038-A. Care of children of male committed offenders

1. Commitment of child. If any male committed offender, at the time of his commitment to the Maine State Prison or the Maine Correctional Center, is the father of and has under his exclusive care any child which might otherwise be left without proper care or guardianship, the judge committing him shall cause his child to be committed to:

A. A children's home provided by law for the child's care or guardianship;

B. The care and custody of some relative or proper person willing to assume the care; or

C. The custody of the Department of Human Services.

2. Controlling statute. Any commitment of a child under this section is subject to Title 22, sections 4006, 4037, 4038, 4061 and 4063.

§3039. Committed offenders' money

When any committed offender confined in a correctional facility receives money from any source, including compensation for work authorized under other sections of the Revised Statutes or by a policy of the department, and the money or any part of it is retained to be given to the committed offender upon release:

1. Account. The money shall be placed in an interest-bearing account of the committed offender's choice; and

2. Payment. The principal and interest shall be paid to the committed offender at the time of his

release.

§3040. Committed offender's abandoned property

Any property abandoned or unclaimed by a committed offender in a correctional facility shall be disposed of according to Title 33, chapter 27.

§3041. Reduction of sentence

A prisoner in any correctional facility may have his sentence reduced by 5 days for each pint of blood donated by him to a veterans' organization, civil defense unit, blood bank, hospital, the Armed Forces of the United States or the Red Cross, or for the purpose of scientific research.

1. Applicability. The reduction of sentence is applicable to the minimum sentence of the prisoner.

2. Limitation. Each prisoner is limited to one donation every 6 months.

3. No forfeiture. Any reduction of sentence earned under this section is not subject to forfeiture.

4. Nonprofit. Blood donated under this section may not be used in any way commercially or for a profit.

5. Donor list. The chief administrative officer of the correctional facility shall keep a list of all blood donors under this section and the amounts of blood donated by each.

§3042. Disposition of detainees

1. Notice to prisoner. The commissioner, chief administrative officer or other official having custody of a prisoner serving a term of imprisonment in a correctional facility in this State shall promptly inform the prisoner in writing of:

A. The source and contents of any untried indictment, information or complaint pending in this State against the prisoner of which the commissioner, warden or other official has knowledge; and

B. The prisoner's right to request a final disposition of the untried indictment, information or complaint.

2. Right to trial. A prisoner serving a term of imprisonment in a correctional facility in this State

is entitled to be brought to trial on any untried indictment, information or complaint pending in this State against him within 180 days after giving proper notice in accordance with subsections 3 and 4.

3. Proper notice. To constitute proper notice under subsection 2, the prisoner must send to the prosecuting official of the county in which the indictment, information or complaint is pending, and to the appropriate court, the following:

A. Written notice of the place of imprisonment;

B. Written notice of the request for final disposition to be made of the untried indictment, information or complaint; and

C. A certificate of the commissioner, warden or other official having custody of the prisoner stating:

(1) The term of commitment under which the prisoner is held;

(2) The time already served on the sentence;

(3) The time remaining to be served;

(4) The amount of good time earned;

(5) The time of parole eligibility of the prisoner; and

(6) Any decisions of the State Parole Board relating to the prisoner.

4. Manner of giving proper notice. The manner of giving proper notice under subsection 2 is as follows.

A. The prisoner shall give or send the written notice of place of imprisonment and the written notice of request for final disposition to the commissioner, warden or other official having custody of him.

B. The commissioner, warden or other official having custody of the prisoner shall promptly forward the written notices, together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

5. Continuance. The court having jurisdiction of the matter may grant any necessary or reasonable

continuance for good cause shown in open court by the prisoner or his counsel.

6. Time limitation. If the prisoner is not brought to trial on the untried indictment, information or complaint within 180 days after the prisoner gave or sent proper notice under subsection 2:

A. The untried indictment, information or complaint is no longer of any force of effect;

B. No court has jurisdiction over it; and

C. The appropriate court shall enter an order dismissing it with prejudice.

7. Effect of escape. If a prisoner escapes from custody after his execution of the request for final disposition, his request is voided.

8. Exception. This section does not apply to any person adjudged to be mentally ill.

§3043. Aliens

1. Notification of immigration officer. When a person is admitted or committed to a correctional facility, a county jail or any other state, county, city or private institution which is supported wholly or in part by public funds, the chief administrative officer of the facility, jail or institution shall inquire at once into the nationality of the person and, if it appears that the person is an alien, the chief administrative officer shall notify immediately the United States immigration officer in charge of the district in which the facility, jail or institution is located, of:

A. The date of and the reason for the alien's admission or commitment;

B. The length of time for which the alien is admitted or committed;

C. The country of which the alien is a citizen; and

D. The date on which and the port at which the alien last entered the United States.

2. Copy of record to immigration officer. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien to a correctional facility, a county jail or any other state, county, city or private institution which is

supported wholly or in part by public funds, the clerk of the court shall furnish without charge a certified copy of:

- A. The complaint, information or indictment;
- B. The judgment and sentence; and
- C. Any other record pertaining to the alien's case.

§3044. Apprehension of escapees and fugitives

1. Generally. The commissioner shall take all proper measures for, and may offer a reward for, the apprehension and return of any committed offender in any correctional institution who has escaped from the control of the department.

- A. The reward may not exceed \$100.
- B. Upon satisfactory proof that the terms of the reward offer have been complied with, the department shall pay the reward.

2. Capital crimes and high offenses. When a prisoner convicted of or charged with a capital crime or other high offense escapes from prison, or there is reasonable cause to believe that a person charged with such an offense and unapprehended for it cannot be arrested and secured in the ordinary course of proceedings, the Governor may, upon application in writing of the Attorney General or district attorney for the county in which the offense was committed, and upon terms which he deems expedient and proper, offer a suitable reward for the arrest, return and delivery into custody of the escaped prisoner or fugitive from justice.

- A. The reward may not exceed \$1,000
- B. Upon satisfactory proof that the terms of the reward offer have been complied with, the Governor may draw his warrant upon the Treasurer of State for the payment of the reward.

§3045. Unnatural death of committed offender

When the death of any committed offender in any correctional facility is not clearly the result of natural causes, an examination and inquest shall be held as in other cases, and the commissioner or the chief administrative officer of the facility shall cause a medical examiner to be immediately notified for that purpose.

ARTICLE IIITRANSFER AND REMOVAL OF COMMITTED OFFENDERS§3061. Transfer generally

When it appears to the commissioner, for reasons of availability of rehabilitative programs and the most efficient administration of correctional resources, that the requirements of any committed offender would be better met in a facility, or program other than that to which the person was originally sentenced, the commissioner may, with the written consent of the person, transfer the person to another facility, institution or program administered by or providing services to the department.

1. Juveniles. No juvenile may be transferred to a facility, institution or program for adult offenders.

2. Applicable rules. Any person transferred under this section shall be subject to the general rules of the institution, facility or program to which he is transferred, except that:

A. The term of his original sentence or commitment remains the same, unless altered by the court; and

B. The person becomes eligible for release and discharge as provided in Title 17-A, section 1254.

§3062. Transfer from the prison to a federal correctional institution

1. Requirements. The commissioner may transfer a person committed to the prison to a federal penal or correctional institution if:

A. The warden certifies in writing to the commissioner that:

(1) The person's presence may be seriously detrimental to the well-being of the prison;

(2) The person willfully and persistently refuses to obey prison rules; or

(3) The person is considered an incorrigible prisoner; and

B. The Attorney General of the United States accepts the commissioner's application for transfer of the person.

2. Contract. The commissioner may contract with the Attorney General of the United States, or such officer as the Congress may designate under the United States Code, Title 18, Section 5003 and acts supplementing and amending it, in each individual case for the care, custody, subsistence, education, treatment and training of any person transferred under this section.

A. The contract shall provide for the reimbursement of the United States in full for all costs or other expenses involved, the costs and expenses to be paid from the appropriation for the operation of the prison.

B. The warden shall affix to the contract a copy of the mittimus or mittimuses under which the prisoner is held.

C. The contract and mittimus or mittimuses are sufficient authority for the United States to hold the prisoner on behalf of the State.

3. Effect on prisoner. The rights of transferred prisoners are governed as follows.

A. A prisoner transferred under this section is subject to the terms of his original sentence or sentences as if he were serving the sentence or sentences within the confines of the prison.

B. Nothing in this section deprives a prisoner transferred under this section of his rights to parole or his rights to legal process in the courts of this State.

§3063. Transfer from the prison to the Maine Correctional Center

1. Transfer requirements. The commissioner may, upon the joint recommendation of the warden and the Superintendent of the Maine Correctional Center, transfer a prisoner in execution of sentence at the prison to the Maine Correctional Center if the transfer would be in the best interest of the transferee, of public safety or of the security and orderly administration of the facility.

A. The transferred prisoner shall serve the sentence imposed upon him by the court at the Maine Correctional Center.

B. During execution of the sentence at the Maine Correctional Center, the transferred prisoner is entitled to receive the same deductions for good time as he would have received at the prison.

2. Return requirements. The commissioner may, upon the joint recommendation of the warden and the Superintendent of the Maine Correctional Center, order a prisoner transferred under subsection 1 to be returned to the prison to continue in execution of his sentence, if the transferred prisoner is not compatible to the Maine Correctional Center program.

§3064. Transfer from the prison to the minimum security unit

The warden may, at his discretion, transfer prisoners from the prison to the Maine State Prison minimum security unit at South Warren, which is considered a part of the prison.

1. Effect on sentences. Prisoners transferred under this section are deemed to be serving their sentences as if confined within the walls of the prison.

2. Rules. Prisoners transferred under this section are subject to the same rules as prisoners confined within the walls of the prison.

3. Escape. Prisoners who escape from the minimum security unit are guilty of escape as if the escape were from the confines of the prison and are punishable in accordance with Title 17-A, section 755.

§3065. Transfer from the prison to jails

1. Requirements. The commissioner may authorize the warden to transfer as many prisoners as necessary to a jail if the warden certifies to the commissioner that there are more prisoners in the prison than can be confined there securely.

2. Jailer's compensation. The jailer who receives prisoners under subsection 1 is entitled to receive whatever compensation from the State Treasury that he and the warden agree upon.

3. Return to prison. When the prison can safely accommodate prisoners transferred under subsection 1, the warden shall transfer the prisoners back to the prison.

4. Effect on sentences. Prisoners are entitled to have the time served in jail under this section deducted from their sentences.

§3066. Transfer from the Maine Correctional Center

1. Transfer to the prison. Transfers to the prison are governed as follows.

A. The commissioner may, upon the joint recommendation of the warden and the Superintendent of the Maine Correctional Center, transfer a prisoner convicted of a Class A, Class B or Class C crime and committed to the center to the prison if:

(1) Reasons of security or overcrowding at the center so require; or

(2) In the interest of the prisoner and the public, the result is the most effective use of available correctional programs with respect to the prisoner.

B. Any prisoner transferred under paragraph A shall serve the sentence imposed on him by the court at the prison.

C. The commissioner may, upon the joint recommendation of the warden and the Superintendent of the Maine Correctional Center, return the prisoner to the center to continue in execution of his sentence, if the reasons for the transfer no longer obtain.

2. Transfer to jails. Transfers to jails are governed as follows.

A. The commissioner may authorize the Superintendent of the Maine Correctional Center to transfer as many prisoners as necessary to a jail if the superintendent certifies to the commissioner that there are more prisoners in the center than can be confined there securely.

B. The jailer who receives prisoners under paragraph A is entitled to receive whatever compensation from the State Treasury that he and the superintendent agree upon.

C. When the center can safely accommodate prisoners transferred under paragraph A, the superintendent shall transfer the prisoners back to the center.

D. Prisoners are entitled to have the time served in jail under this section deducted from their sentences.

§3067. Transfer from the Charleston Correctional Facility

1. Transfer to the prison or the Maine Correctional Center. The Director of the Charleston Correctional Facility may transfer any prisoner, in ac-

cordance with the department's classification process, to the prison or the Maine Correctional Center for reasons of security, overcrowding or failure to participate satisfactorily in the work and rehabilitative programs of the Charleston Correctional Facility.

2. Other transfers. Other transfers from the Charleston Correctional Facility are governed as follows.

A. The director may transfer prisoners to prerelease centers, work release centers, halfway houses, specialized treatment facilities or county jails to meet correctional objectives.

B. Prisoners transferred under this subsection are entitled to credit to their sentences for all time spent in county jails and other correctional facilities or programs.

§3068. Transfer from jails

The commissioner may transfer a prisoner serving a sentence in a county jail from one jail to another to serve any part of his sentence, upon request of the sheriff and approval of the county commissioners of the county of the sending jail and upon the approval of the sheriff and county commissioners of the county of the receiving jail.

1. Cost of transfer or return. The cost of the transfer or return of the prisoner shall be paid by the county of the sending jail.

2. Cost of support. The cost of the support of the prisoner in the receiving jail shall be the amount agreed upon by the county commissioners party to the transfer and shall be paid by the county of the sending jail.

§3069. Hospitalization for mental illness

1. Involuntary. When the chief administrative officer of a correctional facility believes that any person in his facility is mentally ill, requires hospitalization and meets requirements for admission, the chief administrative officer 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, Article III, 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 correctional facility shall accompany the application for admission.

D. If the sentence being served at the time of admission has not expired or commitment has not been terminated in accordance with law at the time the person is ready for discharge from hospitalization, he shall be returned by the appropriate officers of the correctional facility.

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

2. Voluntary. The chief administrative officer of a correctional facility may permit a person confined in the facility to apply for informal admission to a state mental health institute under Title 34-B, section 3831.

A. Except as otherwise provided in this section, the provisions of law applicable to persons admitted to a state mental health institute under Title 34-B, chapter 3, subchapter IV, Article II, shall apply to any person confined in a correctional facility who is admitted to a state mental health institute under that section.

B. A copy of the document by which the person is held in the correctional facility shall accompany the application for admission.

C. If the sentence being served at the time of admission has not expired or commitment has not been terminated in accordance with law at the time the person is ready for discharge from hospitalization, he shall be returned by the appropriate officers of the correctional facility.

D. Admission to a mental health institute under this section has no effect upon a sentence then being served or a commitment then in effect. The sentence continues to run and the commitment remains in force, unless terminated in accordance with law.

§3070. Hospitalization for mental retardation

1. Application. When the chief administrative officer of a correctional facility believes that any person confined in his facility is mentally retarded and in need of services available at the Pineland Center and is a proper subject for admission to the Pineland Center, he shall apply in writing for the admission of the person.

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

B. Admission to the Pineland Center shall be effected in accordance with Title 34-B, sections 5473 to 5478.

2. Unexpired sentence. If the sentence being served at the time of admission has not expired or commitment has not been terminated in accordance with law at the time the person is ready for discharge from the Pineland Center, he shall be returned by the appropriate officers of the correctional facility.

3. Expired sentence. If, at the time of expiration of the original sentence or termination of the commitment, it is the opinion of the Superintendent of the Pineland Center that the patient should remain in residence at the Pineland Center after expiration of sentence or termination of commitment, the patient may be readmitted to the Pineland Center in accordance with Title 34-B, sections 5473 to 5478.

4. Effect on sentence. The sentences of hospitalized prisoners are governed as follows.

A. Admission to a hospital under this section has no effect upon a sentence then being served or a commitment then in effect.

B. The sentence continues to run and the commitment remains in force, unless terminated in accordance with law.

§3071. Removal for disease

1. Dangerous diseases. Removal of prisoners afflicted with dangerous diseases is governed as follows.

A. If a prisoner in a jail, house of correction or workhouse is attacked with a disease which the local health officer, by medical advice, considers dangerous to the safety and health of other prisoners or of the inhabitants of the town, the local health officer shall, by written order,

direct the person's removal to some place of safety, to be securely kept and provided for until the officer's further order.

B. If the person recovers from the disease, he shall be returned to his place of confinement.

C. A removal under this section may not be deemed an escape.

D. If the diseased person was committed to the place of confinement by an order of court or judicial process, the local health officer shall send to the office of the clerk of the court from which the order or process was issued:

(1) The order for the diseased person's removal or a copy of the order attested by the local health officer; and

(2) A statement describing the actions taken pursuant to the order.

2. Contagious diseases. If a pestilence or contagious disease breaks out among the committed offenders in any correctional facility or county jail, the commissioner may:

A. Cause any of the committed offenders to be removed to some suitable place of security where they shall receive all necessary care and medical attention; and

B. Cause the committed offender or offenders to be returned as soon as possible to the jail or institution to be confined according to their sentences, if unexpired.

3. Tuberculosis. The commissioner may transfer committed offenders in any correctional institution who are afflicted with tuberculosis to state sanatoriums.

A. When a committed offender in a correctional facility becomes afflicted with tuberculosis so that the welfare of the committed offender or the safety of the other committed offenders in the facility requires his removal, the commissioner, with the approval of the Governor, may cause the committed offender to be removed to one of the state sanatoriums to be kept and treated until he may be safely returned to the correctional facility.

B. The officers of state sanatoriums shall give preference in the admission of new patients to

persons transferred under this subsection.

SUBCHAPTER II

MAINE STATE PRISON

ARTICLE I

GENERAL PROVISIONS

§3201. Maintenance

The commissioner shall maintain the Maine State Prison at Thomaston, in Knox County, as the prison and penitentiary of the State, and shall confine, employ and govern persons lawfully committed to the prison, as provided by law.

ARTICLE II

PRISON OFFICIALS AND PERSONNEL

§3231. Warden

The chief administrative officer of the Maine State Prison is called the warden.

1. Appointment. The commissioner shall appoint and set the salary for the warden.

A. The warden's appointment shall be subject to the Personnel Law.

B. The appointment shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

2. Residence. The warden shall reside constantly within the prison.

3. Duties. In addition to other duties set out in this Title, the warden has the following duties.

A. Under the direction and control of the commissioner, the warden shall have the care, custody and charge of the prison, the prisoners in the prison, in conformity to their sentences, and the lands, buildings, machines, tools, stock, provisions and every other kind of property belonging to or within the prison.

B. The warden shall cause all rules of the prison to be strictly and promptly enforced.

C. The warden shall observe and oversee the conduct of the prisoners.

D. The warden shall have command of all the force for guarding the prison, and all officers and persons employed under him in overseeing, guarding and governing it.

E. The warden shall constantly keep on hand a suitable and sufficient supply of arms and ammunition.

F. The warden shall give the commissioner immediate information of any officer who refuses or neglects to enforce the discipline established and shall remove forthwith any such officer.

G. The warden shall cause a record to be kept of all punishments imposed upon prisoners at the prison, as provided in section 3032 and in rules of the prison, setting forth the reasons for the imposition of the punishments.

H. The warden shall serve, execute and return all processes within the exterior walls of the prison yard.

(1) All processes shall be directed to the warden.

(2) Both the warden and his designee are answerable for the actions of the designee.

(3) The warden shall charge the same fees as sheriffs for serving, executing and returning processes.

I. The warden shall, on demand of an officer having a writ commanding him to replevy from the warden's possession any goods or chattels of a private individual who is not a prisoner, expose the goods and chattels outside the prison yard so that they may be replevied.

(1) The officer shall pay the warden a reasonable charge for the removal of the goods and chattels.

(2) The officer shall tax that charge in his fees on the writ.

J. The warden shall be the contracting agent for all sales of articles from the prison, for the letting to hire of such prisoners as the commissioner deems expedient and for all other contracts made on account of the prison, except those made by the State Purchasing Agent.

(1) All contracts shall be made in the man-

ner prescribed by the commissioner.

(2) No contract may be accepted by the warden, unless the contractor gives satisfactory security for its performance.

(3) No officer of the prison may be directly or indirectly interested in any contract.

(4) Notwithstanding the language of this paragraph, the warden may authorize the sale of articles produced at the prison and may authorize any person or business entity purchasing articles from the prison to resell those articles if the person or entity requests in writing that authority from the warden at the time the initial purchase is made.

K. The warden shall receive and take care of any property that a person has with him at the time he enters the prison, keep an account of the property and give the property back to the person on his discharge.

L. Upon the advice of the prison physician and in other cases when he deems it necessary, the warden shall cause any sick prisoner to be removed forthwith to a hospital, where the prisoner shall receive such care, attention, medicine and diet as his situation requires, until the prison physician determines that the prisoner may leave the hospital without injury to his health.

M. The warden shall cause all articles and goods manufactured at the prison for sale to be distinctly labeled or branded with the words "Manufactured at the Maine State Prison."

N. The warden may not carry on or be concerned in trade or commerce during his continuance in office.

4. Powers. In addition to other powers granted in this Title, the warden has the following powers.

A. The warden may require all officers and other citizens to aid him in suppressing an insurrection among the prisoners in the prison and in preventing their escape or rescue from the prison or from any other legal custody or confinement.

B. The warden may transport prisoners to induction centers whenever necessary to comply with rules of selective service, and in so doing shall

take such measures as the commissioner feels are necessary for the public safety.

C. If any subordinate officer is guilty of negligence or unfaithfulness in the discharge of his duties or of a violation of any of the laws or rules for the government of the prison and, if the commissioner approves, the warden may deduct from the wages of the subordinate officer a sum not exceeding a month's pay.

D. Under the direction of the commissioner, the warden may sell and convey any real estate to which he acquires title in the adjustment of debts in behalf of the State.

5. Civil process or execution. The warden may not be arrested on any civil process or execution while in office, but execution upon any judgment against him personally, and not in his official capacity, may be issued against his goods and estate only.

A. If the execution is returned unsatisfied, the creditor may file with the Governor a copy of the execution and return and may serve on the warden a copy of that copy attested by the Secretary of State, with a notice under the Secretary of State's hand of the day on which the copy was filed.

B. If the warden does not, within 40 days after the day of service of the copy, pay the creditor his full debt, with reasonable costs for copies and service of the copies, the commissioner shall remove the warden from office.

C. When the person appointed warden ceases to be warden, alias executions may be issued against his body or property as in other cases.

§3232. Deputy warden

1. Appointment. The warden shall appoint deputy wardens subject to the Personnel Law.

2. Unavailability of warden. When the warden is absent from the prison or unable to perform the duties of his office, the deputy warden designated by the warden has the powers, duties, obligations and liabilities of the warden.

§3233. Prison employees

1. Duties. Prison employees have the following duties.

A. Prison officers shall perform the services in the managing, superintending and guarding of the prison as prescribed by the rules or as directed by the warden.

B. If a prisoner at the prison resists the authority of any uniformed or ununiformed officer or refuses to obey his lawful commands, the officer shall immediately enforce obedience.

2. Powers. Prison employees have the following powers.

A. Employees of the prison have the same power as sheriffs in their respective counties to search for and apprehend escapees from the prison, when authorized to do so by the warden.

B. Employees of the prison, when authorized by the warden, may carry weapons inside and outside the prison in connection with their assigned duties or training.

3. Uniforms. Prison employee uniforms are governed as follows.

A. Employees of the prison may be provided, at the expense of the State, with distinctive uniforms for use when required for the performance of their official duties and which shall remain the property of the State.

B. Employees of the prison may be provided with an equivalent clothing allowance when the private purchase of special clothing is similarly required for the performance of their official duties.

§3234. Overseers

1. Employment. When practicable, the warden shall employ persons having suitable knowledge and skill in the fields of labor and manufacture carried on in the prison to supervise activities in those fields assigned to them by the warden.

2. Services. Persons employed under subsection 1 shall perform the services in the managing, supervising and guarding of the prison as prescribed by the prison rules or as directed by the warden.

§3235. Physician

1. Appointment. The warden shall appoint some suitable person as physician of the prison.

2. Duties. The prison physician has the following duties.

A. The prison physician shall visit the prison as necessary to attend and prescribe for sick prisoners and, when requested by the warden, shall determine their ability to work.

B. The prison physician shall advise the warden when the illness of any prisoner requires his removal to a hospital.

§3236. Chaplain

1. Appointment. The warden shall appoint suitable persons as chaplains.

2. Duties. The prison chaplains shall, in accordance with the rules of the prison:

A. Conduct religious services;

B. Visit the sick;

C. Labor diligently and faithfully for the mental, moral and religious improvement of the prisoners; and

D. Aid the prisoners, when practicable, in obtaining employment after their discharge.

3. Powers. The chaplains may, with the assent of the warden, establish a religious educational program and may admit persons of proper character from outside the prison to assist in it.

ARTICLE III

PRISONERS

§3261. Delivery of convicted men to the prison

When a male person is convicted and sentenced to the prison from any county:

1. Duties of clerk of court. The clerk of the sentencing court shall immediately notify the warden and the sheriff of the county in which the sentencing court is located;

2. Duties of the sheriff. The sheriff of the county in which the sentencing court is located shall:

A. Transport the convict to the prison, using a sufficient number of his appointed deputies when

necessary; and

B. Deliver the convict to the officer in charge of the prison before 4 p.m. on any day, accompanied by a duly signed warrant of commitment and record, as provided by Title 15, section 1707;

3. Duties of the jail keeper. When, during the conveyance of a convict to the prison in pursuance of his sentence, it is necessary or convenient to lodge him for safekeeping in a jail until the remainder of the conveyance can be conveniently performed, the keeper of the jail shall:

A. Receive and safely keep and provide for the convict, reasonable charges and expenses for this service to be paid from the State Treasury; and

B. Deliver the convict to the custody of the person employed to convey him, when that person calls for the convict; and

4. Duties of the warden. The warden shall:

A. File the warrant and record, as provided by Title 15, section 1707, with his return thereon in his office; and

B. Cause a copy of the warrant of commitment to be filed in the office of the clerk of court from which it was issued.

§3262. Receipt of United States prisoners

1. Requirements. A prisoner convicted of an offense against the United States and committed for a term of imprisonment in excess of one year to the custody of the Attorney General of the United States may be received in the prison, if:

A. The Attorney General of the United States designates the prison as the place of confinement for the prisoner; and

B. The commissioner approves and agrees to accept the prisoner to be kept in the prison in pursuance of his sentence.

2. Contracts. Contracts for the receipt of United States prisoners are governed as follows.

A. The commissioner may contract with the Attorney General of the United States or such officer as the Congress may designate for the care, custody, subsistence, education, treatment and training of any prisoner accepted under this

section.

B. All sums paid pursuant to contracts authorized under this section shall accrue to the General Fund.

§3263. Sentence duration

1. Commencement of sentence. A prisoner's sentence begins on the day he is received into the prison and that day is counted as the first full day of the sentence.

2. Discharge from sentence. The warden shall discharge a prisoner from his sentence only when the prisoner:

A. Has served the full term for which he was sentenced, except that, if the computation of a prisoner's sentence fixes his release or discharge date on a Saturday, Sunday or legal holiday, the warden may release or discharge the prisoner on the last regular business day of the prison preceding that Saturday, Sunday or legal holiday;

B. Has been pardoned; or

C. Has been otherwise released by legal authority.

§3264. Conditions of imprisonment

Prisoners in the prison, including prisoners transferred under section 3066, shall work at tasks normal to the maintenance, service, industrial, agricultural and other activities of the prison.

§3265. Disciplinary action

1. Hard labor. The warden may subject a prisoner, including a prisoner transferred under section 3066, to confinement at hard labor only for the purposes of prison discipline and government and control of the prisoners.

2. Segregation. The warden may subject a prisoner, including a prisoner transferred under section 3066, to segregation only for the purposes of prison discipline and government and control of the prisoners.

§3266. Prisoner employment and training

1. Minimum security unit. The warden may establish a vocational training program at the minimum

security unit to provide prisoners skills designed to assist in the acquisition and retention of employment following parole or discharge.

2. Leased facilities. The warden may employ or provide training for prisoners in minimum security facilities conducted on leased land in towns within Knox County, and may detain and house the prisoners in the barracks at the minimum security unit at South Warren.

3. Effect on sentences. Prisoners in training or employed under programs established under subsection 2 are deemed to be serving their sentences as if confined in the minimum security unit.

4. Rules. Prisoners in training or employed under programs established under subsection 2 are subject to the same rules as prisoners confined in the minimum security unit.

5. Escape. Prisoners who escape from the Maine State Prison minimum security unit, or from land leased by the warden while they are in training or employed under programs established under subsection 2, are guilty of escape as if the escape were from the confines of the prison and are punishable in accordance with Title 17-A, section 755.

§3267. Funerals and deathbed visits

At the discretion of the warden, a prisoner at the prison may attend the funeral of his natural or adoptive mother, father, son or daughter, of his wife, his brothers or sisters, or may be permitted one supervised deathbed visit to any of those persons, if the funeral or visit is held within the State.

1. Certification of terminal illness. Before a deathbed visit is permitted, terminal illness must be certified by the attending physician.

2. Costs. The prisoner, if able, shall pay the cost of transportation and the per diem compensation of the accompanying officer.

§3268. Discharge or parole

When any prisoner is paroled or discharged, the warden:

1. Clothing. Shall ensure that he is provided with decent clothing;

2. Money. May give him no more than \$50, except

that the warden may not give money to a prisoner who:

A. Has, within the 6 months prior to the date of his parole or discharge, transferred from his account to any person more than \$500, plus money necessary to the support of his dependents and the payment of his creditors; or

B. Has, on the date of his parole or discharge, more than \$500 in his account; and

3. Transportation. Shall furnish transportation to the place where the prisoner was convicted, except that:

A. If the prisoner's home is within the State, the warden shall furnish transportation to his home;

B. If the prisoner has secured employment within the State, the warden shall furnish transportation to the place of employment;

C. If the prisoner's home is outside the State, the warden shall furnish transportation to the place on the Maine border nearest to his home; and

D. If the prisoner has secured employment outside the State, the warden shall furnish transportation to the place on the Maine border nearest the place of employment.

SUBCHAPTER III

MAINE CORRECTIONAL CENTER

§3401. Establishment

There is established the Maine Correctional Center, formerly known as the Men's Correctional Center, located at South Windham for the confinement and rehabilitation of the following persons:

1. Men. Men over the age of 18 years who have been duly sentenced and committed to the center;

2. Women. Women who have been duly sentenced to the prison or the center and committed to the center; and

3. Pretrial detainees. Pretrial detainees who have been committed to the center.

§3402. Superintendent

1. Chief administrative officer. The chief

administrative officer of the Maine Correctional Center is called the superintendent.

2. Duties. In addition to other duties set out in this Title, the superintendent shall supervise and control the prisoners, pretrial detainees, employees, grounds, buildings and equipment at the center.

3. Powers. In addition to other powers granted in this Title, the superintendent has the following powers.

A. The superintendent may appoint 2 assistant superintendents, subject to the Personnel Law. An assistant superintendent designated by the superintendent has the powers, duties, obligations and liabilities of the superintendent when the superintendent is absent from the center location or is unable to perform the duties of the office.

B. The superintendent may, with the written approval of the commissioner, contract with the Director of the Federal Bureau of Prisons acting pursuant to the United States Code, Title 18, Section 4002, for the imprisonment, subsistence, care and proper employment of persons convicted of crimes against the United States, and may receive and detain such persons pursuant to the contracts.

§3403. Prisoners generally

1. Conditions of confinement. Conditions of confinement of prisoners are governed as follows.

A. The superintendent shall detain and confine all persons committed to the center in accordance with the sentences of the courts and with the rules of the center.

B. The superintendent shall provide for the safekeeping or employment of persons committed to the center in order to teach them a useful trade or profession and to improve their mental and moral condition.

2. Housing. The superintendent shall maintain separate housing facilities for men and women.

3. Convicted boundover juveniles. Nothing in this subchapter may be construed to prevent the sentencing of convicted boundover juveniles to other correctional facilities in this State.

§3404. Pregnant women

If any woman is, at the time of her commitment to the center, pregnant with a child which will be born after her commitment, the custody of the child, at the instance of the commissioner, shall be determined in accordance with Title 22, chapter 1071.

§3405. Maine Correctional Center employees

1. Powers. Employees of the center have the same power as sheriffs in their respective counties to search for and apprehend escapees from the center, when authorized to do so by the superintendent.

2. Uniforms. Maine Correctional Center employee uniforms are governed as follows.

A. Employees of the center may be provided, at the expense of the State, with distinctive uniforms for use when required for the performance of their official duties and which shall remain the property of the State.

B. Employees of the center may be provided with an equivalent clothing allowance when the private purchase of special clothing is similarly required for the performance of their official duties.

§3406. Land grants to the Department of Conservation

The following lands of the former Women's Correctional Center at Skowhegan are granted to the bureaus of the Department of Conservation as follows.

1. Land grant to Bureau of Public Lands. All of the open land and timberland north of Norridgewock Avenue, excluding the land immediately adjacent to the institutional buildings, is transferred to the Bureau of Public Lands, which shall actively manage the timberlands as a working forest.

2. Land grant to Bureau of Parks and Recreation. All the land lying between Norridgewock Avenue and the Kennebec River, with the exception of the sewerage treatment plant and access thereto, is transferred to the Bureau of Parks and Recreation to be managed by the bureau.

SUBCHAPTER IV

CHARLESTON CORRECTIONAL FACILITY

§3601. Establishment

There is established the Charleston Correctional

Facility located at Charleston for the confinement and rehabilitation of persons who have been duly sentenced and committed to the Maine Correctional Center or to the prison.

§3602. Purposes

The purposes of the Charleston Correctional Facility include vocational and academic education and work involving public restitution.

§3603. Director

1. Chief administrative officer. The chief administrative officer of the Charleston Correctional Facility is called the director and is responsible to the commissioner.

2. Duties. In addition to other duties set out in this Title, the director has the following duties.

A. The director shall exercise proper supervision over the employees, grounds, buildings and equipment at the Charleston Correctional Facility.

B. The director shall supervise and control the prisoners at the Charleston Correctional Facility in accordance with departmental rules.

3. Powers. In addition to other powers granted in this Title, the director may appoint one assistant director, subject to the Personnel Law, and the assistant director has the powers, duties, obligations and liabilities of the director when the director is absent or unable to perform his duties.

§3604. Prisoners generally

1. Evaluation. Before assignment to the Charleston Correctional Facility, prisoners must be evaluated for security status, program needs and emotional stability by the classification process at the Maine Correctional Center or the prison.

2. Transferred prisoners. All prisoners transferred to the Charleston Correctional Facility shall be detained and confined in accordance with the sentences of the court and the rules of the department.

3. Education. The director shall maintain suitable courses for academic and vocational education of the prisoners.

A. The director shall maintain necessary equipment and employ suitable qualified instructors as

necessary to carry out the objectives of the facility's programs.

B. Before employing instructors in vocational education, the director shall obtain the approval of the Department of Educational and Cultural Services.

4. Employment. The commissioner may authorize the employment of prisoners of the Charleston Correctional Facility on public works with any department, agency or entity of the State, county or local government and may authorize the use of prisoners to provide assistance in the improvement of property owned by nonprofit organizations.

A. The commissioner shall promulgate such rules as he deems proper to ensure the care and treatment of the prisoners and the safe working conditions of prisoners and departmental employees.

B. The purpose of the employment authorized in this subsection is to provide training to the prisoner and to be a form of public restitution for the crime or crimes committed by the prisoner.

C. The prisoners employed under this subsection may not be compensated monetarily for the work performed.

D. The commissioner may request that nonprofit organizations pay for the transportation of the prisoners and pay the per diem compensation of correctional officers or instructors who must accompany the prisoners or oversee the work to be performed.

5. Escape. Any prisoner who escapes from the facility, or from any assignment beyond the grounds of the facility, is guilty of escape under Title 17-A, section 755.

§3605. Charleston Correctional Facility employees

Employees of the Charleston Correctional Facility have the same power as sheriffs in their respective counties to search for and apprehend escapees from the facility, when authorized to do so by the director.

SUBCHAPTER V

MAINE YOUTH CENTER

§3801. Establishment

The State shall maintain the Maine Youth Center located at South Portland.

1. Coeducational. The center shall be coeducational.

2. Separate housing. The center shall fully separate the housing facilities for boys and girls.

§3802. Purposes

1. Statement. The purposes of the Maine Youth Center are:

A. To detain juveniles prior to Juvenile Court appearances on court order that the juvenile be securely detained;

B. To administer court-ordered diagnostic evaluations pursuant to Title 15, section 3309-A, and court-ordered examinations pursuant to Title 15, section 3318; and

C. To rehabilitate juveniles committed to it on being adjudicated as having committed a juvenile crime under Title 15, section 3310, subsection 5.

2. Accomplishment. To accomplish the purposes set out in subsection 1, the disciplines of education, casework, group work, psychology, psychiatry, medicine, nursing, vocational training and religion as they are related to human relations and personality development shall be employed.

§3803. Superintendent

The chief administrative officer of the Maine Youth Center is called the superintendent.

§3804. Superintendent's powers

In addition to other powers granted in this subchapter, the superintendent has the following powers.

1. Juvenile clients. The superintendent has all the power which a guardian has over his ward and which a parent has over his child as to the person, property, earnings and rehabilitation of every juvenile client. Each juvenile client is under the direction of the superintendent, subject to rules of the department, except that:

A. If a juvenile client is or becomes 18 years of age while still under commitment, the statu-

tory guardianship of the superintendent over him shall terminate; but

B. The juvenile client remains subject to the control of the superintendent, staff and rules of the center until the expiration of the period of commitment or until discharge from the center.

2. Assistant superintendents. The superintendent may appoint 2 assistant superintendents, subject to the Personnel Law.

A. An assistant superintendent designated by the superintendent has the powers, duties, obligations and liabilities of the superintendent when the superintendent is absent from the center or unable to perform the duties of the office.

B. If there are no assistant superintendents, another employee designated by the superintendent has the powers, duties, obligations and liabilities of the superintendent in the circumstances described in paragraph A.

§3805. Commitment

1. Eligibility. Only a juvenile, as defined in Title 15, section 3003, subsection 14, who is 11 years of age or older at the time of the court's disposition of the case may be committed to the center pursuant to this subchapter and Title 15, Part 6.

2. Limitations. No person may be committed to the center who is blind or who is a proper subject for the Augusta Mental Health Institute, the Bangor Mental Health Institute or the Pineland Center.

3. Certification. When a person is committed to the center, the court making the commitment shall certify on the mittimus the person's birthplace, parentage and legal residence.

§3806. Federal juvenile offenders

The commissioner may contract with the Attorney General of the United States for the confinement and support in the Maine Youth Center of juvenile offenders against the laws of the United States in accordance with the United States Code, Title 18, Sections 706 and 707.

§3807. Human services' custody

1. Suspension. When the custody of a child at the time of commitment is in the Department of Human

Services, that custody shall be temporarily suspended while the child is in the Maine Youth Center.

2. Reversion. Upon discharge from the Maine Youth Center, the custody of the child shall revert to the Department of Human Services, if the child is still under 18 years of age.

§3808. Overcrowding

When the superintendent reports that overcrowding exists at the center, the commissioner may, with the approval of the Governor, authorize the use of any available facilities at the location in Hallowell formerly known as the Stevens School and Women's Correctional Center.

§3809. Seclusion

1. Generally. When a juvenile client's behavior presents a high likelihood of harm to himself or to others, presents a substantial and imminent threat of destruction of property or demonstrates a proclivity to absent himself from the center without leave, the juvenile client may be placed in seclusion if he has demonstrated that anything less restrictive would be ineffectual in the control of his behavior.

2. Conditions. The use of seclusion is subject to the following conditions.

A. The use of seclusion shall be first approved by the superintendent.

B. The juvenile client shall be provided with a sufficient quantity of wholesome and nutritious food.

C. Adequate sanitary and other conditions required for the health of the juvenile client shall be maintained.

D. The use of seclusion may not exceed the period of time necessary to alleviate and prevent the reoccurrence of the behavior described in subsection 1.

E. When seclusion exceeds 12 hours, the superintendent shall cause the center physician or a member of the center medical staff to visit the juvenile client forthwith and at least once in each succeeding 24-hour period the client remains in seclusion, to examine the client's state of health.

(1) The superintendent shall give full con-

sideration to recommendations of the physician or medical staff member as to the juvenile client's dietary needs and the conditions of his confinement required to maintain his health.

(2) Use of seclusion shall be discontinued if the physician states that it is harmful to the mental or physical health of the juvenile client.

F. Seclusion may not exceed 72 hours without the commissioner's approval, which shall:

(1) Be in writing;

(2) State the reasons for the approval; and

(3) Be kept on file.

G. If the recommendations of the physician or medical staff member regarding the juvenile client's dietary or other health needs while in seclusion are not carried out, the superintendent shall send a written justification to the commissioner.

§3810. Entrustment

1. Superintendent's powers. During a juvenile client's commitment to the center, the superintendent may, at his discretion:

A. Keep the juvenile client at the center; or

B. Upon prior mutual agreement, entrust the juvenile client, for a period not exceeding the term of his commitment, to the care of:

(1) Any suitable person or persons;

(2) The Division of Probation and Parole;

(3) The Department of Human Services; or

(4) Some other public or private child care agency.

2. Reports. As often as the superintendent requires, the person or agency to whom the juvenile client is entrusted shall report to the superintendent:

A. The progress and behavior of the juvenile client, whether or not the juvenile client remains under the care of the person or agency;

and

B. If the juvenile client is not under the care of the person or agency, where the client is.

3. Center services. The superintendent shall provide aftercare and entrustment services to juvenile clients.

4. Cancellation. If the superintendent is satisfied at any time that the welfare of the juvenile client will be promoted by return to the center, the superintendent may cancel the trust and resume charge of the client with the same powers as before the trust was made.

§3811. Return to the center

When a juvenile client who has been placed on entrustment or who has absented himself from the center without leave is taken into custody for the purpose of return to the center by an officer or employee of the center, at the direction of the superintendent, or by a law enforcement officer, at the request of the superintendent, and because of the juvenile client's distance from the center at the time of being taken into custody, it becomes necessary to detain the client overnight:

1. Temporary detention. The juvenile client may be temporarily detained in a county jail; and

2. Return. The juvenile client shall be returned to the center on the day after being taken into custody, except that, if traveling conditions are unsafe, the client shall be returned to the center at the earliest possible time.

§3812. Discharge

1. Duty. The superintendent shall cause a juvenile client to be discharged from the center:

A. When the client becomes 21 years of age; or

B. When the superintendent determines that the client has benefited optimally from the services and facilities of the center.

2. Power. The superintendent may cause a juvenile client to be discharged from the center when the superintendent determines that discharge is in the best interest of the client.

CHAPTER 5

PROBATION AND PAROLE

SUBCHAPTER I

GENERAL PROVISIONS

§5001. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the State Parole Board.
2. Director. "Director" means the Director of Probation and Parole.
3. Division. "Division" means the Division of Probation and Parole under the Department of Corrections.
4. Fine. "Fine" includes court costs whenever applicable.
5. Juvenile. "Juvenile" means a person under the age of 18 years or a person who is alleged to have committed, while under the age of 18 years, any acts or offenses covered by Title 15, Part 6, regardless of whether, at the time of the proceeding, the person is of the age of 18 years or over.
6. Parole. "Parole" is a release procedure by which a person may be released from a correctional facility by the State Parole Board prior to the expiration of his maximum term, parole status being in effect under Title 17-A, section 1254, subsection 3, with all provisions of prior laws governing parole continuing in effect.
7. Probation. "Probation" means a procedure under which a person found guilty of an offense is released by the court, without being committed to a correctional facility, or with or without commitment to jail or fine, subject to conditions imposed by the court.

§5002. Pardons by the Governor

This chapter does not deprive the Governor of the power to grant a pardon or commutation to any person sentenced to a correctional facility.

§5003. Prohibited acts

1. Interference with probation. A person 18

years of age or older is guilty of interference with probation if he willfully obstructs, intimidates or otherwise abets a probationer under the supervision and control of the division and thereby causes or contributes to causing the probationer to violate the conditions of his probation, after having been warned in writing by the director to end his relationship or association with the probationer.

A. Interference with probation is a Class E crime, except that, notwithstanding Title 17-A, it shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

B. This subsection applies to interferences with the probation of probationers who are under the supervision and control of the division at the request of other states under terms of the Uniform Act for Out-of-State Parolee Supervision.

2. Interference with parole. A person 18 years of age or older is guilty of interference with parole if he willfully obstructs, intimidates or otherwise abets a parolee under the supervision and control of the division and thereby causes or contributes to causing the parolee to violate the conditions of his parole, after having been warned in writing by the director to end his relationship or association with the parolee.

A. Notwithstanding Title 17-A, section 4-A, interference with parole shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

B. This subsection applies to interferences with the parole of parolees who are under the supervision and control of the division at the request of other states under terms of the Uniform Act for Out-of-State Parolee Supervision.

SUBCHAPTER II

PAROLE BOARD

§5201. Establishment

There is established within the Department of Corrections a State Parole Board consisting of 5 members.

§5202. Appointment

The Governor shall appoint as the 5 members of

the board persons who:

1. Citizens and residents. Are citizens and residents of the State; and

2. Training or experience. Have special training or experience in law, sociology, psychology or related branches of social science.

§5203. Terms

The terms of the members of the board are:

1. Four years. Four years plus the time period until their successors have been appointed and qualified; or

2. Pleasure of Governor. During the pleasure of the Governor.

§5204. Vacancy

A vacancy on the board shall be filled for the unexpired term in the same manner in which an appointment is made.

§5205. Expenses

The members of the board shall be paid \$25 per day and necessary expenses for each day actually spent in the work of the board.

§5206. Meetings

1. Chairman. The members of the board shall elect a chairman who shall preside at all meetings of the board when he is present.

2. Frequency. The board shall meet at least once every 2 months and may meet as often as necessary, at such times and places as the chairman may designate.

3. Quorum. Any 3 members constitute a quorum for the exercise of all powers of the board.

§5207. Cooperation

The Department of Human Services, Department of Corrections and officers and staffs of correctional facilities and law enforcement agencies in the State shall cooperate with the board in exercising its powers and duties.

§5208. Annual report

1. Board secretary's duty. The secretary of the board shall, after June 30th of each year, send to the commissioner a detailed report of the work of the board and of the probation and parole activities of the division for the preceding fiscal year.

2. Commissioner's duty. The commissioner shall send the annual report to the Governor for submission to the Legislature.

§5209. Administrative assistant

1. Appointment. The board shall appoint a full-time administrative assistant to serve at the pleasure of the board.

2. Compensation. The administrative assistant is entitled to compensation in an amount to be determined by the Governor.

3. Duties. The administrative assistant shall perform those duties assigned to him by the board.

4. Powers. The administrative assistant may, subject to the rules of the board, conduct a preliminary hearing with a committed offender at any correctional facility and make written recommendations to the board concerning disposition.

§5210. Duties

The board shall:

1. Time of parole. Determine the time of parole for each committed offender;

2. Parole revocation. Revoke parole when warranted due to a parole violation;

3. Discharge from parole. Determine the time of discharge of parolees from parole supervision; and

4. Advice to Governor. When requested by the Governor, advise him concerning applications for pardon, reprieve or commutation.

A. The board shall hold hearings, cause an investigation to be made and collect records to determine the facts and circumstances of a committed offender's crime, his past criminal record, his social history and his physical and mental condition as may bear on the application.

B. The board shall make recommendations regard-

ing action by the Governor on the application.

C. All information obtained under this subsection, and any report furnished to the Governor under this subsection, is confidential.

§5211. Powers

1. Rules. The board may promulgate rules, in accordance with the Administrative Procedure Act, Title 5, chapter 375, pertaining to its functions set out in this chapter.

2. Restitution. The board may authorize and impose as a condition of parole that the person make restitution to his victim or other authorized claimant in accordance with Title 17-A, chapter 54.

3. Quasi-judicial powers. The board, or any member of the board, may, in the performance of official duties:

A. Issue subpoenas;

B. Compel the attendance of witnesses;

C. Compel the production of books, papers and other documents pertinent to the subject of its inquiry; and

D. Administer oaths and take the testimony of persons under oath.

4. Grant or denial of parole. The board may grant or deny parole in accordance with the following procedures.

A. If the recommendation of the administrative assistant under section 5209, subsection 4, is to grant parole, the board may make a final decision granting parole without a hearing.

B. If the recommendation of the administrative assistant is to deny parole, the board shall afford the committed offender a hearing before the board and the board may not deny parole without affording the committed offender a hearing.

SUBCHAPTER III

DIVISION OF

PROBATION AND PAROLE

§5401. Establishment

There is established within the Department of Corrections a Division of Probation and Parole which is charged with the administration of probation and parole services within the State:

1. Director. The division is under the direction of the Director of Probation and Parole.

2. Employees. The division consists of field probation and parole officers, juvenile caseworkers and of such other administrative employees as may be necessary in carrying out its functions.

§5402. Director

1. Appointment. The commissioner shall appoint the Director of Probation and Parole, subject to the Personnel Law.

2. Duties. The director shall:

A. Promulgate and enforce rules for the field probation and parole service, juvenile caseworkers and parole officers in correctional facilities;

B. Appoint, subject to the Personnel Law, district probation and parole supervisors, field probation and parole officers and such other employees as may be required to carry out adequate supervision of all probationers and of all parolees from the correctional facilities;

C. Prescribe the powers and duties of persons appointed under paragraph B;

D. Provide necessary investigation of any criminal case or matter, including presentence investigation, when requested by the court having jurisdiction;

E. Provide investigation when requested by the board;

F. Cooperate closely with the board, the criminal and juvenile courts, the chief administrative officers of correctional facilities and other correctional facility personnel;

G. Make recommendations to the board in cases of violations of the conditions of parole;

H. Issue warrants for the arrest of parole violators;

I. Notify the chief administrative officers of correctional facilities of determinations made by the board;

J. Divide the State into administrative districts and staff the districts;

K. Provide instruction and training courses for probation and parole officers and for juvenile caseworkers; and

L. Be executive officer and secretary of the board.

3. Powers. The director may:

A. Provide necessary specialized services and procedures for the constructive rehabilitation of juveniles;

B. Obtain psychiatric, psychological and other necessary services;

C. Sign documents, including warrants and extradition papers, for the board when so instructed by the board; and

D. With the approval of the commissioner, in special instances and in the absence or illness of the Assistant Director of Probation and Parole, delegate any responsibilities of the assistant director to a district supervisor.

(1) This delegation shall not exceed 20 working days.

(2) During the period of the delegation, the district supervisor has all the responsibilities and obligations of the assistant director.

§5403. Assistant director

1. Acting director. The assistant director has the powers, duties, obligations and liabilities of the director when the director is absent or unable to perform his duties.

2. Arrest warrants. Upon designation by the director, the assistant director may issue warrants for the arrest of parole violators.

§5404. Probation and parole officers

In addition to duties prescribed by the director and by the court having jurisdiction, a probation and

parole officer shall:

1. Investigation. Investigate any criminal case or matter concerning probation or parole referred to him for investigation and report the result of the investigation;

2. Arrest. Arrest in the following circumstances:

A. Arrest and return probation and parole violators upon request of the chief administrative officer of a correctional facility; and

B. Arrest and return to a correctional facility persons released from the correctional facility under section 3035;

3. Supervision. Supervise persons as follows:

A. Supervise the probation or parole of each person placed under his supervision;

B. Supervise persons released from a correctional facility under section 3035, if the chief administrative officer of the facility requests the supervision and the director agrees to the supervision; and

C. Keep informed of the conduct and condition of each person placed under his supervision and use suitable methods to encourage him to improve his conduct and condition;

4. Records and reports. Keep records of each case and make reports as required; and

5. Money. Collect and disburse money according to the order of the court having jurisdiction.

A. The officer shall make a detailed account under oath of all fines received.

B. The officer shall pay the fines collected to the appropriate county treasurer by the 15th day of the month following collection.

SUBCHAPTER IV

JUVENILE PROBATION SERVICES

§5601. Interagency agreements

The department may enter into agreements with state agencies, other public agencies and private

nonprofit agencies to provide supervision or other services to juveniles placed on probation by the Juvenile Court.

1. Terms. The terms of the agreements, including any payments to be made by the department for the services provided, shall be set forth in writing.

2. Termination. Any agreement made under this section may be terminated upon 90 days' written notice by either party to the agreement.

§5602. Juvenile caseworkers

1. Departmental employees. Juvenile caseworkers are employees of the Department of Corrections.

2. Juvenile probation officer functions. Juvenile caseworkers shall carry out the functions of juvenile probation officers, including those delineated in the Maine Juvenile Code, Title 15, Part 6.

3. Intake worker functions. The intake worker functions of juvenile caseworkers are governed as follows.

A. Juvenile caseworkers shall carry out the functions of intake workers delineated in the Maine Juvenile Code, Title 15, Part 6.

B. Statements made by a juvenile to a juvenile caseworker performing as an intake worker shall be inadmissible as provided in Title 15, section 3204.

4. Maine Youth Center functions. The Maine Youth Center functions of juvenile caseworkers are governed as follows.

A. Juvenile caseworkers shall provide appropriate services to juveniles committed to the Maine Youth Center who are on leave or in the community on entrustment.

B. Juvenile caseworkers shall, when directed, provide information to the Maine Youth Center on juveniles committed to the Maine Youth Center.

5. Investigations. Juvenile caseworkers appointed under this chapter shall make such investigations as the Juvenile Court may direct and shall keep those written records of the investigations as the Juvenile Court may direct.

6. Care and custody of juveniles. Each juvenile

caseworker shall use all suitable means, including counseling, to aid each juvenile under his supervision and shall perform such duties in connection with the care and custody of juveniles as the court may direct.

7. Arrest. With respect to juveniles placed under their supervision, juvenile caseworkers have the same arrest powers as other sworn law enforcement officers.

8. Written statement of probation conditions. When any juvenile is placed on probation, the juvenile caseworker shall give the juvenile a written statement of the conditions of his probation and shall fully explain the conditions to him.

9. Keeping informed. Each juvenile caseworker shall keep informed as to the condition and conduct of each juvenile placed under his supervision and shall report on the condition and conduct to the court and to the department as they may direct.

10. Records. Each juvenile caseworker shall keep complete records of all work done.

11. Change of residence. Before a juvenile who is on probation may change his residence, he shall obtain the permission of his caseworker.

A. When a juvenile caseworker learns that a juvenile under his supervision has changed his residence to another district, he shall immediately notify the court.

B. The court may then transfer the probation records of the juvenile to the Juvenile Court of the district to which the juvenile has moved, together with a request that that court direct the probation supervision of the juvenile.

C. The Juvenile Court of the district to which the juvenile has moved shall then place the juvenile under probation supervision.

SUBCHAPTER V

PAROLE LAWS FOR

PRECRIMINAL CODE PRISONERS

§5801. Applicability

This subchapter applies only to those persons in the custody of the Department of Corrections pursuant to a sentence imposed under the law in effect prior

to May 1, 1976.

§5802. Parole by board

The board may grant a parole from a penal or correctional institution after the expiration of the period of confinement, less deductions for good behavior, or after compliance with conditions provided for in sections 5803 to 5805 applicable to the sentence being served by the prisoner or inmate. It may revoke a parole when a condition of the parole is violated.

1. Duration and conditions of parole. When the board grants a parole, upon release, the parolee shall serve the unexpired portion of his sentence, less deductions for good behavior, unless otherwise discharged therefrom by the board.

2. Custody and control. While on parole, the parolee is under the custody of the warden or superintendent of the institution from which he was released, but under the immediate supervision of and subject to the rules of the division or any special conditions of parole imposed by the board.

§5803. Eligibility for hearing; State Prison

A prisoner at the Maine State Prison or Maine Correctional Center becomes eligible for a hearing by the board as follows:

1. Expiration of minimum term in minimum-maximum sentence. Prior to the expiration of the prisoner's minimum term of imprisonment, less the deduction for good behavior, when the law provides for a minimum-maximum sentence;

2. Expiration of 1/2 of term in certain cases. Prior to the expiration of 1/2 of the term of imprisonment imposed by the court, less the deduction for good behavior, when the prisoner has been convicted of an offense under Title 17, section 1951, 3151, 3152 or 3153. This subsection applies to a prisoner who has been convicted previously of an offense under Title 17, section 1951, 3151, 3152 or 3153;

3. Expiration of 15-year term in life imprisonment cases. Prior to the expiration of a 15-year term of imprisonment, less deduction for good behavior, when the prisoner has been convicted of an offense punishable only by life imprisonment; and

4. Expiration of 15-year term in other cases. Prior to the expiration of a 15-year term of

imprisonment, less deduction for good behavior, when, following conviction, the prisoner has been sentenced to a minimum term of 15 years or more.

§5804. Maine Correctional Center

An inmate at the Maine Correctional Center becomes eligible for a hearing by the board as follows:

1. Inmate reformed. When it appears to the superintendent that the inmate has reformed; and

2. Suitable employment secured. When some suitable employment or situation has been secured for him in advance.

If the superintendent does not recommend an inmate for a parole hearing during the first year after commitment, the reasons for not so doing shall be reported to the Director of Corrections at the end of the year and for each 6 months thereafter until the inmate is recommended for a hearing by the board.

§5805. Women's reformatory

An inmate at the Women's Correctional Center becomes eligible for a hearing by the board as follows:

1. Inmate reformed. When it appears to the superintendent that the inmate has reformed;

2. Suitable employment secured. When some suitable employment or situation has been secured for her in advance.

If the superintendent does not recommend an inmate for a parole hearing during the first year after commitment, the reasons for not so doing shall be reported to the Director of Corrections at the end of the year and for each 6 months thereafter until the inmate is recommended for a hearing by the board.

§5806. Violations of parole

A probation-parole officer may arrest and charge a parolee with violation of parole and take him into his custody in any place he may be found, detain the parolee in any jail, pending the issuance of a parole violation warrant, which detention shall not extend beyond the next business day of the office of the director. In the event a warrant is not issued in that time, the parolee shall be released from arrest and detention forthwith. A parolee so arrested and detained shall have no right of action against the

probation-parole officer or any other persons because of that arrest and detention.

When a parolee violates a condition of his parole or violates the law, the director may issue a warrant for his arrest. A probation-parole officer, or any other law enforcement officer within the State authorized to make arrests, may arrest the parolee on the warrant and return him to the institution from which he was paroled. At its next meeting at that institution, the board shall hold a hearing. The parolee is entitled to appear and be heard. If the board, after hearing, finds that the parolee has violated his parole or the law, it shall revoke his parole, set the length of time he shall serve of the unexpired portion of his sentence before he can again be eligible for hearing by the board, and remand him to the institution from which he was released; except that, when a parolee from the Maine Correctional Center violates the law and is sentenced by the court to the Maine State Prison, any length of time set by the board to be served of the unexpired portion of his correctional center sentence may be served at the Maine State Prison.

1. Forfeits deductions. Upon revocation of parole by the board, the prisoner forfeits any deductions for good behavior earned while on parole.

2. May earn deductions. While serving the unexpired portion of his sentence after parole has been revoked, the prisoner may earn deductions for good conduct.

Whenever a warrant is issued under this section for the arrest of a parolee, the running of the parolee's sentence shall be interrupted and shall remain interrupted until the parolee is returned to the institution from which he was paroled. Interruption of the running of his sentence shall include any time served prior to such return, after conviction for a crime committed while on parole.

In the event of the withdrawal of the warrant by authority of the director, or in the event that the board at the hearing on the alleged violation finds that the parolee did not violate the conditions of his parole, or the law, he shall be credited with the time lost by the interruption of the running of his sentence.

§5807. Sentence for crime committed by parolee

Any parolee who commits an offense while on parole who is sentenced to the Maine State Prison shall serve the 2nd sentence beginning on the date of

termination of the first sentence, unless the first sentence is otherwise terminated by the board.

§5808. Discharge from parole

Any parolee who faithfully performs all the conditions of parole and completes his sentence is entitled to a certificate of discharge to be issued by the warden or superintendent of the institution to which he was committed.

§5809. Certificate of discharge

Whenever it appears to the board that a person on parole is no longer in need of supervision, it may order the superintendent or warden of the institution from which he was released to issue him a certificate of discharge, except that in the case of persons serving a life sentence who may not be discharged from parole in less than 10 years after release on parole.

§5810. Records forwarded to State Police

When a person who has been convicted under Title 17, section 1951, 3151, 3152 or 3153 is paroled, the warden or superintendent of the institution shall forward to the State Police a copy of his record and a statement of facts necessary for full comprehension of the case. Whenever any prisoner, who has been convicted of an offense under Title 17, section 1951, 3151, 3152 or 3153 is discharged in full execution of his sentence, the Warden of the Maine State Prison shall make and forward to the State Police a copy of the prison record of that prisoner together with a statement of any fact or facts which he may deem necessary for a full comprehension of the case.

CHAPTER 7

JUVENILE DELINQUENCY PREVENTION

AND REHABILITATION

§7001. Responsibility of the department

The department is responsible for:

1. Services. Within the limits of available funding, ensuring the provision of all services necessary to:

A. Prevent juveniles from coming into contact with the Juvenile Court; and

B. Support and rehabilitate those juveniles who do come into contact with the Juvenile Court;

2. Information. Gathering standardized information on the characteristics of and the present and past services needs of juveniles who have come into contact with the Juvenile Court and gathering standardized information on the extent to which those needs are being met;

3. Proposals. Making proposals for meeting the prevention and rehabilitation services needs which are not being addressed; and

4. Coordination. Coordinating its efforts in discharging the responsibility given under this section with those of other state or local agencies in order to effectively use existing resources to the maximum extent possible to achieve the purposes of this chapter and Title 15, Part 6.

§7002. Powers and duties of the department

The department has the following powers and duties with respect to the responsibility defined in section 7001.

1. Services. The department shall provide, directly or through purchase or contract, services to children and their families, including, but not limited to:

A. Administering, supervising and ensuring the provision of correctional programs for juveniles adjudicated as having committed juvenile crimes;

B. Providing technical assistance and additional financial resources to assist communities to establish and provide necessary preventive and rehabilitative services for juveniles;

C. Coordinating its efforts with those of other state and local agencies in order to effectively use all existing resources to the maximum extent possible;

D. Working with other public and voluntary agencies as resources for the purchase of care and services; and

E. Stimulating the creation of voluntary services.

2. Planning. The department shall carry out planning for identifying, evaluating and meeting the service needs for prevention of juvenile crime and

rehabilitation of juveniles adjudicated as having committed juvenile crimes.

3. Evaluation. The department shall evaluate prevention and rehabilitation services with regard to, among other things:

A. Compliance with all regulations for the use of funds for those services; and

B. Quality and cost of effectiveness of those services.

4. Appeals. The department shall provide structure for appeals, fair hearings and a review of grievances by children and their parents, guardian or legal custodian regarding provision of services for which the department has been given responsibility under this chapter, including, but not limited to, protecting the rights of individuals to appeal from denials of or exclusion from the services to which they are entitled, actions that preclude the individual's right of choice to specific programs, or actions that force involuntary participation in a service program.

5. Training. The department shall train personnel to perform the functions necessary to implement this chapter, including, but not limited to:

A. Meeting the need for professional personnel for juvenile services, through in-service training, institutes, conferences and educational leave grants;

B. Upgrading education and competence of professional and other personnel and volunteers; and

C. Making staff and training facilities available for training of staff and volunteers in contracting agencies or facilities to assure effective provision of purchased services.

6. Research and demonstration. The department may conduct research and demonstration projects, including, but not limited to, entering into contracts with other agencies and making grants for research, including basic research into the causes of juvenile crime, evaluation of methods of service delivery in use, and development of new approaches.

7. Wards. With respect to individual juveniles for whom the department has accepted responsibility, it may take necessary action for the appointment of a guardian of a juvenile who does not have a parent to exercise effective guardianship, and it shall:

A. Assure that appropriate services are made available to them, either directly or by purchase of those services;

B. Assume responsibility, to the extent that parents are unable to do so, for payment for services; and

C. Assume legal custody of children or legal guardianship when vested by the court.

§7003. Transfer

1. Approval. The department may transfer any juvenile committed to its care from one facility or program to another, except that, before any juvenile is transferred, he shall be examined and evaluated and the evaluation shall be reviewed and approved by the commissioner.

2. Emergency exception. When the commissioner finds that the welfare and protection of a juvenile or others requires the juvenile's immediate transfer to another facility, he shall make the transfer prior to the examination and evaluation of the juvenile.

3. Restrictive placements. Restrictive placements are governed as follows.

A. Notwithstanding subsections 1 and 2, the transfer of any juvenile from a less restrictive placement to a more restrictive placement shall be reviewed by the Juvenile Court that originally ordered the juvenile's placement within 48 hours of the transfer, excluding Saturdays, Sundays and legal holidays.

B. In order to continue the more restrictive placement, a court must find:

(1) That it is necessary to protect the juvenile or protect the community; and

(2) That no other available less restrictive placement will protect the juvenile or the community.

C. Notwithstanding paragraph A, the commissioner may not place any juvenile committed to the department in an adult correctional facility.

§7004. Agreements and contracts with public and private agencies

1. Commissioner's power. The commissioner may enter into agreements or contracts with any govern-

mental unit or agency or private facility or program cooperating or willing to cooperate in a program to carry out the purposes of this chapter and Title 15, Part 6.

2. Nature of agreements or contracts. Agreements or contracts entered into under subsection 1 may provide, among other things, for the type of work to be performed, for the rate of payment for that work and for other matters relating to the care and treatment of juveniles.

3. Custody. Placement of juveniles by the department in any public or private facility or program not under the jurisdiction of the department does not terminate the legal custody of the department.

4. Inspection. The department may inspect all facilities used by it and may examine and consult with persons in its legal custody who have been placed in any such facility.

§7005. Administrators of facilities and programs

A chief administrative officer of a facility or program with which the department contracts for services shall:

1. Report. Report to the commissioner at such times and on such matters as the commissioner may require;

2. Receipt of juveniles. Receive, subject to limitations on physical capacity and programs, all juveniles committed to the custody of the department and placed in his care under the provisions of Title 15, Part 6, and keep them for rehabilitation, education and training until discharged by law or under the rules of the department or released on probation; and

3. Evaluations. Secure a careful and thorough evaluation of every juvenile placed under his care at intervals no greater than 6 months, that evaluation to ascertain whether the juvenile should be released, whether his program should be modified or whether his transfer to another facility should be recommended.

§7006. Rules

The commissioner shall develop and promulgate according to the Maine Administrative Procedure Act, Title 5, chapter 375, by January, 1979, such rules as may be necessary to enable the department to carry out its responsibilities as prescribed in this chap-

ter. When portions of the rules relate to staff or services administered by another state agency, those portions shall be developed and approved jointly with that other agency.

§7007. Expenses for transporting children long distances

The department shall pay any expenses incurred by local agencies for transporting a juvenile more than 100 miles, pursuant to the provisions of Title 15, Part 6, or of this chapter to an intake worker, to a placement directed by the intake worker or to a Juvenile Court.

§7008. Community conference committee

In any district in which an intake worker is established, the commissioner may appoint a community conference committee composed of citizen volunteers.

1. Membership. The committee shall consist of at least 10 members, but not more than 15 members, of whom 5 shall constitute a quorum.

2. Compensation. Members may not be compensated for their services.

3. Alternative diversionary resource. The committee shall serve as an alternative diversionary resource for juvenile offenders.

4. Guidelines. The commissioner shall promulgate guidelines for the functioning of community conference committees.

5. Additional committees. This section does not prohibit the appointment of more than one community conference committee within an intake district by the intake worker, with the approval of the commissioner.

CHAPTER 9

INTERSTATE COMPACTS

SUBCHAPTER I

UNIFORM INTERSTATE COMPACT ON JUVENILES

§9001. Findings and purposes--Article I

The contracting states solemnly agree:

That juveniles who are not under proper supervision and control, or who have absconded, escaped or

run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

1. Cooperative supervision. Cooperative supervision of delinquent juveniles on probation or parole;

2. Return of delinquent juveniles. The return, from one state to another, of delinquent juveniles who have escaped or absconded;

3. Return of nondelinquent juveniles. The return, from one state to another, of nondelinquent juveniles who have run away from home; and

4. Additional measures undertaken cooperatively. Additional measures for the protection of juveniles and of the public, which any 2 or more of the party states may find desirable to undertake cooperatively. In carrying out this compact, the party states shall be guided by the noncriminal, reformatory and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to this compact. This compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

§9002. Existing rights and remedies--Article II

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

§9003. Definitions--Article III

For the purposes of this compact:

1. Court. "Court" means any court having jurisdiction over delinquent, neglected or dependent children;

2. Delinquent juvenile. "Delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the

jurisdiction or supervision of an agency or institution pursuant to an order of such court;

3. Probation or parole. "Probation or parole" means any kind of conditional release of juveniles authorized under the laws of the state party hereto;

4. Residence. "Residence" or any variant thereof means a place at which a home or regular place of abode is maintained;

5. State. "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico;

6. Minor. "Minor" means any person who has not attained the age of 18 years. A person charged with or convicted of a crime as an adult in a demanding state, whose extradition from this State is sought by the demanding state shall be subject to the provisions of Title 15, sections 201 to 229, although the person is a minor under the laws of this State; and

7. Adult. "Adult" means a person who has attained the age of 18 years.

§9004. Return of runaways--Article IV

1. Requisition for return of juvenile. The parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent, but who has run away without the consent of such parent, guardian, person or agency, may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the

judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return, and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause

exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. Transportation costs. The state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

3. Juvenile defined. "Juvenile," as used in this Article, means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

§9005. Return of escapees and absconders--Article V

1. Requisition for return of delinquent juvenile. The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be

executed in duplicate, and shall be accompanied by 2 certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. In such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any

criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

2. Transportation costs. The state to which a delinquent juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

§9006. Voluntary return procedure--Article VI

Any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under Article IV, subsection 1, or Article V, subsection 1, may consent to his immediate return to the state from which he absconded, escaped or run away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, upon the request of the state to which the juve-

nile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event, a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

§9006-A. Rendition amendment--Article VI-A

All provisions and procedures of Articles V and VI of the Uniform Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law, shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed.

This provision shall apply regardless of whether the requesting state has also adopted it.

§9007. Cooperative supervision of probationers and parolees--Article VII

1. Permission for delinquent juvenile to reside in receiving state. The duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact, herein called "receiving state," while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian

or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

2. Duties of receiving state. Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

3. Returning delinquent juvenile. After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

4. Transportation costs. The sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

§9008. Responsibility for costs--Article VIII

1. Internal relationships not affected. Article IV, subsection 2, Article V, subsection 2, and Article VII, subsection 4 of this compact shall not be construed to alter or affect any internal relation-

ship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

2. Asserting rights for costs. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Article IV, subsection 2, Article V, subsection 2, or Article VII, subsection 4 of this compact.

§9009. Detention practices--Article IX

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or disolute persons.

§9010. Supplementary agreements--Article X

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

1. Rates. Provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished;

2. Court hearing. Provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody;

3. Receiving state agent of sending state. Provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

4. Sending state to retain jurisdiction. Provide that the sending state shall at all

times retain jurisdiction over a delinquent juvenile sent to an institution in another state;

5. Inspection. Provide for reasonable inspection of such institutions by the sending state;

6. Consent of parent, guardian or custodian. Provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

7. Other matters and details. Make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

§9011. Acceptance of federal and other aid--Article XI

Any state party to this compact may accept any and all donations, gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same, subject to the terms, conditions and regulations governing such donations, gifts and grants.

§9012. Compact administrators--Article XII

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

§9013. Execution of compact--Article XIII

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

§9014. Renunciation--Article XIV

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII shall continue as to parolees

and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the 6 months' renunciation notice of the present Article.

§9015. Severability--Article XV

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstances is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§9016. Action by Governor

The Governor of this State is authorized and directed to execute a compact on behalf of the State with any of the states of the United States legally joining therein in the form substantially as provided in this chapter.

SUBCHAPTER II

NEW ENGLAND INTERSTATE CORRECTIONS COMPACT

§9201. Purpose and policy--Article I

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

§9202. Definitions--Article II

As used in this compact, unless the context otherwise indicates, the following terms have the following meanings.

1. Inmate. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

2. Institution. "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill or mentally defective, in which inmates, as defined in subsection 1, may lawfully be confined.

3. Receiving state. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

4. Sending state. "Sending state" means a state party to this compact in which conviction or court commitment was had.

5. State. "State" means a state of the United States, located in New England, to wit, Maine, New Hampshire, Vermont, Massachusetts, Connecticut and Rhode Island.

§9203. Contracts--Article III

Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Duration. Its duration;

2. Payments. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

3. Employment. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

4. Inmate delivery. Delivery and retaking of inmates; and

5. Other matters. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

Subject to legislative approval by the states concerned and prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

§9204. Procedures and rights--Article IV

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state,

for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

All inmates who may be confined in an institution pursuant to this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to this paragraph, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Any inmate confined pursuant to this compact

shall be released within the territory of the sending state, unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

The parent, guardian, trustee or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

§9205. Acts not reviewable in receiving state;
extradition--Article V

Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to remove an inmate from an institution in the receiving state, there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

Any inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

§9206. Federal aid--Article VI

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

§9207. Entry into force--Article VII

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states from among the states of New England. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

§9208. Withdrawal and termination--Article VIII

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to this compact.

§9209. Other arrangements unaffected--Article IX

Nothing contained in this compact shall be construed to abrogate nor impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

§9210. Construction and severability--Article X

The provisions of this compact shall be liberally

construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§9221. Ratification

The New England Interstate Corrections Compact is enacted into law and entered into by this State with any other of the states mentioned in Article II legally joining therein in the form substantially as provided in this subchapter.

§9222. Title

This subchapter may be cited as the "New England Interstate Corrections Compact."

§9223. Powers

The Commissioner of Corrections is authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

SUBCHAPTER III

INTERSTATE CORRECTIONS COMPACT

§9401. Purpose and policy--Article I

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

§9402. Definitions--Article II

As used in this compact, unless the context clearly requires otherwise:

1. Inmate. "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution;

2. Institution. "Institution" means any penal or correctional facility, including, but not limited to, a facility for the mentally ill or mentally defective, in which inmates, as defined in subsection 1, may lawfully be confined;

3. Receiving state. "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had;

4. Sending state. "Sending state" means a state party to this compact in which conviction or court commitment was had; and

5. State. "State" means a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§9403. Contracts--Article III

Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states.

1. Contract provisions. Any such contract shall provide for:

A. Its duration;

B. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

C. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

D. Delivery and retaking of inmates; and

E. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

§9404. Procedures and rights--Article IV

Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within an institution within the territory of the other party state, the receiving state to act in that regard solely as agent for the sending state.

The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify the record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining

and altering the disposition of the inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which the inmate would have had if confined in an appropriate institution of the sending state.

Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. The record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this section, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

Any inmate confined pursuant to this compact shall be released within the territory of the sending state, unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

The parent, guardian, trustee or other person or

persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

§9405. Acts not reviewable in receiving state; extradition--Article V

Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to remove an inmate from an institution in the receiving state, there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent nor affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

§9406. Federal aid--Article VI

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provisions; provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

§9407. Entry into force--Article VII

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

§9408. Withdrawal and termination--Article VIII

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

§9409. Other arrangements unaffected--Article IX

Nothing contained in this compact shall be construed to abrogate nor impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

§9410. Construction and severability--Article X

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

§9421. Ratification

The Interstate Corrections Compact is hereby enacted into law and entered into by this State with any other states legally joining therein.

§9422. Title

This subchapter may be cited as the "Interstate Corrections Compact."

§9423. Powers

The Commissioner of Corrections, subject to the limitations provided under section 9424, is hereby authorized and directed to do all things necessary or incidental to the carrying out of the compact in every particular.

§9424. Limitations

The commissioner shall carry out the provisions of this compact in accordance with the following.

1. Juveniles excluded. For purposes of this compact, no juvenile may be considered an inmate, as defined in section 9402.

2. Contracts. Any contracts made with one of the other party states for the confinement of inmates in Maine may provide for cash payments for the costs of the confinement whenever the total days for inmates placed in Maine by that state exceeds by 200 the number of days for inmates placed by Maine in that state. Otherwise, all contracts shall provide for an accrual of days earned by the respective states rather than cash payments.

3. Inmates. The commissioner may accept an inmate for confinement in Maine if, in the opinion of the commissioner, the inmate has demonstrated ties to this State which would justify the confinement, or the inmate's confinement in this State is in the best interests of the inmate or the State of Maine.

4. Transportation. The commissioner may permit any inmate who may be confined in another state under the provisions of the compact to pay the costs of transportation to the receiving state.

5. Facilities. The commissioner may not accept any inmate under the provisions of the compact when the confinement of that inmate would cause immediately, or in the near future would be likely to cause, a need for an increase in correctional facilities in this State.

6. Report. The commissioner shall annually, prior to February 1st, present a report to the joint standing committee of the Legislature having jurisdiction over health and institutional services describing any actions taken under the provisions of the compact during the previous year.

SUBCHAPTER IV

INTERSTATE COMPACT ON DETAINERS

ARTICLE I

AGREEMENT

§9601. Purpose and policy--Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trials of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from other jurisdictions, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

§9602. Definitions--Article II

As used in this agreement, unless the context clearly requires otherwise, the following terms shall have the following meanings.

1. Receiving state. "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to Article III or Article IV.

2. Sending state. "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III or at the time that a request for custody or availability is initiated pursuant to Article IV.

3. State. "State" shall mean a state of the

United States, the United States of America, a territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

§9603. Request for final disposition--Article III

1. Trial pending. Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for final disposition to be made of the indictment, information or complaint, provided that, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

2. Request for final disposition. The written notice and request for final disposition referred to in subsection 1 shall be given or sent by the prisoner to the warden, Commissioner of Corrections or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

3. Notification. The warden, Commissioner of Corrections or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

4. Application. Any request for final disposition made by a prisoner pursuant to subsection 1 shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged

against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, Commissioner of Corrections or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

5. Waiver of extradition. Any request for final disposition made by a prisoner pursuant to subsection 1 shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection 1 and a waiver of extradition to the receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with this agreement. Nothing in this subsection shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

6. Escape. Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection 1 shall void the request.

§9604. Temporary custody--Article IV

1. Request. The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V, subsection 1, upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated, provided that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and

transmitted the request, and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

2. Certificate. Upon receipt of the officer's written request as provided in subsection 1, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

3. Time of trial. In respect of any proceeding made possible by this Article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

4. Legality of delivery. Nothing contained in this Article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection 1, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

5. Order dismissing. If trial is not had on any indictment, information or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V, subsection 5, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

§9605. Delivery--Article V

1. Request. In response to a request made under Article III or Article IV, the appropriate authority in a sending state shall offer to deliver temporary

custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

2. Identification; copy of indictment. The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

A. Proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given; and

B. A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

3. Dismissed. If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

4. Purpose. The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

5. Return. At the earliest practicable time consonant with the purposes of this agreement, the

prisoner shall be returned to the sending state.

6. Time on sentence. During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

7. Escape. For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

8. Responsibility; costs. From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing in this subsection shall be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

§9606. Time periods tolled--Article VI

In determining the duration and expiration dates of the time periods provided in Articles III and IV, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

§9607. Rules and regulations--Article VII

Each state party to this agreement shall design-

nate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

§9608. Effective date--Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

§9609. Construction--Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

ARTICLE II

PROVISIONS RELATING TO AGREEMENT

§9631. Designation of courts

The phrase "appropriate court" as used in Article I, with reference to the courts of this State, shall mean the District Court or the Superior Court, as applicable.

§9632. Enforcement and cooperation by courts and agencies

All courts, departments, agencies, officers and employees of this State and its political subdivisions shall enforce the agreement on detainees con-

tained within Article I and cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

§9633. Escape

Any person, who escapes or attempts to escape from custody while in another state pursuant to Article I, shall be subject to the penalties provided in Title 17-A, section 755, for escape or attempt to escape from the Maine State Prison.

§9634. Chief administrative officer to give over the person of inmate

The chief administrative officer of a correctional facility in Maine shall give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

§9635. Commissioner of Corrections to make rules and regulations

The Commissioner of Corrections is designated as the officer provided for in section 9607.

SUBCHAPTER V

UNIFORM ACT FOR OUT-OF-STATE PAROLEE

SUPERVISION

ARTICLE I

COMPACT

§9801. Conditions for residence in another state--Article I

It shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact, herein called "sending state," to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact, herein called "receiving state," while on probation or paroled, if:

1. Resident. Such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there; and

2. Consent. Though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this chapter, is one who has been an actual inhabitant of such state continuously for more than one year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

§9802. Duties of receiving state--Article II

Each receiving state will assume the duties of visitation of and supervision over probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees.

§9803. Retaking--Article III

Duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose, no formalities will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are expressly waived on the part of the states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge, or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

§9804. Transportation of retaken persons--Article IV

The duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states party to this compact, without interference.

§9805. Rules and regulations--Article V

The governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall

promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact. The officer so designated by the Governor shall have the authorization to appoint such deputy compact administrators as he deems necessary to carry out the mandates of this section.

§9806. Entry into force--Article VI

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed, it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

§9807. Renunciation--Article VII

This compact shall continue in force and remain binding upon each executing state until renounced by it. The duties and obligations of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

ARTICLE II

PROVISIONS RELATING TO COMPACT

§9831. Action by Governor

The Governor of this State is authorized and directed to execute a compact on behalf of the State with any of the states of the United States legally joining therein in the form substantially provided in this subchapter.

§9832. State defined

The word "state" in this subchapter shall mean any state, territory or possession of the United States and the District of Columbia.

§9833. Short title

This subchapter may be cited as the "Uniform Act for Out-of-State Parolee Supervision."

ARTICLE III

PRELIMINARY

HEARING IN INTERSTATE PROBATION

AND PAROLE VIOLATION CASES

§9861. Preliminary hearing required, detention

Where supervision of a parolee or probationer is being administered pursuant to Articles I and II, the appropriate judicial or administrative authorities in this State shall notify the compact administrator of the sending state whenever, in their view, consideration should be given to retaking or reincarceration for a parole or probation violation. Prior to the giving of any such notification, a hearing shall be held in accordance with this chapter within a reasonable time, unless such hearing is waived by the parolee or probationer. The appropriate officer or officers of this State shall as soon as practicable, following termination of any such hearing, report to the sending state, furnish a copy of the hearing record and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state. Pending any proceeding pursuant to this chapter, the appropriate officers of this State may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and, if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow, for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration.

§9862. Persons authorized to conduct preliminary hearing

Any hearing pursuant to this chapter may be before the compact administrator under Article I or his authorized designee, except that no hearing officer shall be the person making the allegation of violation.

§9863. Procedure at preliminary hearing

With respect to any hearing pursuant to this chapter, the parolee or probationer:

1. Notice. Shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a

revocation of parole or probation;

2. Advise. Shall be permitted to advise with any persons whose assistance he reasonably desires, prior to the hearing;

3. Confrontation. Shall have the right to confront and examine any persons who have made allegations against him, unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons; and

4. Contentions. May admit, deny or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

§9864. Reciprocal provisions

In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the Uniform Act for Out-of-State Parolee Supervision, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this chapter, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this State, and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this State in making disposition of the matter.

Sec. 7. 34-B MRSA is enacted to read:

TITLE 34-B

MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 1

GENERAL PROVISIONS

SUBCHAPTER I

DEFINITIONS

§1001. Definitions

As used in this Title, unless the context otherwise indicates, the following terms have the follow-

ing meanings.

1. Chief administrative officer. "Chief administrative officer" means the head of a state institution or the head of any other institution which provides services which fall under the jurisdiction of the department.

2. Client. "Client" means a person receiving services from the department, from the Bureau of Mental Health, from the Bureau of Mental Retardation, from any state institution or from any agency licensed or funded to provide services falling under the jurisdiction of the department.

3. Commissioner. "Commissioner" means the Commissioner of Mental Health and Mental Retardation or his designee, except that when the term "commissioner and only the commissioner" is used, the term applies only to the person appointed Commissioner of Mental Health and Mental Retardation and not to any designee.

4. Department. "Department" means the Department of Mental Health and Mental Retardation.

5. Parking area. "Parking area" means land maintained by the State at the state institutions under the jurisdiction of the department, which may be designated as parking areas by the heads of the state institutions.

6. Public way. "Public way" means a road or driveway on land maintained by the State at the state institutions under the jurisdiction of the department.

7. Resident. "Resident" means a person residing in a state institution or in any other institution which provides services which fall under the jurisdiction of the department.

8. State institution. "State institution" means:

- A. The Augusta Mental Health Institute;
- B. The Bangor Mental Health Institute;
- C. The Pineland Center;
- D. The Elizabeth Levinson Center;
- E. The Aroostook Residential Center; or
- F. The Military and Naval Children's Home.

9. Written political material. "Written political material" means flyers, handbills or other nonperiodical publications which are subject to the restrictions of Title 21, chapter 35.

SUBCHAPTER II

DEPARTMENT

§1201. Establishment

There is established a Department of Mental Health and Mental Retardation.

1. Cabinet level. The department is a cabinet-level department.

2. Commissioner. The department is under the control and supervision of the Commissioner of Mental Health and Mental Retardation.

§1202. Office of the commissioner

1. Appointment. The Governor shall appoint the Commissioner of Mental Health and Mental Retardation subject to review by the joint standing committee of the Legislature having jurisdiction over health and institutional services and to confirmation by the Senate, to serve at the pleasure of the Governor.

2. Vacancy. Vacancies in the office of the commissioner shall be filled as follows.

A. Any vacancy in the office of commissioner shall be filled by appointment under subsection 1.

B. If the office of the commissioner is vacant or if the commissioner is absent or disabled, the associate commissioner for programs shall perform the duties and have the powers provided by law for the commissioner.

C. If the offices of the commissioner and the associate commissioner for programs are vacant or if both officials are absent or disabled, the associate commissioner for administration shall perform the duties and have the powers provided by law for the commissioner.

3. Qualifications. To qualify for appointment as commissioner, a person must have training and experience in human services' administration or satisfactory experience in the direction of work of a comparable nature.

§1203. Duties of the commissioner

In addition to other duties set out in this Title, the commissioner has the following duties.

1. General. The commissioner shall have general supervision, management and control of the research and planning, grounds, buildings, property, officers, employees and clients of all state institutions.

2. Enforcement of laws. The commissioner shall enforce all laws concerning the institutions within the department, unless specific law enforcement duties are given by law to other persons.

3. Rules. Rules shall be established as follows.

A. The commissioner shall establish such rules, regulations, procedures and practices as he may determine appropriate or necessary for the care and management of the property of all state institutions, for the production and distribution of the products of the institutions, for guiding the institutions in determining whether to approve admissions and for the execution of the statutory purposes and functions of the institutions.

B. The central principle underlying all rules relating to residents of the institutions within the department is that the residents shall retain all rights of an ordinary citizen, except those expressly or by necessary implication taken from them by law.

4. Grievance procedures. The commissioner shall establish procedures for hearing grievances of clients.

5. Residential child care facilities. The commissioner shall approve all programs for the provision of mental health services to residential child care facilities, as defined in Title 22, section 8101, subsection 4, and shall participate in licensure of these programs in accordance with Title 22, section 8104.

6. Sliding fee scale. The commissioner shall provide and establish a sliding fee scale for the provision of center-based developmental day care services for preschool children with developmental disabilities according to the following requirements.

A. Services provided under this subsection shall be made available to all eligible preschool chil-

dren, regardless of their family income.

B. Services to eligible children of individuals and families whose adjusted gross income is at or below 80% of the median personal income for residents of this State shall be made available at no cost to the individual or family.

C. A sliding fee scale no higher than the applicable scale under Title 22, section 9, subsection 3, shall be applied to eligible children of individuals and families whose adjusted gross income is between 80% and 115% of the median personal income for residents of this State.

D. A sliding fee scale that is proportionately related to the applicable scale under Title 22, section 9, subsection 3, shall be developed and applied to eligible children of individuals and families whose adjusted gross income is over 115% of the median personal income for residents of this State.

E. The commissioner shall coordinate these services with other state agencies in order to insure that no unnecessary duplication of services will occur.

§1204. Powers of the commissioner

In addition to other powers granted in this Title, the commissioner has the following powers.

1. General powers. The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of the residents of state institutions or may purchase residential services when the department does not provide the appropriate institutional services for the client.

2. Appointments of associate commissioners and other employees. The commissioner's powers to appoint associate commissioners and other employees are as follows.

A. The commissioner may appoint, subject to the Personnel Law and except as otherwise provided, any employees who may be necessary.

B. The commissioner may appoint and set the salaries for an associate commissioner for programs and an associate commissioner for administration to assist in carrying out the responsibilities of the department.

(1) Each appointment shall be for an inde-

terminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

(2) To be eligible for appointment as associate commissioner for programs, a person shall have training and experience in the planning and administration of human services.

(3) To be eligible for appointment as associate commissioner for administration, a person shall have training and experience in general management.

3. Delegation. The commissioner's delegation powers are as follows.

A. The commissioner may delegate powers and duties given under this Title to the associate commissioners, bureau directors and chief administrative officers of state institutions.

B. The commissioner may empower the associate commissioners, bureau directors and chief administrative officers of state institutions to further delegate powers and duties delegated to them by the commissioner.

4. Funding sources. The commissioner may apply for and accept from any other agency of government, person, group or corporation any funds which may be available in carrying out this Title.

5. Lease of unused buildings. The commissioner may, with the approval of the Director of Public Improvements, lease unused buildings at the state institutions for the purposes of providing services to departmental clients.

A. The leases shall be for a period not to exceed one year.

B. The commissioner shall submit a plan of the proposed leases and their impact on the institutions and departmental clients to the joint standing committee having jurisdiction over health and institutional services no later than January 31st of each year.

6. Nurse training. The commissioner may provide for the training of nurses.

§1205. Office of Advocacy

1. Establishment. The Office of Advocacy is

established within the department to investigate the claims and grievances of clients of the department and to advocate for compliance by any institution, other facility or agency administered by the department with all laws, administrative rules and institutional and other policies relating to the rights and dignity of clients.

2. Chief advocate. A chief advocate shall direct and coordinate the program of the office.

A. The chief advocate shall report only to the commissioner.

B. The chief advocate shall, with the approval of the commissioner, select other advocates needed to carry out the intent of this section, who shall report only to the chief advocate.

C. Both the chief advocate and all other advocates shall be classified state employees.

3. Duties. The Office of Advocacy, through the chief advocate and the other advocates, shall:

A. Receive or refer complaints made by clients of the department;

B. Intercede on behalf of these clients with officials of the institutions, facilities and agencies administered by the department or assist these clients in the initiation of grievance proceedings established by the commissioner under section 1203, subsection 4, except that the Office of Advocacy may refuse to take action on any complaint which it deems to be trivial or moot or for which there is clearly another remedy available;

C. As an information source regarding the rights of all clients, keep itself informed about all laws, administrative rules and institutional and other policies relating to the rights and dignity of the clients and about relevant legal decisions and other developments related to the field of mental health and mental retardation, both in this State and in other parts of the country; and

D. Make and publish reports necessary to the performance of the duties described in this section, except that only the chief advocate may report any findings of the office to groups outside the department, such as legislative bodies, advisory committees to the Governor, boards of visitors, law enforcement agencies and the press.

4. Access to files and records. The Office of Advocacy, through the chief advocate and the other advocates, has access, limited only by the law, to the files, records and personnel of any institution, facility or agency administered by the department.

5. Confidentiality. Requests for action shall be treated confidentially as follows.

A. Any client request for action by the office and all written records or accounts related to the request shall be confidential as to the identity of the client.

B. The records and accounts may be released only as provided by law.

§1206. Office of Children's Services

1. Establishment. There is established within the department the Office of Children's Services.

2. Duties. The duties of the Office of Children's Services are as follows.

A. The office shall assist in the planning, coordination and development of mental health services for children of the ages of 0 to 20 years.

B. The office shall work closely with the Bureau of Mental Health and the Bureau of Mental Retardation to help coordinate services to children who are mentally ill or mentally retarded.

3. Powers. The office may contract for services with attention paid to ensuring that services are provided in the least restrictive setting appropriate to the child's needs, with emphasis on maintaining each child in his natural home or in a substitute care placement within the community whenever possible.

§1207. Confidentiality of information

1. Generally. All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person, except that:

A. A client, his legal guardian, if any, or, if he is a minor, his parent or legal guardian may give his informed written consent to the disclosure of information, if he has been given the opportunity to review the information sought to

be disclosed;

B. Information may be disclosed if necessary to carry out any of the statutory functions of the department, the hospitalization provisions of chapter 3, subchapter IV or the purposes of Title 22, section 3554, dealing with the investigatory function of the Protection and Advocacy Agency of the Developmentally Disabled in Maine;

C. Information may be disclosed if ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. Nothing in this subsection precludes disclosure, upon proper inquiry, of information relating to the physical condition or mental status of a client to his spouse or next of kin;

E. Nothing in this subsection precludes the disclosure of biographical or medical information concerning a client to commercial or governmental insurers, or to any other corporation, association or agency from which the department or a licensee of the department may receive reimbursement for the care and treatment, education, training or support of the client, if the recipient of the information uses it for no other purpose than to determine eligibility for reimbursement and, if eligibility exists, to make reimbursement; and

F. Nothing in this subsection precludes the disclosure or use of any information, including recorded or transcribed diagnostic and therapeutic interviews, concerning any client in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric or counseling clinic or school of nursing, provided that, in the disclosure or use of the information as part of a course of instruction or training program, the client's identity remains undisclosed.

2. Statistical compilations and research. Confidentiality of records used for statistical compilations or research is governed as follows.

A. Persons engaged in statistical compilation or research may have access to treatment records of clients when needed for research, if:

(1) The access is approved by the chief administrative officer of the mental health facility or his designee;

(2) The research plan is first submitted to and approved by the chief administrative officer of the mental health facility, or his designee, where the person engaged in research or statistical compilation is to have access to communications and records; and

(3) The records are not removed from the mental health facility which prepared them, except that data which do not identify clients or coded data may be removed from a mental health facility if the key to the code remains on the premises of the facility.

B. The chief administrative officer of the mental health facility and the person doing the research shall preserve the anonymity of the client and may not disseminate data which refer to the client by name, number or combination of characteristics which together could lead to his identification.

3. Use by the commissioner. Confidentiality of information and records used by the commissioner for administration, planning or research is governed as follows.

A. Any facility licensed by the department under section 3606 or a facility which receives funds from the department or has received or is receiving funds under the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Public Law 88-164, United States Code, Title 42, Section 6001, et seq., as amended, shall send information and records to the commissioner, if requested by the commissioner pursuant to his obligation to maintain the overall responsibility for the care and treatment of the mentally ill.

B. The commissioner may collect and use the information and records for administration, planning or research, under the following conditions.

(1) The use of the information is subject to subsection 1, paragraph C.

(2) Data identifying particular clients by means other than case number or code shall be removed from all records and reports of information before issuance from the mental health facility which prepared the records and reports.

(3) A code shall be the exclusive means of identifying clients and shall be available to the commissioner and only the commissioner.

(4) The key to the code shall remain in the possession of the issuing facility and shall be available to the commissioner and only the commissioner.

(5) Members of the department may not release or disseminate to any other person, agency or department of government any information which refers to a client by name, numbers, address, birth date or other characteristics or combination of characteristics which could lead to the client's identification, except as otherwise required by law.

4. Prohibited acts. Prohibited acts under this section are governed as follows.

A. A person is guilty of unlawful disclosure of information if he disseminates, releases or discloses information in violation of this section.

B. Unlawful disclosure of information is a Class D crime.

§1208. Agreements with community agencies

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

A. "Agreement" means a legally binding document between 2 parties, including documents commonly referred to as accepted application, proposal, prospectus, contract, grant, joint or cooperative agreement, purchase of service or state aid.

B. "Community agency" means a person, a public or private nonprofit organization or a firm, partnership or business corporation operated for profit, which operates a human service program at the community level.

C. "Funds" means any and all general funds, dedicated funds, fees, special revenue funds, 3rd party reimbursements, vendor payments or other funds available for expenditure by the department in support of the provision of a human service.

D. "Human service" means any alcoholism, children's community action, corrections, criminal

justice, developmental disability, donated food, education, elderly, food stamp, income maintenance, health, juvenile, law enforcement, legal, medical care, mental health, mental retardation, poverty, public assistance, rehabilitation, social, substance abuse, transportation, welfare or youth service operated by a community agency under an agreement financially supporting the service, wholly or in part, by funds authorized for expenditure by the department.

E. "Nonprofit organization" means any agency, institution or organization which is, or is owned and operated by, one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and which has a territory of operations that may extend to a neighborhood, community, region or the State.

F. "Public" means municipal, county and other governmental bodies which are political subdivisions within the State.

2. Commissioner's powers. The commissioner may disburse funds to a community agency for the purpose of financially supporting a human service, only if the disbursement is covered by a written agreement between the department and the agency, specifying at least the following:

A. The human service to be provided by the community agency;

B. The method of payment by the department to the community agency; and

C. The criteria for monitoring and evaluating the performance of the community agency in the provision of the human service.

3. Commissioner's duties. The commissioner's duties are as follows.

A. The commissioner shall promulgate rules consistent with and necessary for the effective administration of this section.

B. When making agreements with community agencies for the provision of a human service, the commissioner shall use agreement forms and shall develop uniform procedures.

C. When disbursing funds pursuant to an agreement, the commissioner shall require uniform ac-

counts payable forms or uniform supporting documentation and information.

D. When accounting for funds disbursed under an agreement, the commissioner shall use uniform accounting principles, policies and procedures.

§1209. Mental Health Advisory Council

1. Establishment. The Governor, with the advice of the commissioner, shall establish a Mental Health Advisory Council and appoint its membership.

2. Membership. Membership on the Mental Health Advisory Council is determined as follows.

A. The membership of the council shall consist of 30 persons, including:

(1) Representatives of consumers of mental health services, including clients and their families;

(2) Providers of mental health services;

(3) Persons who are concerned with the planning, operation or use of mental health services or facilities and who are representatives of nongovernmental organizations or groups; and

(4) Representatives of agencies of State Government.

B. A majority, but no more than 60%, of the members of the council shall be neither direct nor indirect providers of mental health services.

(1) Consumers who are identified as nonprovider members of community mental health center boards may be considered as nonproviders for the purpose of serving on the council.

(2) The nonprovider consumer class of membership shall include, where possible, but not be limited to, persons who have been beneficiaries of the services of a public mental hospital or community mental health center, representatives of patient organizations and representatives of patient advocacy groups.

C. No less than 40% of the members of the council shall be direct or indirect providers of

mental health services and the provider group shall include persons from both governmental and nongovernmental mental health service agencies.

D. Both provider and consumer members shall be representative of the social, economic, linguistic and racial groups residing in the State and of the geographic areas of the State.

3. Term. The Governor shall appoint members of the council for terms of 3 years, except that:

A. Of the members first appointed, 1/3 shall be appointed for terms of 3 years, 1/3 shall be appointed for terms of 2 years and 1/3 shall be appointed for terms of one year, as designated by the Governor at the time of appointment; and

B. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of the term.

4. Vacancy. Vacancies in the council are governed as follows.

A. A vacancy in the council shall be filled in the same manner by which the original appointment was made.

B. A vacancy in the council does not affect the council's powers.

5. Chairman. The membership of the council shall elect a chairman.

6. Meetings. The council shall meet at least quarterly.

7. Duties. The council shall act in an advisory capacity to the commissioner in the development of the state mental health plan and in the appointment of a Director of the Bureau of Mental Health.

§1210. Maine Committee on the Problems of the Mentally Retarded

There is established the Maine Committee on the Problems of the Mentally Retarded.

1. Composition. The committee shall consist of 11 members to be appointed as follows:

A. One member from the House of Representatives appointed by the Speaker of the House of Representatives;

B. One member from the Senate appointed by the President of the Senate; and

C. Nine representative citizens appointed by the Governor.

2. Chairman. The Governor shall designate the chairman of the committee.

3. Duration of appointments. The duration of appointments shall be as follows.

A. Gubernatorial appointments shall be for terms of 3 years, plus the time period until a successor is appointed.

B. Legislative appointments shall be for the legislative term of office of the person appointed.

4. Compensation. Members of the committee shall serve without pay, but shall be reimbursed for expenses on the same basis as state employees.

5. Duties. The committee shall act in an advisory capacity to the commissioner and to the Director of the Bureau of Mental Retardation in assessing present programs, planning future programs and developing means to meet the needs of the mentally retarded in Maine.

§1211. State Planning and Advisory Council on Developmental Disabilities

1. Establishment. The Governor shall establish a State Planning and Advisory Council on Developmental Disabilities.

2. Appointments. Appointments to the council are governed as follows.

A. The Governor shall appoint appropriate representatives to the council as are required as a condition of eligibility for benefits under the "Amendments to the Developmental Disabilities Services and Facilities Construction Act of 1978," Public Law 93-288, United States Code, Title 42, Section 6000 et seq.

B. The Governor shall ensure that there is at least one representative from each of the regions established by the department, except that regional representatives may not be in addition to those required by the United States Code, Public Law 93-288.

3. Duties. The council shall consult with and coordinate with the commissioner in carrying out the purposes of the program established under the federal act specified in subsection 2.

4. Departmental role. The department's role under this section is as follows.

A. Except where a single state agency is otherwise designated or established in accordance with any other state law, the department is designated to be the sole agency of the State:

(1) To develop jointly with the council the statewide plan required by the federal act specified in subsection 2; and

(2) To be the sole administering agency for that plan, which plan is now or may later be required as a condition to the eligibility for benefits under the federal act specified in subsection 2.

B. The department may receive, administer and expend any funds that may be available under the federal act specified in subsection 2 or from any other sources, public or private, for those purposes.

SUBCHAPTER III

INSTITUTIONS GENERALLY

ARTICLE I

ADMINISTRATIVE PROVISIONS

§1401. Chief administrative officers

1. Appointment. The commissioner may appoint chief administrative officers of state institutions as necessary for the proper performance of the functions of the department.

A. To be eligible for appointment as a chief administrative officer of a state institution, a person shall be experienced in the management of the particular type of institution to which he is to be assigned.

B. Chief administrative officers of state institutions shall report directly to the commissioner.

2. Acting chief administrative officer. Notwithstanding any other provision of law, the

commissioner may delegate any employee of the department to serve as the acting chief administrative officer of any state institution, if the office of the chief administrative officer of any state institution is vacant.

A. The acting chief administrative officer shall serve for a period not to exceed 180 days.

B. Service as the acting chief administrative officer of a state institution is considered a temporary additional duty for the person so delegated.

§1402. Bureaus for community service

1. Commissioner's duty. In every state institution to which a mentally ill or mentally retarded person may be committed, the commissioner shall organize and administer under his direction a bureau for community service in the district served by the institution.

2. Bureau's duties. Each bureau for community service shall:

A. Supervise clients who have left the institution with a view to their safe care at home, suitable employment and self-support under good working and living conditions, and with a view to prevention of their relapse and return to public dependency;

B. Provide for informing and advising any indigent person, his relatives or friends and the representatives of any charitable agency as to:

(1) The mental condition of the indigent person;

(2) The prevention and treatment of the condition;

(3) The available institutions or other means of caring for the afflicted person; and

(4) Any other matter relative to the welfare of the person; and

C. Acquire and disseminate knowledge of mental disease, mental retardation and allied conditions with a view to promoting a better understanding and the most enlightened public sentiment and policy in these matters, and in this work the bureau may cooperate with local authorities,

schools and social agencies.

§1403. Boards of visitors

1. Appointment. The Governor shall appoint a board of 5 visitors for each state institution under the department.

A. The term of the visitors is for one year.

B. Members of boards of visitors are eligible for reappointment at the expiration of their terms.

C. No member of the Legislature may serve on any board of visitors.

D. Members of boards of visitors are not entitled to compensation.

2. Powers. Each board of visitors may inspect the institution to which it is assigned and may make recommendations on the management of the institution to the commissioner.

3. Duties. Boards of visitors have the following duties.

A. Boards of visitors shall send copies of all recommendations to the members of the joint standing committee of the Legislature having jurisdiction over health and institutional services.

B. Each board of visitors shall appear before the joint standing committee of the Legislature having jurisdiction over health and institutional services upon request.

§1404. Legal actions

1. Contract actions. Actions founded on any contract made with the State Purchasing Agent, or with any official of the department under the authority granted by the State Purchasing Agent, on behalf of any of the state institutions, may be brought by the official making the contract or his successor in office.

2. Actions for injuries to property. Actions for injuries to the real or personal property of the State, used by any state institution and under the management of the chief administrative officer of the institution, may be prosecuted in the name of the officer or his successor in office.

§1405. Emergencies

When emergency situations are certified by the chief administrative officer of a state institution to exist at the institution, the commissioner may, with the approval of the Governor, assign departmental personnel as may be necessary to assist in controlling the emergency situation.

1. Temporary assignment. The assignment of personnel shall be only for the period during which the emergency exists.

2. Compensation. Any personnel transferred are entitled to receive compensation as required by the Personnel Law, rules and contract terms.

§1406. Improper conduct of institutional officers

The commissioner may inquire into any improper conduct imputed to state institutional officers in relation to the concerns of their institutions, and for that purpose may:

1. Subpoenas. Issue subpoenas for witnesses and compel their attendance and the production of papers and writings by punishment for contempt in case of willful failure, neglect or refusal;

2. Examination of witnesses. Examine witnesses under oath; and

3. Adjudication. Adjudicate cases of alleged improper conduct in a manner similar to and with similar effect as cases of arbitration.

§1407. Appointment of physician

In every state institution to which a mentally ill or mentally retarded person may be committed, the commissioner shall appoint a physician experienced in the care and treatment of such persons and the necessary assistants to the physician.

§1408. Cooperation with state departments

Whenever it is deemed advisable, the chief administrative officer of any institution for the mentally ill or mentally retarded may cooperate with state departments to examine upon request and recommend suitable treatment and supervision for:

1. Mental illness or mental retardation. Persons thought to be mentally ill or mentally retarded; and

2. Juvenile Court. Children brought before any Juvenile Court.

§1409. Payment for care and treatment of residents

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

A. "Care and treatment" includes all goods and services provided, or caused to be provided, to a resident by the State.

B. "Liable person" means a person liable for the care and treatment of a resident under subsection 3.

2. Charges. Charges under this section are governed as follows.

A. The commissioner shall establish charges for the care and treatment of residents at any state institution.

B. Charges made under this section are a debt of the resident, or any person legally liable for the resident's care and treatment under this section, and are recoverable in any court of competent jurisdiction in a civil action brought in the name of the State.

3. Liable persons. Each resident, his spouse, his adult child and his parent are jointly and severally liable for the care and treatment of the resident, whether the resident was committed or otherwise legally admitted, from the date of the resident's admission to a state institution, except that:

A. A parent is not liable for a child resident's care and treatment, unless the child resident was wholly or partially dependent for support upon the parent at the time of admission;

B. A child is not liable for a parent resident's care and treatment, if:

(1) The parent resident willfully failed to support the child prior to the child's 18th birthday; and

(2) The child provides the department with clear and convincing evidence substantiating such a claim; and

C. The department may not charge any parent for the care and treatment of a child resident beyond

the child's 18th birthday, or beyond 6 months from the date of the child's admission, whichever occurs later.

4. Financial statement forms. Financial statement forms are governed as follows.

A. The commissioner shall prescribe financial statement forms which shall be completed by:

(1) The resident;

(2) Any person liable for the resident's care and treatment under this section; or

(3) Any fiduciary acting on behalf of the resident or person liable for the resident.

B. The form in each case shall be witnessed.

5. Determination of ability to pay. After a resident is admitted into any state institution, the department shall:

A. Investigate to determine what property, real and personal, the resident has, and, in determining ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents; and

B. Investigate to determine whether there exist any persons liable under subsection 3 for the payment of charges for the resident's care and treatment.

(1) The department shall ascertain the financial condition of the persons, if any, and shall determine whether each person is financially able to pay the charges.

(2) In determining the person's ability to pay, the department shall consider all income, debts, expenses, obligations and the number and condition of dependents.

6. Obtaining information. The obtaining of information under this section is governed as follows.

A. Every agency and department of the State shall render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of this section.

B. To carry out the purposes of this section,

the commissioner may administer oaths, take testimony, subpoena and compel the attendance of witnesses, and subpoena and compel the production of books, papers, records and documents deemed material or pertinent in connection with the commissioner's duty of securing payments for care and treatment as provided in this section.

(1) Any person failing to obey a subpoena may, upon petition of the commissioner to any Justice of the Superior Court, be ordered by the justice to appear and show cause for his disobedience of the subpoena.

(2) The justice, after hearing, may order that the subpoena be obeyed or, if it is made to appear to the justice that the subpoena was for any reason inappropriately issued, may dismiss the petition.

C. Upon request of the commissioner, banking organizations, insurance companies, brokers or fiduciaries shall furnish to the commissioner full information concerning the earnings of, income of, funds deposited to the credit of or funds owing to any resident, or any person liable under subsection 3 for the resident.

(1) The information shall be provided in writing and shall be duly certified.

(2) The certified statement is admissible in evidence in any action or proceeding to compel payment for the care and treatment of the resident.

(3) The certified statement is prima facie evidence of the facts stated in the statement.

7. Inability to pay. When it is determined that any resident or liable person is unable to pay all or part of the charges for care and treatment, the commissioner may cancel, suspend or reduce charges in accordance with the resident's or liable person's ability to pay.

8. Postponement of billing. The commissioner may enter into an agreement with any resident or liable person to postpone billing for care and treatment for any period of time.

9. Benefit payments. The chief administrative officer of any state institution may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like bene-

fits paid on behalf of any resident.

A. The chief administrative officer shall apply the benefits toward the care and treatment of the resident in accordance with charges made by the department.

B. Any surplus from the payments shall be held in a personal account at the hospital in the name of the resident and shall be available for the resident's personal needs.

10. Claims against estates. The State has a claim against the estate of any resident, and the estate of any liable person, for any amount due to the State at the date of death of the resident or the liable person, including any claim arising under an agreement entered into under this section, enforceable in the Probate Court.

A. The state's claim has priority over all unsecured claims against the estate, except:

(1) Administrative expenses, including probate fees and taxes;

(2) Expenses of the last sickness; and

(3) Funeral expenses, not exceeding \$400, exclusive of the honorarium of the clergy and cemetery expenses.

B. The Attorney General shall collect any claim which the State may have against the estate.

C. The State may not enforce a claim against any real estate while it is occupied as a home by the surviving spouse of the resident or liable person and while the surviving spouse remains unmarried.

11. Reimbursement of providers. Notwithstanding any other law, if part of the care and treatment of a resident under this section is provided by a party other than the State, the commissioner shall pay to the other party, from the fee collected by the department for the care and treatment of the resident, the portion of those costs borne by the other party in the same ratio as the fee collected to the total charge made, except that:

A. This subsection may not be construed as a limitation on compensation for providers of resident care and treatment; and

B. This subsection may not be construed as a limitation on contractual arrangements between

the providers and the State.

12. Prohibited acts. A person is guilty of contempt if he fails to obey a subpoena when ordered to do so by a Justice of the Superior Court under subsection 6, upon application by the commissioner to the Superior Court for an order of contempt.

§1410. Posting of political material

The chief administrative officer of each state institution shall provide in at least one accessible area in each institution an appropriate space for the posting of written political material sent for that purpose to the chief administrative officer by candidates for state office or federal office in this State.

1. One item limit. Not more than one item of written political material may be posted in one place on behalf of any one candidate.

2. Removal. Written political material shall be removed after the elections for which it is intended for use.

3. Voting place. If there is a voting place within the institution, the posting place may not be located within 250 feet of the entrance to the voting place.

4. Violation. The posting of written political material under this section is not a violation of Title 21, section 1575-A or section 1579, subsection 7.

§1411. Public ways and parking areas

1. Rules. The chief administrative officers of state institutions may promulgate and enforce rules, subject to the approval of the commissioner, governing the use of public ways and parking areas maintained by the State at the state institutions.

A. The rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

B. The Secretary of State shall forward a copy of the rules, attested under the Great Seal of the State, to the District Court in the area of jurisdiction.

2. Special police officers. The chief administrative officers of state institutions may appoint and employ, subject to the Personnel Law, special

police officers for the purpose of enforcing rules promulgated under subsection 1.

A. The special police officers shall:

(1) Patrol all the public ways and parking areas subject to this section;

(2) Enforce rules promulgated under this section; and

(3) Arrest and prosecute violators of the rules.

B. The State Police, sheriffs, deputy sheriffs, police officers and constables who have jurisdiction over the areas in which the institutions are located shall, insofar as possible, cooperate with the special police officers in the enforcement of the rules promulgated under subsection 1.

3. Court procedure. The District Court in the areas in which the institutions are located has jurisdiction in all proceedings brought under this section.

A. The District Court shall take judicial notice of all rules promulgated under subsection 1.

B. In any prosecution for a violation of the rules, the complaint may allege the offense as in prosecutions under a general statute and need not recite the rule.

4. Prohibited acts; fines. Prohibited acts and fines under this section are governed as follows.

A. A person is guilty of a public way or parking violation if he violates any rule promulgated pursuant to this section.

B. Upon conviction of a public way or parking violation, a person shall pay a fine as follows:

(1) For the first offense in any calendar year, a fine of \$1;

(2) For the 2nd offense in any calendar year, a fine of \$2; and

(3) For each offense in excess of 2 in any calendar year, a fine of \$5.

C. Notwithstanding any other law, the fines and costs of court paid under this section shall inure to the municipality in which the proceed-

ings take place.

D. Offenses not covered by the rules promulgated under subsection 1 shall be dealt with as otherwise provided by law.

§1412. Military and Naval Children's Home

1. Departmental control. The department shall have charge of the operations of the Military and Naval Children's Home.

2. Chief administrative officer. The chief administrative officer of the Military and Naval Children's Home is called the superintendent.

3. Purpose. The purpose of the Military and Naval Children's Home is the shelter and care of children of this State who are in need of shelter and care for one or more of the following reasons:

A. Lack of appropriate alternative shelter and care;

B. Potential or actual abuse and neglect; or

C. Family crisis and upheaval.

4. Veterans' preference. Preference in admission to the Military and Naval Children's Home shall be given to the children of veterans of Maine who have served in the various wars in which the United States has been engaged.

5. Educational or vocational training programs. Any child in residence at the Military and Naval Children's Home, who at the expiration of his minority is a participant in an educational or vocational training program, the interruption or cessation of which will be caused by discharge from the home, may, with the approval of the superintendent, voluntarily elect to remain in residence at the home until completion of all or part of the educational or vocational training program.

6. Board of visitors. There is established a Board of Visitors for the Military and Naval Children's Home which shall provide advice and direction to the commissioner concerning the changes necessary to ensure maximum utilization of the facility.

A. The board shall consist of 9 members and shall include:

(1) The Associate Commissioner of Programs of the department;

(2) A representative from the Bath community;

(3) The Bath Elementary School principal or a similar school official;

(4) A representative from an alcohol treatment center;

(5) A social worker assigned to the home;

(6) A designee of a veterans' organization;

(7) Two citizens from outside the Bath area; and

(8) One member appointed from the Department of Human Services, Division of Child and Family Services.

B. The commissioner, with the advice and consent of the joint standing committee of the Legislature having jurisdiction over audit and program review, shall appoint the members of the board, except that the Commissioner of Human Services shall appoint the member from the Division of Child and Family Services.

C. Members shall be appointed for terms not to exceed 3 years.

D. Members' terms shall be staggered so that no more than 3 expire in any one year.

E. The board shall be responsible for:

(1) Assisting in the development of policy and program changes regarding the use of the home;

(2) Monitoring the progress made toward the objectives outlined and presented during the home's current transition; and

(3) Providing continuing oversight of the home, its programs and its policies.

F. By the first day of each January and July in the years 1984 and 1985, the department shall report to the joint standing committee of the Legislature having jurisdiction over audit and program review on its efforts to improve the operation of the home, and the committee shall work with the department and board in ensuring that efficient use is made of the home.

ARTICLE II

CLIENTS GENERALLY

§1430. Rights

Any resident of a state institution has a right to nutritious food in adequate quantities, adequate professional medical care, an acceptable level of sanitation, ventilation and light, a reasonable amount of space per person in any sleeping area, a reasonable opportunity for physical exercise and recreational activities, protection against any physical or psychological abuse and a reasonably secure area for the maintenance of permitted personal effects.

§1431. Indefinite convalescent status

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

A. "Living conditions" includes, but is not limited to, the physical conditions of a residential facility, the individual treatment plan provided for each outpatient client and the programs for treatment available to and appropriate for each outpatient client.

B. "Residential facility" means a boarding home, nursing home, foster home, group home or halfway house licensed by the Department of Human Services or used by the Department of Mental Health and Mental Retardation.

2. Requirements. The chief administrative officer of any state institution, or a person designated by him, may place any person who has been hospitalized as mentally ill or mentally retarded, except residents described in chapter 3, subchapter IV, Article II, on indefinite convalescence status, if the officer or his designee determines that the residential facility in which the person will be residing is at least equivalent in the quality of living conditions to the state institution in which the person is hospitalized.

3. Standards. The commissioner shall establish standards for assessing whether or not living conditions in residential facilities are equivalent to the existing living conditions in state institutions.

§1432. Administration of medication

The administration of medication in state insti-

tutions shall be in accordance with rules established by the State Board of Nursing.

1. Maine Administrative Procedure Act. The State Board of Nursing shall establish rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

2. Considerations. In establishing rules for each type of state institution, the State Board of Nursing shall consider, among other factors:

A. The general health of the persons likely to receive medication;

B. The number of persons served by the institution; and

C. The number of persons employed at the institution.

§1433. Aliens

1. Notification of immigration officer. When a person is admitted or committed to a state, county, city or private institution which is supported wholly or in part by public funds, the chief administrative officer of the institution shall inquire at once into the nationality of the person and, if it appears that the person is an alien, the chief administrative officer shall notify immediately the United States immigration officer in charge of the district in which the institution is located, of:

A. The date of and the reason for the alien's admission or commitment;

B. The length of time for which the alien is admitted or committed;

C. The country of which the alien is a citizen; and

D. The date on which and the port at which the alien last entered the United States.

2. Copy of record to immigration officer. Upon the official request of the United States immigration officer in charge of the territory or district in which is located any court committing an alien to a state, county, city or private institution which is supported wholly or in part by public funds, the clerk of the court shall furnish without charge a certified copy of any record pertaining to the alien's case.

§1434. Resident's abandoned property

Any property abandoned or unclaimed by a resident of a state institution shall be disposed of according to Title 33, chapter 27.

§1435. Unnatural death of resident

When the death of any resident in a state institution is not clearly the result of natural causes, an examination and inquest shall be held as in other cases, and the commissioner or the chief administrative officer of the institution shall cause a medical examiner to be immediately notified for that purpose.

CHAPTER 3

MENTAL HEALTH

SUBCHAPTER I

BUREAU OF MENTAL HEALTH

§3001. Establishment

There is established, within the Department of Mental Health and Mental Retardation, the Bureau of Mental Health, which is responsible for the direction of the mental health programs in the state institutions and for the promotion and guidance of mental health programs within the several communities of the State.

§3002. Director

1. Appointment. The commissioner shall, with the advice of the Mental Health Advisory Council, appoint and set the salary for the Director of the Bureau of Mental Health.

A. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve, for a period not to exceed 180 days, as the acting director, if the office of the director is vacant.

B. Service as the acting director is considered a temporary additional duty for the person so delegated.

2. Qualifications. To be eligible for appointment as director, a person shall have training and experience in mental health program administration or satisfactory experience in the direction of work of a comparable nature.

3. Term. The appointment of the director shall be for an indeterminate term and until a successor is appointed and qualified or during the pleasure of the commissioner.

4. Duties. In addition to other duties set out in this Title, the director shall:

A. Report directly to the commissioner; and

B. Carry out the purpose of the bureau.

§3003. Rules

1. Promulgation. The director shall promulgate rules, subject to the Maine Administrative Procedure Act, Title 5, chapter 375, for the enhancement and protection of the rights of clients receiving services from the department, from any hospital pursuant to subchapter IV or from any program or facility administered or licensed by the department under section 3606.

2. Requirements. The rules shall include, but are not limited to:

A. Establishment of the right to provision of treatment and related services in the least restrictive appropriate setting;

B. Establishment of the right to an individualized treatment or service plan, to be developed with the participation of the client;

C. Standards for informed consent to treatment and guidelines for exceptions to informed consent as permitted under applicable law or in emergency situations;

D. Standards for participation in experimentation and research;

E. Standards pertaining to the use of seclusion and restraint;

F. Establishment of the right to appropriate privacy and to a humane treatment environment;

G. Establishment of the right to confidentiality of records and procedures pertaining to a person's right to access to his mental health care records;

H. Establishment of the right to receive visitors and to communicate by telephone and mail;

I. Procedures to ensure that clients are notified of their rights;

J. The right to assistance in protecting a right or advocacy service in the exercise or protection of a right; and

K. Provisions for a fair, timely and impartial grievance procedure for the purpose of ensuring appropriate administrative resolution of grievances with respect to infringement of rights.

3. Public hearing. The director shall hold a public hearing before adopting these rules and shall give notice of the public hearing pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

4. Legislative review. When a rule is proposed or adopted under this section, a copy of the proposed or adopted rule shall be sent to the legislative committee having jurisdiction over health and institutional services.

A. The committee may review the rule and, if it determines that an adopted rule should be stricken or amended, the committee may prepare legislation to accomplish that purpose and submit the legislation to the full Legislature in accordance with legislative rules.

B. The adopted rule shall remain in effect unless the full Legislature acts to strike or amend it, or it is repealed or amended by the director in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER II

STATE MENTAL HEALTH INSTITUTES

§3201. Maintenance

The commissioner shall maintain 2 state mental health institutes for the mentally ill, one at Bangor called the Bangor Mental Health Institute and the other at Augusta called the Augusta Mental Health Institute.

§3202. Superintendent

1. Chief administrative officer. The chief administrative officer of each state mental health institute is called the superintendent.

2. Qualifications. To be eligible to be

appointed superintendent, a person shall be a qualified psychiatrist, qualified hospital administrator, qualified psychologist or a person with a master's degree in social work, public administration or public health.

3. Appointment. The commissioner shall, with the advice of the Advisory Committee on Mental Health, appoint and set the salaries for the superintendent of each state mental health institute.

A. The commissioner and the advisory committee shall give due consideration to the appointee's qualifications and experience in administration and to his qualifications and experience in health matters.

B. The appointments are at the pleasure of the commissioner.

4. Duties. The superintendent shall:

A. Have general superintendence of the state mental health institute and grounds under the direction of the commissioner; and

B. Receive all persons legally sent to the state mental health institute who are in need of special care and treatment, if accommodations permit, subject to the rules of the department.

SUBCHAPTER III

COMMUNITY MENTAL HEALTH SERVICES

§3601. Definition

As used in the subchapter, unless the context otherwise indicates, "mental health services" means out-patient counselling, other psychological, psychiatric, diagnostic or therapeutic services and other allied services.

§3602. Purpose

The purpose of this subchapter is to expand community mental health services, encourage participation in a program of community mental health services by persons in local communities, obtain better understanding of the need for those services and secure aid for programs of community mental health services by state aid and local financial support.

§3603. Commissioner's duties

The commissioner shall promulgate rules, accord-

ing to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this subchapter and to licensing under this subchapter.

§3604. Commissioner's powers

1. Provision of services. The commissioner may provide mental health services throughout the State and for that purpose may cooperate with other state agencies, municipalities, persons, unincorporated associations and nonstock corporations.

2. Funding sources. The commissioner may receive and use for the purpose of this subchapter money appropriated by the State, grants by the Federal Government, gifts from individuals and gifts from any other sources.

3. Grants. The commissioner may make grants of funds to any state or local governmental unit, or branch of a governmental unit, or to a person, unincorporated association or nonstock corporation to be used in the conduct of its mental health services if:

A. The entity or person applies for the funds; and

B. The programs administered by the entity or person provide for adequate standards of professional services.

§3605. Governmental agencies

Any state department, municipality or other governmental unit, or any branch or composite of a state department, municipality or other governmental unit may, through its authorized representative or governing body approved by the commissioner, adopt and conduct a program of mental health services established or approved by the commissioner.

§3606. Licenses

The commissioner may, in accordance with the rules of the department, issue a license to any person, firm, association or corporation to operate, conduct or maintain a facility for the provision of mental health services.

1. Term. The term of the license is for one year.

2. Fee. The annual fee for the license is \$25.

3. Temporary and conditional licenses. If a

licensee, upon inspection by the department, fails to meet any requirement imposed by this section or by rules promulgated under this section, the commissioner may:

A. Upon payment of a fee of \$10, issue a temporary license for a specified period, not to exceed 90 days, during which time the licensee shall make corrections specified by the department to bring the licensee into compliance with this section and rules promulgated under this section;

B. Upon payment of a fee of \$10, issue a conditional license setting forth conditions and, if the conditions are not met by the licensee to the satisfaction of the department, the commissioner shall immediately void the conditional license by:

(1) Personally serving written notice on the conditional licensee; or

(2) If the licensee cannot be reached for personal service, leaving notice at the licensed premises; or

C. Refuse to issue any temporary or conditional license.

4. New application for regular license. The commissioner may consider a new application for a regular license if:

A. The conditions imposed by the commissioner at the time of issuance of the temporary or conditional license have been met; and

B. Satisfactory evidence of this fact has been given to the department.

5. Suspension or revocation. Suspension or revocation of licenses under this section is governed as follows.

A. A license issued under this section may be suspended or revoked for just cause.

B. When the commissioner believes a license should be suspended or revoked, he shall file a complaint with the Administrative Court under the Maine Administrative Procedure Act, Title 5, chapter 375.

6. Refusal to issue license. A person aggrieved by the refusal of the commissioner to issue a license

may file a complaint with the Administrative Court, under the Maine Administrative Procedure Act, Title 5, chapter 375.

7. Prohibited acts; penalties. Prohibited acts and penalties under this section are governed as follows.

A. Any person, firm, association or corporation, except an individual or corporate professional practice of one or more psychologists or psychiatrists, is guilty of unlicensed operation of a mental health service facility, if he or it operates, conducts or maintains such a facility without a license from the commissioner.

B. Notwithstanding Title 17-A, section 4-A, unlicensed operation of a mental health service facility is punishable by a fine of not more than \$500 or by imprisonment for not more than 60 days.

SUBCHAPTER IV

HOSPITALIZATION

ARTICLE I

GENERAL PROVISIONS

§3801. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Hospital. "Hospital" means:

A. A state mental health institute; or

B. A nonstate mental health institution.

2. Licensed physician. "Licensed physician" means a person licensed under the laws of the State to practice medicine or osteopathy or a medical officer of the Federal Government while in this State in the performance of his official duties.

3. Licensed clinical psychologist. "Licensed clinical psychologist" means a person licensed under the laws of the State as a psychologist and who practices clinical psychology.

4. Likelihood of serious harm. "Likelihood of serious harm" means:

A. A substantial risk of physical harm to the person himself as manifested by evidence of recent threats of, or attempts at, suicide or serious bodily harm to himself and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable;

B. A substantial risk of physical harm to other persons as manifested by recent evidence of homicidal or other violent behavior or recent evidence that others are placed in reasonable fear of violent behavior and serious physical harm to them and, after consideration of less restrictive treatment settings and modalities, a determination that community resources for his care and treatment are unavailable; or

C. A reasonable certainty that severe physical or mental impairment or injury will result to the person alleged to be mentally ill as manifested by recent evidence of his actions or behavior which demonstrate his inability to avoid or protect himself from such impairment or injury, and, after consideration of less restrictive treatment settings and modalities, a determination that suitable community resources for his care are unavailable.

5. Mentally ill person. "Mentally ill person" means a person having a psychiatric or other disease which substantially impairs his mental health, including persons suffering from the effects of the use of drugs, narcotics, hallucinogens or intoxicants, including alcohol, but not including mentally retarded or sociopathic persons.

6. Nonstate mental health institution. "Nonstate mental health institution" means a public institution, a private institution or a mental health center, which is administered by an entity other than the State and which is equipped to provide inpatient care and treatment for the mentally ill.

7. Patient. "Patient" means a person under observation, care or treatment in a hospital or residential care facility pursuant to this subchapter.

8. Residential care facility. "Residential care facility" means a licensed or approved boarding care, nursing care or foster care facility which supplies supportive residential care to individuals due to their mental illness.

9. State mental health institute. "State mental

health institute" means the Augusta Mental Health Institute or the Bangor Mental Health Institute.

§3802. Commissioner's powers

The commissioner may:

1. Rules. Promulgate such rules, not inconsistent with this subchapter, as he may find to be reasonably necessary for proper and efficient hospitalization of the mentally ill;

2. Investigation. Investigate, by personal visit, complaints made by any patient or by any person on behalf of a patient;

3. Visitation. Visit each hospital or residential care facility regularly to review the commitment procedures of all new patients admitted between visits;

4. Reports. Require reports from the chief administrative officer of any hospital or residential care facility relating to the admission, examination, diagnosis, release or discharge of any patient; and

5. Forms. Prescribe the form of applications, records, reports and medical certificates provided for under this subchapter and prescribe the information required to be contained in them.

§3803. Patient's rights

A patient in a hospital or residential care facility under this subchapter has the following rights.

1. Civil rights. Every patient is entitled to exercise all civil rights, including, but not limited to, the right to civil service status, the right to vote, rights relating to the granting, renewal, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, the right to enter into contractual relationships and the right to manage his property, unless:

A. The chief administrative officer of the hospital or residential care facility determines that it is necessary for the medical welfare of the patient to impose restrictions on the exercise of these rights and, if restrictions are imposed, the restrictions and the reasons for them shall be made a part of the clinical record of the patient;

B. A patient has been adjudicated incompetent

and has not been restored to legal capacity; or

C. The exercise of these rights is specifically restricted by other statute or rule, but not solely because of the fact of admission to a hospital or residential care facility.

2. Humane care and treatment. Every patient is entitled to humane care and treatment and, to the extent that facilities, equipment and personnel are available, to medical care and treatment in accordance with the highest standards accepted in medical practice.

3. Restraints and seclusion. Restraint, including any mechanical means of restricting movement, and seclusion, including isolation by means of doors which cannot be opened by the patient, may not be used on a patient, unless the chief administrative officer of the hospital or residential care facility or his designee determines that either is required by the medical needs of the patient.

A. The chief administrative officer of the hospital or facility shall record and make available for inspection every use of mechanical restraint or seclusion and the reasons for its use.

B. The limitation of the use of seclusion in this section does not apply to maximum security installations.

4. Communication. Patient communication rights are as follows.

A. Every patient is entitled to communicate by sealed envelopes with the department, a member of the clergy of his choice, his attorney and the court which ordered his hospitalization, if any.

B. Every patient is entitled to communicate by mail in accordance with the rules of the hospital.

5. Visitors. Every patient is entitled to receive visitors unless definitely contraindicated by his medical condition, except that he may be visited by a member of the clergy of his choice or his attorney at any reasonable time.

6. Sterilization. A patient may not be sterilized except in accordance with chapter 7.

§3804. Habeas corpus

Any person detained pursuant to this subchapter

is entitled to the writ of habeas corpus, upon proper petition by himself or by a friend to any justice generally empowered to issue the writ of habeas corpus in the county in which the person is detained.

§3805. Prohibited acts; penalty

1. Unwarranted hospitalization. A person is guilty of causing unwarranted hospitalization, if he willfully causes the unwarranted hospitalization of any person under this subchapter.

2. Denial of rights. A person is guilty of causing a denial of rights if he willfully causes the denial to any person of any of the rights accorded to him by this subchapter.

3. Penalty. Causing unwarranted hospitalization or causing a denial of rights is a Class C crime.

ARTICLE II

VOLUNTARY HOSPITALIZATION

§3831. Admission

Any person desiring admission to a hospital for the mentally ill for care and treatment of a mental illness may be admitted without making a formal application under the following conditions.

1. Availability of accommodations. Except in cases of medical emergency, voluntary admission is subject to the availability of suitable accommodations.

2. Standard hospital information. Standard hospital information may be elicited from the person if, after examination, the chief administrative officer of the hospital deems the person suitable for admission, care and treatment.

3. Persons under 18 years of age. Any person under 18 years of age must have the consent of his parent or guardian.

4. State mental health institute. Any person under 18 years of age must have the consent of the commissioner for admission to a state mental health institute.

§3832. Freedom to leave

1. Patient's right. A patient admitted under section 3831 is free to leave the hospital at any time after admission, except that admission of the

person under section 3863 is not precluded, if at any time such an admission is considered necessary in the interest of the person and of the community.

2. Notice. The chief administrative officer of the hospital shall cause every patient admitted under section 3831 to be informed, at the time of admission, of:

A. His status as an informally admitted patient; and

B. His freedom to leave the hospital at any time under this section.

ARTICLE III

INVOLUNTARY HOSPITALIZATION

§3861. Reception of involuntary patients

1. Nonstate mental health institution. The chief administrative officer of a nonstate mental health institution may receive for observation, diagnosis, care and treatment in the institution any person whose admission is applied for under any of the procedures in this subchapter.

2. State mental health institute. The chief administrative officer of a state mental health institute:

A. May receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3831 or 3863; and

B. Shall receive for observation, diagnosis, care and treatment in the hospital any person whose admission is applied for under section 3864 or is ordered by a court.

§3862. Protective custody

1. Law enforcement officer's power. If a law enforcement officer has reasonable grounds to believe, based upon his personal observation, that a person may be mentally ill and that due to his condition he presents a threat of imminent and substantial physical harm to himself or to other persons, he:

A. May take the person into protective custody; and

B. If the officer does take the person into protective custody, shall deliver the person forth-

with for examination by an available licensed physician or licensed clinical psychologist, as provided in section 3863.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under section 3863, the officer shall:

A. Release the person from protective custody and, with his permission, return him forthwith to his place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with his permission, return him forthwith to the place where he was taken into protective custody; or

C. If the person is also under arrest for a violation of law, retain him in custody until he is released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under section 3863, the officer shall undertake forthwith to secure the endorsement of a judicial officer under section 3863 and may detain the person for a reasonable period of time, not to exceed 18 hours, pending that endorsement.

4. Transportation costs. The costs of transportation under this section shall be paid in the manner provided under section 3863.

§3863. Emergency procedure

A person may be admitted to a mental hospital on an emergency basis according to the following procedures.

1. Application. Any health officer, law enforcement officer or other person may make a written application to admit a person to a mental hospital, subject to the prohibitions and penalties of section 3805, stating:

A. His belief that the person is mentally ill and, because of his illness, poses a likelihood of serious harm; and

B. The grounds for this belief.

2. Certifying examination. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical

psychologist, stating:

A. He has examined the person on the date of the certificate, which date may not be more than 3 days before the date of admission to the hospital; and

B. He is of the opinion that the person is mentally ill and, because of his illness, poses a likelihood of serious harm.

3. Judicial review. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, Judge of the District Court, Judge of Probate or a complaint justice.

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

B. No person may be held against his will in the hospital under this section, whether informally admitted under section 3831 or sought to be involuntarily admitted under this section, unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed the certificate under subsection 2 may be detained in a hospital for a reasonable period of time, not to exceed 18 hours, pending endorsement by a judge or justice, if:

(1) For a person informally admitted under section 3831, the chief administrative officer of the hospital undertakes to secure the endorsement forthwith upon execution of the certificate by the examiner; and

(2) For a person sought to be involuntarily admitted under this section, the person or persons transporting him to the hospital undertake to secure the endorsement forthwith upon execution of the certificate by the examiner.

4. Custody and transportation. Custody and transportation under this section are governed as follows.

A. Upon endorsement of the application and certificate by the judge or justice, any health officer, law enforcement officer or other person designated by the judge or justice may take the person into custody and transport him to the hospital designated in the application.

B. The county in which the person is found is responsible for any expenses of transportation under this section, including return from the hospital if admission is declined.

5. Continuation of hospitalization. If the chief administrative officer of the hospital recommends further hospitalization of the person, he shall determine the suitability of admission, care and treatment of the patient as an informally admitted patient, as described in section 3831.

A. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is suitable, he shall admit the person on this basis, if the person so desires.

B. If the chief administrative officer of the hospital determines that admission of the person as an informally admitted patient is not suitable, or if the person declines admission as an informally admitted patient, the chief administrative officer of the hospital may file an application for the issuance of an order for hospitalization under section 3864.

(1) The application shall be made to the District Court having territorial jurisdiction over the hospital.

(2) The application shall be filed within 5 days from the admission of the patient under this section, excluding the day of admission and any Saturday, Sunday or legal holiday.

C. If neither readmission nor application to the District Court is effected under this subsection, the chief administrative officer of the hospital shall discharge the person forthwith.

6. Notice. Upon admission of a person under this section, and after consultation with the person, the chief administrative officer of the hospital shall mail notice of the fact of admission to:

A. His guardian, if known;

B. His spouse;

C. His parent;

D. His adult child; or

E. One of next of kin or a friend, if none of the listed persons exists.

7. Post-admission examination. Every patient admitted to a hospital shall be examined as soon as practicable after his admission.

A. The chief administrative officer of the hospital shall arrange for examination by a staff physician or licensed clinical psychologist of every patient hospitalized under this section.

B. The examiner may not be the certifying examiner under this section or under section 3864.

C. If the post-admission examination is not held within 24 hours after the time of admission, or if a staff physician or licensed clinical psychologist fails or refuses after the examination to certify that, in his opinion, the person is mentally ill and due to his mental illness poses a likelihood of serious harm, the person shall be immediately discharged.

§3864. Judicial procedure and commitment

1. Application. An application to the District Court to admit a person to a mental hospital, filed under section 3863, subsection 5, paragraph B, shall be accompanied by:

A. The emergency application under section 3863, subsection 1;

B. The accompanying certificate of the physician or psychologist under section 3863, subsection 2; and

C. The certificate of the physician or psychologist under section 3863, subsection 7, that:

(1) He has examined the patient; and

(2) It is his opinion that the patient is a mentally ill person and, because of his illness, poses a likelihood of serious harm.

2. Detention pending judicial determination. Notwithstanding any other provisions of this subchapter, no person, with respect to whom proceedings for judicial hospitalization have been commenced, may be released or discharged during the pendency of the proceedings, unless:

A. The District Court orders release or discharge upon the application of the patient, his guardian, parent, spouse or next of kin;

B. The District Court orders release or dis-

charge upon the report of the chief administrative officer of the hospital that the person may be discharged with safety; or

C. A court orders release or discharge upon a writ of habeas corpus under section 3804.

3. Notice of receipt of application. The giving of notice of receipt of application under this section is governed as follows.

A. Upon receipt by the District Court of the application and accompanying documents specified in subsection 1, the court shall cause written notice of the application:

(1) To be given personally or by mail to the person within a reasonable time before the hearing, but not less than 3 days before the hearing; and

(2) To be mailed to the person's guardian, if known, and to his spouse, his parent or one of his adult children or, if none of these persons exist or if none of them can be located, to one of his next of kin or a friend.

B. A docket entry is sufficient evidence that notice under this subsection has been given.

4. Examination. Examinations under this section are governed as follows.

A. Upon receipt by the District Court of the application and the accompanying documents specified in subsection 1, the court shall forthwith cause the person to be examined by 2 examiners.

(1) Each examiner must be either a licensed physician or a licensed clinical psychologist.

(2) One of the examiners shall be a physician or psychologist chosen by the person or by his counsel, if the chosen physician or psychologist is reasonably available.

(3) Neither examiner appointed by the court may be the certifying examiner under section 3863, subsection 2 or 7.

B. The examination shall be held at the hospital or at any other suitable place not likely to have

a harmful effect on the mental health of the person.

C. If the report of the examiners is to the effect that the person is not mentally ill or does not pose a likelihood of serious harm, the application shall be ordered discharged forthwith.

D. If the report of the examiners is to the effect that the person is mentally ill or poses a likelihood of serious harm, the hearing shall be held on the date, or on the continued date, which the court has set for the hearing.

5. Hearing. Hearings under this section are governed as follows.

A. The District Court shall hold a hearing on the application not later than 15 days from the date of the application.

(1) On a motion by any party, the hearing may be continued for cause for a period not to exceed 10 additional days.

(2) If the hearing is not held within the time specified, or within the specified continuance period, the court shall dismiss the application and order the person discharged forthwith.

(3) In computing the time periods set forth in this paragraph, the District Court Civil Rules shall apply.

B. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have harmful effect on the mental health of the person.

C. The court shall receive all relevant and material evidence which may be offered in accordance with accepted rules of evidence and accepted judicial dispositions.

(1) The person, the applicant and all other persons to whom notice is required to be sent shall be afforded an opportunity to appear at the hearing to testify and to present and cross-examine witnesses.

(2) The court may, in its discretion, receive the testimony of any other person and may subpoena any witness.

D. The person shall be afforded an opportunity to be represented by counsel, and, if neither the person nor others provide counsel, the court shall appoint counsel for the person.

E. In addition to proving that the patient is a mentally ill individual, the applicant shall show:

(1) By evidence of the patient's actions and behavior, that the patient poses a likelihood of serious harm; and

(2) That, after full consideration of less restrictive treatment settings and modalities, inpatient hospitalization is the best available means for the treatment of the person.

F. In each case, the applicant shall submit to the court, at the time of the hearing, testimony indicating the individual treatment plan to be followed by the hospital staff, if the person is committed under this section, and shall bear any expense for witnesses for this purpose.

G. A stenographic or electronic record shall be made of the proceedings in all judicial hospitalization hearings.

(1) The record and all notes, exhibits and other evidence shall be confidential.

(2) The record and all notes, exhibits and other evidence shall be retained as part of the District Court records for a period of 2 years from the date of the hearing.

H. The hearing shall be confidential and no report of the proceedings may be released to the public or press, except by permission of the person or his counsel and with approval of the presiding District Court Judge, except that the court may order a public hearing on the request of the person or his counsel.

6. Court findings. Procedures dealing with the District Court's findings under this section are as follows.

A. The District Court shall so state in the record, if it finds upon completion of the hearing and consideration of the record:

(1) Clear and convincing evidence that the person is mentally ill and that his recent

actions and behavior demonstrate that his illness poses a likelihood of serious harm;

(2) That inpatient hospitalization is the best available means for treatment of the patient; and

(3) That it is satisfied with the individual treatment plan offered by the hospital.

B. If the District Court makes the findings described in paragraph A, subparagraphs 1 and 2, but is not satisfied with the individual treatment plan as offered, it may continue the case for not longer than 10 days, pending reconsideration and resubmission of an individual treatment plan by the hospital.

7. Commitment. Upon making the findings described in subsection 6, the court may order commitment to a mental hospital for a period not to exceed 4 months in the first instance and not to exceed one year after the first and all subsequent hearings.

A. The court may issue an order of commitment immediately after the completion of the hearing, or it may take the matter under advisement and issue an order within 24 hours of the hearing.

B. If the court does not issue an order of commitment within 24 hours of the completion of the hearing, it shall dismiss the application and order the patient discharged forthwith.

8. Continued involuntary hospitalization. If the chief administrative officer of the hospital determines that continued involuntary hospitalization is necessary for a person who has been ordered by the District Court to be committed, he shall, not later than 30 days prior to the expiration of a period of commitment ordered by the court, make application in accordance with this section to the District Court which has territorial jurisdiction over the hospital for a hearing to be held under this section.

9. Transportation. Unless otherwise directed by the court, the sheriff of the county in which the District Court has jurisdiction and in which the hearing takes place shall provide transportation to any hospital to which the court has committed the person.

10. Expenses. With the exception of expenses incurred by the applicant pursuant to subsection 5, paragraph F, the District Court shall be responsible

for any expenses incurred under this section, including fees of appointed counsel, witness and notice fees and expenses of transportation for the person.

11. Appeals. A person ordered by the District Court to be committed to a hospital may appeal from that order to the Superior Court.

A. The appeal is on questions of law only.

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

C. The order of the District Court shall remain in effect pending the appeal.

D. The District Court Civil Rules and the Maine Rules of Civil Procedure apply to the conduct of the appeals, except as otherwise specified in this subsection.

§3865. Hospitalization by federal agency

If a person ordered to be hospitalized under section 3864 is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of a certificate from the agency showing that facilities are available and that the person is eligible for care or treatment in the facilities, may order him to be placed in the custody of the agency for hospitalization.

1. Rules and rights. A person admitted under this section to any hospital or institution operated by any agency of the United States, inside or outside the State, is subject to the rules of the agency, but retains all rights to release and periodic court review granted by this subchapter.

2. Powers of chief administrative officer. The chief administrative officer of any hospital or institution operated by a federal agency in which the person is hospitalized has, with respect to the person, the same powers as the chief administrative officer of hospitals or the commissioner within this State with respect to detention, custody, transfer, conditional release or discharge of patients.

3. Court jurisdiction. Every order of hospitalization issued under this section is conditioned on the retention of jurisdiction in the courts of this State to, at any time:

A. Inquire into the mental condition of a person hospitalized; and

B. Determine the necessity for continuance of his hospitalization.

§3866. Members of the Armed Forces

1. Admission to hospital. Any member of the Armed Forces of the United States who was a resident of the State at the time of his induction into the service and who is determined by a federal board of medical officers to have a mental disease not incurred in line of duty shall be received, at the discretion of the commissioner and without formal commitment, at either of the state hospitals for the mentally ill, upon delivery at the hospital designated by the commissioner of:

A. The member of the Armed Forces; and

B. The findings of the board of medical officers that he is mentally ill.

2. Status. After delivery of the member of the Armed Forces at the hospital designated by the commissioner, his status shall be the same as if he had been committed to the hospital under section 3864.

§3867. Transfer from out-of-state institutions

1. Commissioner's authority. The commissioner may, upon request of a competent authority of the District of Columbia or of a state which is not a member of the Interstate Compact on Mental Health, authorize the transfer of a mentally ill patient directly to a state mental health institute in Maine, if:

A. The patient has resided in this State for a consecutive period of one year during the 3-year period immediately preceding commitment in the other state or the District of Columbia;

B. The patient is currently confined in a recognized institution for the care of the mentally ill as the result of proceedings considered legal by that state or by the District of Columbia;

C. A duly certified copy of the original commitment proceedings and a copy of the patient's case history is supplied;

D. The commissioner, after investigation, deems the transfer justifiable; and

E. All expenses of the transfer are borne by the agency requesting it.

2. Receipt of patient. When the commissioner has authorized a transfer under this section, the superintendent of the state mental health institute designated by the commissioner shall receive the patient as having been regularly committed to the mental health institute under section 3864.

§3868. Transfer to other institutions

1. To other hospitals. The commissioner may transfer, or authorize the transfer of, a patient from one hospital to another, either inside or outside the State, if the commissioner determines that it would be consistent with the medical needs of the patient to do so.

A. Whenever a patient is transferred, the commissioner shall give written notice of the transfer to the patient's guardian, his parents or spouse or, if none of these persons exists or can be located, to his next of kin or friend.

B. In making all such transfers, the commissioner shall give due consideration to the relationship of the patient to his family, guardian or friends, in order to maintain relationships and encourage visits beneficial to the patient.

2. To federal agency. Upon receipt of a certificate of an agency of the United States that facilities are available for the care or treatment of any involuntarily hospitalized person and that the person is eligible for care and treatment in a hospital or institution of the agency, the chief administrative officer of the hospital may cause his transfer to the agency of the United States for hospitalization.

A. Upon making such a transfer, the chief administrator of the hospital shall notify the court which ordered hospitalization and the persons specified in subsection 1, paragraph A.

B. No person may be transferred to an agency of the United States if he is confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness, unless before the transfer the court originally ordering confinement of the person enters an order for transfer after appropriate motion and hearing.

C. Any person transferred under this section to an agency of the United States is deemed to be hospitalized by the agency pursuant to the original order of hospitalization.

§3869. Return from unauthorized absence

If any patient committed under section 3864 leaves the grounds of the hospital without authorization of the chief administrative officer of the hospital or his designee, or refuses to return to the hospital from a community pass when requested to do so by the chief administrative officer or his designee, law enforcement personnel of the State or of any of its subdivisions may, upon request of the chief administrative officer or his designee, assist in the return of the patient to the hospital.

§3870. Convalescent status

1. Authority. The chief administrative officer of a state mental health institute may release an improved patient on convalescent status when he believes that the release is in the best interest of the patient.

A. Release on convalescent status may include provisions for continuing responsibility to and by the state mental health institute, including a plan of treatment on an outpatient or nonhospital basis.

B. Before release on convalescent status under this section, the chief administrative officer of a state mental health institute shall make a good faith attempt to notify, by telephone, personal communication or letter, of the intent to release the patient on convalescent status and of the plan of treatment, if any:

(1) The parent or guardian of a minor patient;

(2) The legal guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given.

C. The state mental health institute is not liable when good faith attempts to notify parents, spouse or guardian have failed.

2. Reexamination. Before a patient has spent a year on convalescent status, and at least once a year thereafter, the chief administrative officer of the state mental health institute shall reexamine the facts relating to the hospitalization of the patient on convalescent status.

3. Discharge. Discharge from convalescent status is governed as follows.

A. If the chief administrative officer of the state mental health institute determines that, in view of the condition of the patient, convalescent status is no longer necessary, he shall discharge the patient and make a report of the discharge to the commissioner.

B. The chief administrative officer shall terminate the convalescent status of a voluntary patient within 10 days after the day he receives from the patient a request for discharge from convalescent status.

4. Rehospitalization. Rehospitalization of patients under this section is governed as follows.

A. If, prior to discharge, there is reason to believe that it is in the best interest of an involuntarily committed patient on convalescent status to be rehospitalized, the commissioner or the chief administrative officer of the state mental health institute may issue an order for the immediate rehospitalization of the patient.

B. If the order is not voluntarily complied with, and if the order is endorsed by a District Court Judge or complaint justice in the county in which the patient has his legal residence or is present, any health officer or police officer may take the patient into custody and transport him to:

(1) The state mental health institute, if the order is issued by the chief administrative officer of the state mental health institute; or

(2) A hospital designated by the commissioner, if the order is issued by the commissioner.

5. Notice of change of status. Notice of the change of convalescent status of patients is governed as follows.

A. If the convalescent status of a patient in a state mental health institute is to be changed, either because of a decision of the chief administrative officer of the state mental health institute or because of a request made by a voluntary patient, the chief administrative officer of the state mental health institute shall immediately make a good faith attempt to notify,

by telephone, personal communication or letter,
of the contemplated change:

(1) The parent or guardian of a minor
patient;

(2) The guardian of an adult incompetent
patient, if any is known; or

(3) The spouse or adult next of kin of an
adult competent patient, unless the patient
requests in writing that the notice not be
given.

B. If the change in convalescent status is due
to the request of a voluntary patient, the chief
administrative officer of the state mental health
institute shall give the required notice within
10 days after the day he receives the request.

C. The state mental health institute is not lia-
ble when good faith attempts to notify parents,
spouse or guardian have failed.

§3871. Discharge

1. Examination. The chief administrative offi-
cer of a state mental health institute shall, as
often as practicable, but no less often than every 12
months, examine or cause to be examined every patient
to determine his mental status and need for continu-
ing hospitalization.

2. Conditions for discharge. The chief adminis-
trative officer of a state mental health institute
shall discharge, or cause to be discharged, any
patient when:

A. Conditions justifying hospitalization no
longer obtain;

B. The patient is transferred to another hospi-
tal for treatment for his mental or physical con-
dition;

C. The patient is absent from the state mental
health institute unlawfully for a period of 90
days;

D. Notice is received that the patient has been
admitted to another hospital, inside or outside
the State, for treatment for his mental or physi-
cal condition; or

E. Although lawfully absent from the state
mental health institute, the patient is admitted

to another hospital, inside or outside the State, for treatment of his mental or physical condition, except that, if the patient is directly admitted to another hospital and it is the opinion of the chief administrative officer of the state mental health institute that the patient will directly reenter the state mental health institute within the foreseeable future, the patient need not be discharged.

3. Discharge against medical advice. The chief administrative officer of a state mental health institute may discharge, or cause to be discharged, any patient even though the patient is mentally ill and appropriately hospitalized in the state mental health institute, if:

A. The patient and either the guardian, spouse or adult next of kin of the patient request his discharge; and

B. In the opinion of the chief administrative officer of the hospital, the patient does not pose a likelihood of serious harm due to his mental illness.

4. Reports. The chief administrative officer of a state mental health institute shall send a report of the discharge of any patient to the commissioner.

5. Notice. Notice of discharge is governed as follows.

A. When a patient is discharged under this section, the chief administrative officer of the state mental health institute shall immediately make a good faith attempt to notify, by telephone, personal communication or letter, that the discharge has taken or will take place:

(1) The parent or guardian of a minor patient;

(2) The guardian of an adult incompetent patient, if any is known; or

(3) The spouse or adult next of kin of an adult competent patient, if any is known, unless the patient requests in writing that the notice not be given or unless the patient was transferred from or will be returned to a state correctional facility.

B. The state mental health institute is not liable when good faith attempts to notify parents, spouse or guardian have failed.

CHAPTER 5
MENTAL RETARDATION
SUBCHAPTER I
GENERAL PROVISIONS

§5001. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. Bureau. "Bureau" means the Bureau of Mental Retardation.

2. Incapacitated person. "Incapacitated person" means any person who is impaired by reason of mental retardation to the extent that he lacks sufficient understanding or capacity to make, communicate or implement responsible decisions concerning his person or property.

3. Mental retardation. "Mental retardation" means a condition of significantly subaverage intellectual functioning manifested during a person's developmental period, existing concurrently with demonstrated defects in adaptive behavior.

4. Protective services. "Protective services" means services which will separate incapacitated adults from danger, including, but not limited to:

A. Social, medical and psychiatric services necessary to preserve the incapacitated adult's rights and resources and to maintain the incapacitated adult's physical and mental well-being; and

B. Seeking guardianship or a protective order under Title 18-A, Article 5.

5. Region. "Region" means any of the regions established by the bureau.

6. Supportive services. "Supportive services" means services to make it possible for an incapacitated person to become rehabilitated or self-sufficient to the maximum extent possible, including but not limited to:

A. Counseling;

- B. Transportation;
- C. Assistance in obtaining adequate housing;
- D. Medical and psychiatric care; and
- E. Nutritional services.

7. Ward. "Ward" means a person for whom the bureau has been duly appointed guardian under Title 18-A, Article V, Part 6.

§5002. Policy

1. Services. It is the policy of the State to provide education, training and habilitative services to mentally retarded persons who need those services, except that nothing in this chapter may replace or limit the right of any mentally retarded person to treatment by spiritual means alone, through prayer, if that treatment is requested by the person or by his next of kin or guardian.

2. Setting. It is the policy of the State that the setting for the services described in subsection 1 shall, consistent with adequate care and treatment:

- A. Impose the fewest possible restrictions on the liberty of mentally retarded persons; and
- B. Be as close as possible to the patterns and norms of the mainstream of society.

§5003. System of care for mentally retarded clients

1. System of care. The Legislature declares that the system of care, through which the State provides services to and programs for mentally retarded persons, shall be designed not only to protect the integrity of the legal and human rights of these persons, but also to meet the needs of these persons.

2. Responsibilities of the department. To facilitate the development of a system which meets the needs of mentally retarded persons, the commissioner, through the bureau, shall:

- A. Provide a mechanism for the identification, evaluation, treatment and reassessment of and the provision of services to mentally retarded persons, including an habilitation program for every client served by the bureau;
- B. Divert mentally retarded persons from institutional care, whenever professional diagnosis and evaluation, the personal preference of the

client or his legal guardian, and the availability of appropriate services indicate that these persons should be placed in community environments and programs;

C. Provide programs, so far as resources permit, for the proper habilitation and treatment of mentally retarded persons, which shall include, but need not be limited to, comprehensive medical care, education, recreation, physical therapy, training, social services and habilitation and rehabilitation services suited to the needs of the individual regardless of age, degree of retardation, handicapping condition or ability to pay;

D. Work toward effectuating the normalization principle through the establishment of community services for the mentally retarded person as a viable and practical alternative to institutional care at each stage of individual life development, but, if care in an institutional facility becomes necessary, it should be in the least restrictive setting, consistent with the proper care of the mentally retarded person;

E. Eliminate its own duplicative and unnecessary administrative procedures and practices in the system of care for mentally retarded persons, encourage other departments to do the same, and clearly define areas of responsibility in order to utilize present resources economically;

F. Strive toward having a sufficient number of personnel who are qualified and experienced to provide treatment which is beneficial to the mentally retarded clients; and

G. Encourage other departments to provide to mentally retarded persons those services which are required by law, and in particular:

(1) The commissioner shall work actively to ensure that mentally retarded clients, as provided for in Title 20-A, chapter 303, shall receive educational and training services beginning at age 6 years regardless of the degree of retardation, or accompanying disabilities or handicaps;

(2) The commissioner shall advise the Department of Human Services about standards and policies pertaining to administration, staff, quality of care, quality of treatment, health and safety of clients, rights of clients, community relations and licens-

ing procedures and other areas which affect mentally retarded persons residing in facilities licensed by the Department of Human Services; and

(3) The commissioner shall inform the joint standing committee of the Legislature having jurisdiction over health and institutional services about areas where increased cooperation by other departments is necessary in order to improve the delivery of services to mentally retarded persons.

3. Plan. The commissioner, through the bureau, shall prepare a plan, subject to the following provisions.

A. The plan shall indicate the most effective and efficient manner in which to implement services and programs for mentally retarded persons, while safeguarding and respecting the legal and human rights of these persons.

B. The plan shall be prepared once every 2 years and shall be submitted to the joint standing committee of the Legislature having jurisdiction over health and institutional services by no later than January 15th of every odd-numbered year.

C. The committee shall study the plan and make recommendations to the Legislature with respect to funding improvements in programs and services to mentally retarded persons.

SUBCHAPTER II

BUREAU OF MENTAL RETARDATION

§5201. Establishment

There is established, within the Department of Mental Health and Mental Retardation, the Bureau of Mental Retardation, which is responsible for:

1. Institutional programs. The supervision of mental retardation programs in the state institutions;

2. Statewide system. The planning, promotion, coordination and development of a complete and integrated statewide system of mental retardation services;

3. Liaison. Serving as liaison, coordinator and consultant to the several state departments in order

to develop the statewide system of mental retardation services;

4. Community-based services. Ensuring that mentally retarded persons residing in community residential facilities, including nursing homes, boarding homes, foster homes, group homes or halfway houses licensed by the Department of Human Services are provided, insofar as possible, with, residential accommodations and access to habilitation services appropriate to their needs; and

5. Protective and supportive services. Providing protective and supportive services, in accordance with section 5203, to incapacitated persons who, with some assistance, are capable of living and functioning in society.

§5202. Director

1. Appointment. The commissioner shall, with the consent of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary, subject to the approval of the Governor, for, the Director of the Bureau of Mental Retardation.

A. Notwithstanding any other provision of law, the commissioner may delegate any employee of the department to serve, for a period not to exceed 180 days, as the acting director, if the office of the director is vacant.

B. Service as the acting director is considered a temporary additional duty for the person so delegated.

2. Qualifications. To be eligible for appointment as director, a person must have training and experience in mental retardation program administration or satisfactory experience in the direction of work of a comparable nature.

3. Term. The director shall serve at the pleasure of the commissioner.

4. Duties. In addition to other duties set out in this Title, the director shall:

A. Report directly to the commissioner; and

B. Carry out the purposes of the bureau.

§5203. Protective and supportive services

1. Bureau authority. The bureau may provide protective or supportive services in response to com-

plaints concerning, and requests for assistance from or on behalf of, all incapacitated persons, under the following conditions.

A. Except for seeking the appointment of a guardian, protective or supportive services may be initiated only:

(1) With the acquiescence of the incapacitated person; and

(2) After consultation, insofar as possible, with the family or the guardian of the incapacitated person.

B. The role of the bureau shall be primarily that of supervision and coordination.

2. Payment for services. Payment for services under this section is governed as follows.

A. The bureau may pay for protective and supportive services to incapacitated persons from its own resources, by mobilizing available community resources or by purchase of services from voluntary or state agencies.

B. To the extent that assets are available to incapacitated persons or wards, the cost of services shall be borne by the estate of persons receiving the services.

C. The department, through the bureau and its other agents, may receive as payee any benefits from social security, veterans' administration, railroad retirement or any other like benefits paid on behalf of any incapacitated person, and shall apply those benefits toward the care and treatment of the incapacitated person.

3. Rules. Promulgation, amendment and appeal of rules under this section are governed as follows.

A. The bureau shall promulgate, and may amend or repeal, rules governing the administration of this section, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

B. The bureau shall hold a public hearing before promulgating, amending or repealing the rules, and shall give notice of the public hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER IIISERVICES FOR MENTALLY RETARDED PERSONSARTICLE ISTATE-OPERATED FACILITIESFOR MENTALLY RETARDED PERSONS§5401. Maintenance of facilities

The department shall maintain the following 3 residential facilities for the care and treatment of mentally retarded persons:

1. Pineland Center;
2. Aroostook Residential Center; and
3. Elizabeth Levinson Center.

§5402. Pineland Center

1. Establishment. There is established the Pineland Center at New Gloucester in Cumberland County, which:

A. Shall be maintained for the training, education, treatment and care of persons who are mentally retarded; and

B. May be maintained for the training, education, treatment and care of persons between the ages of 3 and 16 who are mentally ill.

2. Applicable laws. The provisions of Article III shall, in all relevant aspects, apply to the mentally ill persons described in subsection 1, paragraph B.

3. Superintendent. The chief administrative officer of the Pineland Center is called the superintendent.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the superintendent.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In making the appointment, the commissioner and the committee shall give due consideration to

the appointee's qualifications and experience in mental retardation matters.

D. In order to qualify for appointment as superintendent, a person shall have sufficient training and experience to deal with the problems of mentally retarded persons, and shall be either a psychiatrist, hospital administrator, psychologist or a person with a master's degree in education, social work, public administration, public health or rehabilitation.

4. Duties of the superintendent. The superintendent shall:

A. Be responsible for the training, education, treatment and care of all persons received into Pineland Center;

B. Be responsible for the discharge of all such persons, except those placed in Pineland Center under Title 15, section 101 or 103; and

C. Have direct supervision, management and control of the grounds, buildings, property, officers and employees of Pineland Center, subject to the approval of the commissioner.

§5403. Aroostook Residential Center

1. Establishment. There is established the Aroostook Residential Center at Presque Isle in Aroostook County, which:

A. Shall be maintained for the training, education, treatment and care of persons who are mentally retarded; and

B. May provide living accommodations for mentally retarded persons in order that they may attend educational and training programs.

2. Director. The chief administrative officer of the Aroostook Residential Center is called the director.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the director.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In order to qualify for appointment as the

director, a person shall have sufficient education and experience to administer a facility providing services to the mentally retarded.

3. Duties of the director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Aroostook Residential Center;

B. Be responsible for the discharge of all persons received into the Aroostook Residential Center; and

C. Have direct supervision, management and control of the grounds, buildings, property, officers and employees of the Aroostook Residential Center, subject to the approval of the commissioner.

§5404. Elizabeth Levinson Center

1. Establishment. There is established the Elizabeth Levinson Center at Bangor in Penobscot County, which shall be maintained for the training, education, treatment and care of persons who are mentally retarded.

2. Director. The chief administrative officer of the Elizabeth Levinson Center is called the director.

A. The commissioner shall, with the advice of the Maine Committee on Problems of the Mentally Retarded, appoint and set the salary for the director.

B. The appointment is for an indefinite term and until his successor is appointed and qualified, or during the pleasure of the commissioner.

C. In order to qualify for appointment as the director, a person shall have sufficient education and experience to administer a facility providing services to the mentally retarded.

3. Duties of the director. The director shall:

A. Be responsible for the training, education, treatment and care of all persons received into or receiving services from the Elizabeth Levinson Center;

B. Be responsible for the discharge of all persons received into the Elizabeth Levinson Center;

and

C. Have direct supervision, management and control of the grounds, buildings, property, officers and employees of the Elizabeth Levinson Center, subject to the approval of the commissioner.

ARTICLE II

COMMUNITY-BASED SERVICES

§5431. Purpose

The purpose of this Article is to assist in the establishment and expansion of community-based mental retardation services and programs for mentally retarded persons residing in the community and residing in privately-operated residential care facilities.

§5432. Commissioner's duties

The commissioner shall:

1. Community participation. Encourage persons in local communities to participate in the provision of supportive services for mentally retarded persons, so that persons in the community may have a better understanding of the need for those services;

2. Financial assistance. When offering assistance to community-based programs, follow the procedures set forth in this Article; and

3. Rules. Through the Director of the Bureau of Mental Retardation, promulgate rules, according to the Maine Administrative Procedure Act, Title 5, chapter 375, relating to the administration of the services authorized by this Article.

§5433. Commissioner's powers

The commissioner may:

1. Financial aid. Allocate money for the development of group homes, capital construction, purchase of buildings, supportive services and for other activities, but only those applicants for funds whose programs provide for adequate standards of professional service qualify for funds from the department;

2. Services and programs. Provide and help finance mental retardation services and programs throughout the State for mentally retarded persons residing in the community and residing in privately-owned residential care facilities;

3. Cooperation. Cooperate with other state agencies, municipalities, other governmental units, unincorporated associations and nonstock corporations in order to provide and help finance services and programs for mentally retarded persons; and

4. Available funds. Receive and use for the purpose of this Article money appropriated by the State, grants by the Federal Government, gifts from individuals and money from any other sources.

§5434. Municipalities and other governmental units

1. Authorization. A municipality or other governmental unit, such as a county, school district or health district, through its local board of health or other town or governmental agency approved by the commissioner, may adopt and carry out a program of mental retardation services established or approved by the commissioner and appropriate money for that purpose.

2. Joint ventures. A municipality or other governmental unit may join with another municipality or governmental unit to carry out such a program.

3. Grants. Upon application to the department by a municipality or other governmental unit, the commissioner may grant to the applicant money to be used for carrying out its mental retardation services, including any necessary capital expenditures or purchase of buildings.

§5435. Nongovernmental units

1. Department grants. Upon application to the department by an unincorporated association or nonstock corporation organized for the improvement of community health and welfare, the commissioner may grant to the applicant money to be used for carrying out its mental retardation services, including any necessary capital expenditures or purchase of buildings.

2. Bureau grants. The Bureau of Mental Retardation may make grants to nonprofit corporations for amounts which are reasonable relative to the quantity and quality of services to be provided by the grantee.

A. The bureau may request a display of effort on the part of the grantee that appropriate local governmental and other funding sources have been sought to assist in the financing of the services for which the bureau is making the grant.

B. The bureau shall give consideration to the ability of the municipality or governmental unit to support the mental retardation services, as reflected by the state's evaluation of the component communities.

C. In making grants to unincorporated associations or nonstock corporations, the bureau shall take into account all income and resources.

§5436. Fees

1. Authority. Fees may be charged for services provided directly to individuals by any program authorized by the department, if the individual is financially able to pay.

2. Use. Fees received by a municipality, governmental unit, unincorporated association or nonstock corporation shall be used by each entity in carrying out its programs approved under this Article.

ARTICLE III

PROCEDURES

§5461. Definitions

As used in this Article, unless the context otherwise indicates, the following terms have the following meanings.

1. Advocate. "Advocate" means a person:

A. Who is familiar with the procedures involved both in admitting mentally retarded persons to a facility and in providing services to those persons; and

B. Who is capable of advocating solely on behalf of a mentally retarded person.

2. Client. "Client" means a person asking the department for mental retardation services or the person for whom those services are asked.

3. Community. "Community" means the municipality or other area in which the client resides when applying for services.

4. Comprehensive evaluation. "Comprehensive evaluation" means a comprehensive set of evaluations which:

A. Results in the distinguishing of mental

retardation from other conditions;

B. Determines the severity of disability resulting from mental retardation and other conditions; and

C. Estimates the degree to which mental retardation and other conditions can be ameliorated.

5. Facility. "Facility" means a residential facility operated by the department for mentally retarded clients.

6. Habilitation. "Habilitation" means a process by which a person is assisted to acquire and maintain skills which:

A. Enable him to cope more effectively with the demands of his own person and of the environment;

B. Raise the level of his physical, mental and social efficiency; and

C. Upgrade his sense of well-being.

7. Interdisciplinary team. "Interdisciplinary team" means a team of persons, including at least one professional, which team is established and conducted in accordance with professional standards for the purpose of evaluating mentally retarded clients and recommending services for these clients.

8. Person in need of institutional services. "Person in need of institutional services" means a person who, because of mental retardation and other severely disabling conditions, is unable to care for himself and to avoid or protect himself from severe physical or psychological impairment, and who needs habilitation in an institutional setting designed to improve his ability to care for and protect himself.

9. Prescriptive program plan. "Prescriptive program plan" means a detailed written plan, formulated by an appropriately constituted interdisciplinary team, outlining a mentally retarded client's specific needs for education, training, treatment and habilitation services, along with the methods to be utilized in providing treatment, education and habilitation to the client.

10. Professional. "Professional" means a person who is licensed by the State to practice medicine or psychology and who has had training and experience in the diagnosis and treatment of mentally retarded persons.

11. Service agreement. "Service agreement" means a written form in which the persons designated in section 5471 agree to the type of services and programs for and the manner of providing services to the client.

12. Voluntary admission. "Voluntary admission" means the reception into a facility of a mentally retarded client who understands the nature, purpose and proposed duration of the admission and his right to leave the facility and thus to terminate the admission at any time, and who consents to the admission, or a mentally retarded client whose eligibility for admission to the facility has been certified by the District Court under section 5475.

§5462. Procedure policies

1. Steps. It is the policy of the State that, in order to ensure that mentally retarded persons receive needed services, to the extent possible, the following steps shall be taken for each person found by the department to be mentally retarded and in need of services:

A. An assessment of the person's needs;

B. The development of a prescriptive program of services for the person;

C. A determination of the suitability and quality of needed services which are available to the person, first in the community and 2nd in state-operated facilities; and

D. Insofar as possible, obtaining high quality and suitable services for the person.

2. Persons involved with procedures. It is the policy of the State that:

A. To the extent possible, the mentally retarded person and his guardian or next of kin be involved with the steps specified in subsection 1; and

B. An advocate be available to the mentally retarded person throughout the steps specified in subsection 1.

§5463. Notice

The commissioner shall provide the client, if he is competent, the client's next of kin or guardian, if any exists, and the client's advocate with timely written notice in advance of procedures and actions

to be taken with respect to the development, implementation and assessment of prescriptive program plans.

§5464. Correspondence and reports

The commissioner shall provide the client, if he is competent, the client's next of kin or legal guardian, if any exists, and the client's advocate with access to copies of correspondence and reports concerning the client, in accordance with section 1206.

§5465. Rules

1. Duty. The commissioner shall promulgate rules for the effective implementation of this Article.

2. Requirements. The rules shall include, but need not be limited to, information on:

A. The membership, functions and procedures of the interdisciplinary teams;

B. The procedures to be used in developing prescriptive programs and service agreements;

C. The rights of clients while at a facility or while in departmental programs; and

D. The rights and procedures for administrative review if there is dissatisfaction with any step of the process of receiving services specified in this Article or if there is any grievance arising during the course of voluntary admission to or treatment in any facility, including provisions for the development of regional committees to review any grievance or dissatisfaction.

3. Review. The joint standing committee of the Legislature having jurisdiction over health and institutional services shall review all rules promulgated by the department pursuant to this Article by no later than March of each year.

4. Public hearing and notice. The commissioner shall hold at least one public hearing before promulgating these rules and notice of any public hearing shall be given pursuant to the Maine Administrative Procedure Act, Title 5, section 8053.

5. Amendment or repeal. The commissioner may amend or repeal rules at any time after giving notice and holding a hearing, as prescribed in subsection 4, with respect to the rules amended or repealed.

§5466. Advocate

1. Entitlement. Each client who receives services under sections 5467 to 5474 is entitled to representation by an advocate.

2. List. The commissioner shall develop a list of advocates, including attorneys, for each region of the Bureau of Mental Retardation.

§5467. Application and preliminary procedures

1. Application. An application for mental retardation services, on a form provided by the commissioner, shall be initiated at or referred to a regional office of the Bureau of Mental Retardation.

2. Preliminary procedures. Within 5 work days from the day of application, the department shall:

A. Observe the client in his current environment;

B. Obtain a brief family survey;

C. Make a preliminary assessment of the client's abilities and needs and of the relevant services presently available to the client; and

D. Ensure the client's representation by an advocate throughout the process of mental retardation services under sections 5467 to 5474, unless the client refuses that representation.

§5468. Evaluation

After completing the tasks specified in section 5467, subsection 2, the commissioner shall forthwith cause a comprehensive evaluation of the client, including a consideration of physical, emotional, social and cognitive factors, to be conducted.

1. Location. The comprehensive evaluation shall be conducted locally, except where resources required to carry out the evaluation are not available.

2. Interdisciplinary team. The comprehensive evaluation shall be conducted by an interdisciplinary team.

§5469. Report

Within 30 days of the day of the application made under section 5467, the interdisciplinary team shall give a report of its findings to the department, and the professional on the team shall state specifically

in the report whether or not the client is mentally retarded.

1. Client not mentally retarded. If the report of the interdisciplinary team concludes that the client is not mentally retarded, the department shall deny the application for services, care and treatment, but shall make appropriate referrals in cases where clear needs of the client exist.

2. Client mentally retarded. If the report of the interdisciplinary team concludes that the client is mentally retarded and is in need of services, the department, through the interdisciplinary team, shall develop and begin to implement a prescriptive program plan for this client within 60 days of the day of application made under section 5467.

3. Preschool child. If the report of the interdisciplinary team concludes that a preschool child, aged 0 to 5 years, is developmentally delayed and is in need of infant development center services, the department, through the interdisciplinary team, shall develop and begin to implement a prescriptive program plan for this client within 60 days of the day of application made under section 5467.

§5470. Prescriptive program plan

1. Individually tailored plan. Each prescriptive program plan shall be individually tailored to the client's age, sex, condition, abilities, experiences and needs.

2. Contents of plan. Each prescriptive program plan shall:

A. Define training and treatment goals for the client without regard to service availability;

B. List all available and applicable programs of treatment, education and habilitation;

C. Weigh the advantages of each program in paragraph B in terms of cost, effectiveness, convenience and the client's needs;

D. Recommend the optimal course of action; and

E. Include plans for the active and continued exploration of suitable program alternatives.

3. Implementation. Implementation of all parts of a prescriptive program plan shall occur at the earliest possible time and shall be governed by section 5471, subsection 4.

4. Agreement. All parts of a prescriptive program plan shall be agreed to, prior to implementation, by the client, if he is able, and by his next of kin or legal guardian, if that person exists and is available.

5. Recommendations of plan. Each prescriptive program plan shall recommend that the client be admitted to a facility, receive services in the community under the supervision of a regional office or cease to receive services from the department.

6. Recommendation of admission. If admission to a facility is recommended by an interdisciplinary team, the prescriptive program plan shall include the following:

A. A written report prepared by the interdisciplinary team supporting the following conclusions:

(1) The client is mentally retarded;

(2) The client requires treatment, education and habilitation of an intensive nature;

(3) The client can benefit from programs at the facility; and

(4) Appropriate programs for treatment, education and habilitation are not presently available in the community or the facility is the treatment setting of the client's choice;

B. Plans for preparing the client for admission, including, unless specifically contraindicated, a preadmission visit to the facility; and

C. Plans to facilitate, at the earliest possible time, the client's return to the community.

7. Major changes. Any major changes in a client's prescriptive program plan may be made only in accordance with section 5471, subsection 6.

§5471. Service agreements

1. Service agreement required. Each prescriptive program plan shall be carried out pursuant to a written service agreement.

2. Signatures. Each service agreement shall be signed and dated by at least:

- A. The client, if he is able;
- B. The client's guardian or next of kin, if that person exists and is available;
- C. A client advocate, if the client has no guardian;
- D. The individual program plan coordinator of the interdisciplinary team which developed the individual program plan for the client;
- E. The chief administrative officer of the appropriate regional office, if a client is being admitted to or discharged from a facility or if a client is under the supervision of the regional office;
- F. The chief administrative officer of the facility or his agent, if a client is being admitted to, treated in or discharged from a facility; and
- G. The chief administrative officer, or his agent, of other public or private agencies or groups which agree to provide services to the client.

3. Contents. Each service agreement shall include at least the following information.

- A. It shall specify the respective responsibilities, where applicable, of the client, the family or guardian of the client, the regional office, the facility, and each public and private agency which intends to provide services to the client.
- B. It shall identify by job classification or other description each individual who is responsible for carrying out each part of the prescriptive program plan.
- C. It shall specify the date on which the review required in subsection 5 shall occur.

4. Implementation of prescriptive program plan. Implementation of a prescriptive program plan is governed as follows.

- A. No part of a prescriptive program plan may be implemented until each person required to sign the service agreement under subsection 2 has signed it, except that if a client is to be admitted to a facility, the service agreement need not be completed until 5 days after the date of admission.

B. Any existing prescriptive program plan is considered to be in effect until all persons required to sign under subsection 2 have signed the new service agreement.

C. No prescriptive program plan may be in effect longer than one year and 2 weeks from the day on which the last person signed the service agreement for the plan.

5. Review. At least 30 days prior to the termination of a service agreement, an interdisciplinary team shall meet to assess the present prescriptive program plan and, if further services are recommended, to prepare a new plan.

6. Amendment. Any major changes in a client's prescriptive program plan may occur only after the service agreement has been amended and signed by the persons specified in subsection 2.

§5472. Preadmission visit

Any client may be detained by a facility up to 48 hours, if the purpose of the detention is a preadmission visit solely to observe and evaluate the client.

§5473. Voluntary admissions

1. Respite care. Respite care may be provided to any client by a facility without full compliance with the procedures for admission by judicial certification under section 5475, if it is recommended by an interdisciplinary team and a service agreement has been completed.

A. The purpose of the respite care is for evaluation, diagnosis or other clearly stated and broadly defined therapeutic purposes of the client or his family.

B. Respite care may be provided, upon application to the regional office of the bureau by the client, guardian or parent, for not more than 21 days at a time and not more than 60 days during any 12-month period.

C. Continuing placement in the facility beyond the time periods stated in paragraph B, if indicated, may be accomplished only upon full compliance with procedures described by this chapter.

2. Regular admission. A client may be admitted for extended treatment and care if the following steps have been complied with.

- A. An application for admission has been made by the client, a representative of his choice, the client's guardian, the client's next of kin or any other responsible person.
 - B. The director of a regional office or his designee has certified that he believes that the compelling needs of the client are not being met and has stated the factual basis of that belief.
 - C. An initial prescriptive program plan has been developed according to section 5470.
 - D. The requirements of informed consent under subsection 3 or of judicial certification under section 5475 have been met.
3. Admission by informed consent. The client may be admitted to a facility by informed consent if the chief administrative officer of the facility or his designee has determined that:

- A. The client has been informed of and understands both the nature, purpose and proposed duration of the admission, and the provisions of section 5480 regarding the client's right to leave and the limitations on that right; and
 - B. The client voluntarily consents to the proposed admission.
4. Medical admission to the Benda Hospital at Pineland Center. Any mentally retarded person requiring medical or dental treatment, including post-operative care, may be admitted to the Benda Hospital only if, and as long as, a signed consent to admission is given and remains unrevoked by the client, a parent or a legal guardian.

- A. The consent is consent to admission only.
- B. The consent may not be construed as a substitute for informed consent under subsection 3.

§5474. Involuntary admissions

1. Short-term evaluation. When considered necessary by the interdisciplinary team and with the consent of the director, persons may be admitted to the Elizabeth Levinson Center short-term evaluation program for a period of 40 program days, excluding weekends, without certification.

2. Admission by judicial certification or judicial commitment. If the chief administrative officer of a facility or his designee has determined that the

client is not capable of giving informed consent to admission, a client may be admitted for extended care and treatment only after judicial certification under section 5475 or after judicial commitment under section 5476.

3. Emergency admission. When immediate detention of a person believed to be mentally retarded is necessary, the person may be temporarily restrained in accordance with section 5477.

§5475. Judicial certification procedures

If the chief administrative officer of a facility or his designee has determined that a client is not capable of giving informed consent to admission, the client may be admitted for extended care and treatment only after judicial certification pursuant to the following procedures.

1. Petition. A petition to admit a client by judicial certification may be filed in the District Court with jurisdiction over the place where the client is residing.

A. Only a chief administrative officer of a regional office or facility may file the petition.

B. The petition may not be filed by the chief administrative officer of a regional office until he has obtained approval for the admission by the chief administrative officer of the facility under rules promulgated by the commissioner under section 1203, subsection 3.

C. Any party may file a motion with the court where the petition is filed alleging that a court in another location would be more convenient, and the court may order a change in venue if justice so requires.

2. Prehearing duties of the court. Upon receipt by the District Court of the petition, the court shall:

A. Schedule a certification hearing to be held as soon as practicable, except that if the client is being detained under section 5477, subsection 4, the hearing shall be held no later than 15 days from the day the petition was filed, unless the court, for cause shown, grants a continuance of not more than 10 additional days;

B. Cause written notice of the petition and hearing to be given personally or by mail to the

client who is the subject of the proceeding and to the client's guardian, spouse, parent or adult child, if any is known.

(1) If none of these persons is known or if none can be located, the notice shall be given to one of the client's next of kin or to a next friend.

(2) A docket entry is sufficient evidence that the notice has been given;

C. Unless waived by a parent or guardian, cause the client who is the subject of the proceeding to be examined by a professional.

(1) The client or his counsel may choose the professional, if the professional he chooses is reasonably available.

(2) The professional may not be the same one who performed any part of the evaluation required under section 5468 or who participated in the development of the prescriptive program plan.

(3) Upon completion of the examination, the professional shall report to the court his opinion whether the client is mentally retarded and therefore requires treatment, stating his reasons for his opinion;

D. Appoint counsel for any indigent client not already represented;

E. Furnish counsel with copies of the petition and the reports of the court-appointed examiner; and

F. Cancel the certification hearing if a parent or guardian having legal custody of the person of the client so requests.

3. Certification hearing. The certification hearing shall be governed as follows.

A. The certification hearing shall be conducted in accordance with the Maine Rules of Evidence and in an informal manner consistent with orderly procedure.

B. The certification hearing shall be confidential and shall be electronically or stenographically recorded.

C. No report of the certification hearing pro-

ceedings may be released to the public or press, except by permission of the client or his counsel and with the approval of the court.

D. The court may order a public hearing at the request of the client or his counsel.

4. Certification. The court shall certify the client's eligibility for admission only if the petitioner proves, by clear and convincing evidence, that:

A. The client is a person in need of institutionalized services;

B. The needed services are available at the facility named in the application; and

C. There is no less restrictive alternative to the care provided by the facility, consistent with the best interest of the client.

5. Effect of certification. The certification of a client's eligibility for admission may not be construed as a judicial commitment of the client, but only empowers the chief administrative officer of the facility to admit the client as a resident for treatment, education or habilitation, subject to the provisions for discharge of section 5480.

6. Period of certification. The court shall order the certification to remain in effect for a period of not more than 2 years from the day the certification order was issued.

7. Expenses. The District Court is responsible for any expenses incurred under this section, including fees of appointed counsel, witness fees and the expenses resulting from a court-appointed examiner.

8. Appeals. A client certified under this section may appeal the certification order to the Superior Court.

A. The appeal is limited to questions of law.

B. Any findings of fact of the District Court may not be set aside unless clearly erroneous.

C. The order of the District Court shall remain in effect pending the appeal.

D. The District Court Rules of Civil Procedure and the Maine Civil Rules shall apply to the conduct of the appeals, except as otherwise specified in this subsection.

9. Exceptions. This section does not apply to the Aroostook Residential Center.

§5476. Judicial commitment

Judicial commitment of clients is governed as follows.

1. Eligibility. Any client recommended for regular admission to a facility pursuant to section 5470 may be admitted by judicial commitment.

2. Procedure. The procedure for judicial commitment to a mental retardation facility for care, training and treatment shall follow the procedures set forth in section 3864 for the involuntary commitment of mentally ill persons, except that, where a finding of mental illness is required, a finding of mental retardation as defined by section 5001, subsection 3, shall be substituted.

§5477. Emergency procedures

1. Protective custody. If a law enforcement officer has reasonable grounds to believe, based upon his personal observation, that a person may be mentally retarded, that due to his condition he presents a threat of imminent and substantial physical harm to himself or to other persons and that an emergency exists requiring immediate residential placement:

A. The officer may take the person into protective custody; and

B. If the officer does take the person into protective custody, the officer shall deliver the person forthwith, within 18 hours, for examination by an available licensed physician or licensed psychologist as provided in subsection 4.

2. Certificate not executed. If a certificate relating to the person's likelihood of serious harm is not executed by the examiner under subsection 4, the officer shall:

A. Release the person from protective custody and, with his permission, return him forthwith to his place of residence, if within the territorial jurisdiction of the officer;

B. Release the person from protective custody and, with his permission, return him to the place where he was taken into protective custody; or

C. If the person is also under arrest for violation of law, retain him in custody until he is

released in accordance with the law.

3. Certificate executed. If the certificate is executed by the examiner under subsection 4, the officer shall undertake forthwith, within 18 hours, to obtain the endorsement by a judicial officer under subsection 4 and may detain the person for as long as necessary to obtain the endorsement.

4. Admission. A person may be admitted to a facility after the facility has received an application and certificate according to the following procedures.

A. Any health officer, law enforcement officer or other person may make a written application to admit a person to a facility, subject to the prohibitions and penalties of section 3805, stating:

(1) His belief that the person is in need of institutional services;

(2) That an emergency exists requiring immediate placement in a facility; and

(3) The grounds for this belief.

B. The written application shall be accompanied by a dated certificate, signed by a licensed physician or a licensed clinical psychologist, stating:

(1) He has examined the person on the date of the certificate, which date may not be more than 3 days before the date of admission to the facility; and

(2) He is of the opinion that the person is a mentally retarded person in need of institutional services.

C. The application and accompanying certificate shall be reviewed by a Justice of the Superior Court, a Judge of the District Court, a Judge of Probate or a complaint justice.

(1) If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, he shall endorse them.

(2) No person may be held against his will in the facility under this subsection unless the application and certificate have been endorsed by a judge or justice, except that a person for whom an examiner has executed

the certificate provided for under this subsection may be detained in a facility for as long as is necessary to obtain the endorsement by a judge or justice, if the person or persons transporting the person to the facility undertake to secure the endorsement forthwith upon execution of the certificate by the examiner.

D. Upon endorsement by the judge or justice of the application and certificate, any health officer, police officer or other person designated by the judge or justice may take the person into custody and transport him to the facility designated in the application.

E. The county in which the person is found is responsible for any expenses of transportation for the person under this subsection, including return from the facility if admission is declined.

F. Under this subsection, a facility may admit the client for no longer than 5 days, but if a petition for judicial certification is filed, the facility may admit the client for an additional period not to exceed 25 days from the date of application.

§5478. Continuation of treatment in a facility

1. Authority to continue treatment. A client who has been admitted to a facility by judicial certification, or who has been retained in a facility pursuant to this section, may continue extended care and treatment in that facility for an additional period, not to exceed 2 years, only after judicial certification under section 5475 or after waiver of that process by the District Court as provided in this section, except that waiver of the judicial certification process is not permitted for any mentally retarded person under public guardianship.

2. Waiver of judicial certification. A petition to waive judicial certification under section 5475 may be filed in District Court by the facility where the client is residing. The court may waive judicial certification upon a finding that:

A. A prescriptive program plan, as provided in section 5470, has been agreed to by the superintendent of the facility and the guardian;

B. The guardian has been informed of and understands the nature, purpose and proposed duration of the admission and the provisions of section

5480 regarding the client's right to leave and the limitations on that right;

C. The guardian has consented to the continued extended care and treatment of the client in the facility; and

D. Continued care and treatment is necessary and there is no less restrictive alternative to the care and treatment provided by the facility, consistent with the best interest of the client.

§5479. Post-admission responsibilities of the department

1. Provision of care and treatment. Post-admission care and treatment in a facility is governed as follows.

A. An initial service agreement for services to be received in the facility shall be executed within 5 days of admission and shall include a date, within 30 days of the client's admission to the facility, for a meeting of the persons who signed the agreement to assess and, if necessary, refine the client's prescriptive program plan.

B. While residing in the facility, the client shall receive care, treatment and services only according to the procedures set forth in this section and in sections 5470 and 5471.

2. Preparation for discharge. Preparation for a client's discharge from a facility is governed as follows.

A. When an interdisciplinary team finds that the client may be ready for discharge and determines that temporary placement of the client in the community is required to assist in its evaluation of the client, the team may recommend that placement and shall develop a prescriptive program plan and service agreement which shall include provisions to ensure that:

(1) The client's money is adequately managed;

(2) The client has a legal representative, if required;

(3) The client receives needed services in the community; and

(4) The client's parent or guardian, if available, continues to be involved with the

client.

B. The chief administrative officer of the facility may release the client pursuant to such a recommendation for community placement through the regional office.

3. Role of the regional office. The role of the regional office under this section is as follows.

A. The regional office which will have responsibility for the client shall be included in the preparation of the prescriptive program plan and service agreement specified in subsection 2.

B. The regional office shall be responsible for implementing the client's release.

C. The regional office shall, along with the other members of the interdisciplinary team, evaluate the success of the client's reintegration into the community and shall assist in obtaining the client's discharge when assured that the provisions of the prescriptive program plan and service agreement have been met.

§5480. Client's right to leave facility

1. Client's request. Any client admitted by informed consent may leave the facility at his own request, subject only to section 5477, subsection 4.

2. Discharge. When a judicially certified client is prepared for discharge, under section 5479, subsection 2, he shall be discharged if the regional office and the interdisciplinary team so recommend.

3. Parent or guardian. A parent or guardian having legal custody over the person of the client may, at any time, obtain discharge of his child or ward.

SUBCHAPTER IV

RIGHTS OF MENTALLY RETARDED PERSONS

§5601. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Client. "Client" means any mentally retarded person receiving services from the bureau or from an agency or facility licensed or funded to provide services to mentally retarded persons, except those

presently serving sentences for crime.

2. Day facility. "Day facility" means any non-residential facility owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

3. Express and informed consent. "Express and informed consent" means consent voluntarily given with sufficient knowledge and comprehension of the subject matter involved so as to enable the person giving consent to make an understanding and enlightened decision, without any element of force, fraud, deceit, duress or other form of constraint or coercion.

4. Habilitation. "Habilitation" means the process by which an individual is assisted to acquire and maintain those life skills which enable him to cope with the demands of his own person and environment, to raise the level of his physical, mental and social efficiency and to upgrade his sense of well-being, including, but not limited to, programs of formal, structured education and treatment.

5. Normalization principle. "Normalization principle" means the principle of letting the mentally retarded person obtain an existence as close to normal as possible and making available to him patterns and conditions of everyday life which are as close as possible to the norms and patterns of the mainstream of society.

6. Residential facility. "Residential facility" means a facility providing 24-hour residential care for mentally retarded persons which is owned, operated, licensed or funded, in whole or in part, by the department or through the Department of Human Services.

7. Seclusion. "Seclusion" means the placement of a client alone in a locked room for a period in excess of one hour.

8. Treatment. "Treatment" means the prevention, amelioration or cure of a client's physical and mental disabilities or illness.

§5602. Purpose

It is the intent of the Legislature to guarantee individual dignity, liberty, pursuit of happiness and the protection of the civil and legal rights of mentally retarded persons and to articulate rights of mentally retarded persons, so that these rights may be exercised and protected.

§5603. Entitlement

Each mentally retarded person is entitled to the rights enjoyed by citizens of the State and of the United States, unless some of these rights have been suspended as the result of court guardianship proceedings.

§5604. Protection

The Legislature finds and declares that the rights of mentally retarded persons can be protected best under a system of care which operates according to the principles of normalization and that the state's system of care shall operate according to these principles with the goals of:

1. Community-based services. Continuing the development of community-based services which provide reasonable alternatives to institutionalization in settings that are least restrictive to the client; and

2. Independence and productivity. Providing habilitation, education and other training to mentally retarded persons which will maximize their potential to lead independent and productive lives and which will afford opportunities for outward mobility from institutions.

§5605. Rights and basic protections of mentally retarded clients

Mentally retarded clients are entitled to the following rights and basic protections.

1. Humane care. Clients are entitled to dignity, privacy and humane care.

2. Practice of religion. Clients are entitled to religious freedom and practice without any restriction or forced infringement on a client's right to religious preference and practice.

3. Communication. Clients are entitled to private communications.

A. Each client is entitled to receive, send and mail sealed, unopened correspondence. No person who owns or is employed by a day facility or a residential facility may delay, hold or censor any incoming or outgoing correspondence of any client, nor may he open any such correspondence without the consent of the client or his legal guardian.

B. Clients in residential facilities are entitled to reasonable opportunities for telephone communication.

C. Clients are entitled to an unrestricted right to visitations during reasonable hours, except that nothing in this provision may be construed to permit infringement upon other clients' rights to privacy.

4. Work. Clients engaged in work programs which require compliance with state and federal wage and hour laws are entitled to fair compensation for labor in compliance with regulations of the United States Department of Labor.

5. Vote. No client may be denied the right to vote for reasons of mental illness, as provided in the Constitution of Maine, Article II, Section 1, unless under guardianship.

6. Personal property. Each client is entitled to the possession and use of his own clothing, personal effects and money, except that, when necessary to protect the client or others from imminent injury, the chief administrator of a day facility or a residential facility may take temporary custody of clothing or personal effects which he shall immediately return when the emergency ends.

7. Nutrition. Each client in a residential facility is entitled to nutritious food in adequate quantities and meals may not be withheld for disciplinary reasons.

8. Medical care. Each client is entitled to receive prompt and appropriate medical and dental treatment and care for physical and mental ailments and for the prevention of any illness or disability, and medical treatment shall be consistent with the accepted standards of medical practice in the community, unless the religion of the client so prohibits.

A. Medication may be administered only at the written order of a physician.

B. Medication may not be used as punishment, for the convenience of staff, as a substitute for a habilitation plan or in unnecessary or excessive quantities.

C. Daily notation of medication received by each client in a residential facility shall be kept in the client's records.

D. Periodically, but no less frequently than

every 6 months, the drug regimen of each client in a residential facility shall be reviewed by the attending physician or other appropriate monitoring body, consistent with appropriate standards of medical practice.

E. All prescriptions shall have a termination date.

F. Pharmacy services at each residential facility operated by the department shall be directed or supervised by a professionally competent pharmacist licensed according to the provisions of Title 32, chapter 41.

G. Prior to instituting a plan of experimental medical treatment or carrying out any surgical procedure, express and informed consent shall be obtained from the client, unless the client has been found to be legally incompetent, in which case the client's guardian may consent.

(1) Before making a treatment or surgical decision, the client shall be given information, including, but not limited to, the nature and consequences of the procedures, the risks, benefits and purposes of the procedures and the availability of alternate procedures.

(2) The client or, if legally incompetent, his guardian may withdraw his express and informed consent at any time, with or without cause, before treatment or surgery.

H. Notwithstanding the absence of express and informed consent, emergency medical care or treatment may be provided to any client who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency medical care or treatment would endanger the health of the client.

I. Notwithstanding the absence of express and informed consent, emergency surgical procedures may be provided to any client who has been injured or who is suffering from an acute illness, disease or condition if delay in initiation of emergency surgery would substantially endanger the health of the client.

9. Sterilization. A client may not be sterilized, except in accordance with chapter 7.

10. Social activity. Each client is entitled to suitable opportunities for behavioral and leisure

time activities which include social interaction.

11. Physical exercise. Each client is entitled to opportunities for appropriate physical exercise, including the use of available indoor and outdoor facilities and equipment.

12. Discipline. Discipline of clients is governed as follows.

A. The chief administrative officer of each facility shall prepare a written statement of policies and procedures for the control and discipline of clients, which is directed to the goal of maximizing the growth and development of the clients.

(1) Clients are entitled to participate, as appropriate, in the formulation of the policies and procedures.

(2) Copies of the statement of policies and procedures shall be given to each client and, if the client has been adjudged incompetent, to his parent or legal guardian.

(3) Copies of the statement of policies and procedures shall be posted in each residential and day facility.

B. Corporal punishment or any form of inhumane discipline is not permitted.

C. Seclusion is not permitted.

D. The placement of a resident alone in a locked room for less than an hour is permitted, but:

(1) Is only permitted in emergencies to protect the client or others from imminent injury; and

(2) A staff person shall visually check a client so placed at 10-minute intervals throughout the duration of the placement.

13. Behavior modification. Behavior modification of clients is governed as follows.

A. No client may be subjected to a treatment program to eliminate bizarre or unusual behavior without first being examined by a physician to rule out the possibility that such behaviors are organically caused.

B. Treatment programs involving the use of nox-

ious or painful stimuli may be used only to correct behavior more harmful to the client than the treatment program:

(1) On the recommendation of a physician or psychologist; and

(2) With the approval, following a case-by-case review, of the chief administrative officer of the residential facility and a client advocate of the department.

14. Physical restraints. Clients are entitled to be free from physical restraints, which include totally enclosed cribs and barred enclosures, but physical restraints may be employed only in emergencies to protect the client from imminent injury to himself or others.

A. Physical restraints may not be used as punishment, for the convenience of the staff or as a substitute for habilitative services.

B. Physical restraints may impose only the least possible restrictions consistent with their purpose and shall be removed when the emergency ends.

C. Physical restraints may not cause physical injury to the client and shall be designed to allow the greatest possible comfort.

D. Mechanical supports used in normative situations to achieve proper body position and balance are not considered restraints, but mechanical supports shall be prescriptively designed and applied under the supervision of a qualified professional with concern for principles of good body alignment, circulation and allowance for change of position.

E. Daily reports on the use of restraints shall be made to the appropriate chief administrative officer of the facility.

(1) The reports shall summarize all cases involving the use of restraints, the type of restraints used, the duration of usage and the reasons for the usage.

(2) A monthly summary of the reports shall be relayed to the Office of Advocacy.

15. Records. All client records shall remain confidential as provided in section 1206.

A. The client or, if the client is incompetent, his parent or guardian is entitled to have access to the records upon request.

B. The commissioner is entitled to have access to the records of a day facility or a residential facility if necessary to carry out the statutory functions of his office.

§5606. Violations

1. Report and investigation. Any alleged violation of a client's rights shall be reported immediately to the Office of Advocacy of the department and to the Attorney General's office.

A. The Office of Advocacy shall conduct an investigation of each alleged violation pursuant to section 1205.

B. The Office of Advocacy shall submit a written report of the findings and results of the investigation to the chief administrative officer of the facility in which the client's rights were allegedly violated and to the commissioner within 2 working days after the day of the occurrence or discovery of the alleged incident.

2. Civil liability. Any person who violates or abuses any rights or privileges of clients granted by this subchapter is liable for damages as determined by law.

A. Civil damages may be awarded for negligent or intentional violations of this subchapter.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client is a defense to a civil action under this subchapter.

3. Prohibited acts; penalty; defense. A person is guilty of violation of the rights of a mentally retarded client if he intentionally violates or abuses any rights or privileges of clients granted by this subchapter.

A. Violation of the rights of a mentally retarded client is a Class E crime.

B. Good-faith compliance with the provisions of this subchapter in connection with evaluation, admission, habilitation programming, education, treatment or discharge of a client is a defense to prosecution under this subchapter.

§5607. Notice of rights

The commissioner shall provide a written copy of this subchapter and of section 1206 to each client and, if the client has been adjudged incompetent, to the parent or guardian of the client.

1. Prompt notification. Each client shall be promptly informed in clear language of the legal rights of mentally retarded persons.

2. Posting requirement. A copy of this subchapter shall be posted in each residential and day facility.

§5608. Client government

Upon request of a client, the chief administrative officer of a residential facility shall initiate and develop a program of client government to hear the views and represent the interests of all clients served by the facility.

1. Composition. The client government shall be composed of residents elected by other residents and staff advisors skilled in the administration of community organizations.

2. Duties. The client government shall work closely with the bureau and the Office of Advocacy to promote the interests and welfare of all residents in the facility.

CHAPTER 7DUE PROCESS IN STERILIZATION ACT OF 1982§7001. Short title

This chapter may be cited as the "Due Process in Sterilization Act of 1982."

§7002. Legislative intent

The Legislature finds and declares that sterilization procedures are generally irreversible and represent potentially permanent and highly significant consequences for the patient involved. The Legislature recognizes that certain legal safeguards are necessary to prevent indiscriminate and unnecessary sterilization and to assure equal access to desired medical procedures for all Maine citizens.

§7003. Definitions

As used in this chapter, unless the context indi-

cates otherwise, the following terms have the following meanings.

1. Custodian. "Custodian" means the person having care and custody over the individual seeking sterilization or the individual for whom sterilization is sought.

2. Disinterested expert. "Disinterested expert" means an appropriately licensed or certified professional not associated with an institution serving the person for whom sterilization is being sought and not personally related to the petitioner.

3. Guardian. "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

4. Informed consent. "Informed consent" means consent that is:

A. Based upon an actual understanding by the person to be sterilized of the nature of sterilization, its potentially permanent consequences, all alternative methods of contraception and all reasonably foreseeable risks and benefits of sterilization; and

B. Wholly voluntary and free from express or implied coercion.

5. Parent. "Parent" means a natural or adoptive mother or father of a person.

6. Physician. "Physician" means any person licensed to practice medicine under Title 32, chapter 48, subchapter II, or under Title 32, chapter 36, subchapters II and IV.

7. Psychiatrist. "Psychiatrist" means a physician licensed to practice medicine under Title 32, chapter 48, subchapter II, who specializes in the diagnosis and treatment of mental disorders.

8. Psychologist. "Psychologist" means any person licensed to practice psychology under Title 32, chapter 56, subchapter III.

9. Sterilization. "Sterilization" means a medical or surgical procedure, the purpose of which is to render an individual permanently incapable of procreation. Sterilization does not refer to procedures which must be performed for distinct and urgent medical reasons and which have the unavoidable secondary effect of rendering the individual

infertile.

§7004. Informed consent required for sterilization

1. Informed consent required. Except as provided in this chapter, prior to initiating sterilization procedures on any individual, a physician shall obtain and record the informed consent of that individual.

2. Hearing required to determine ability to give informed consent for sterilization. A hearing to determine ability to give informed consent for sterilization is required when sterilization is sought for:

A. Persons under age 18 years and not married or otherwise emancipated;

B. Persons presently under public or private guardianship or conservatorship;

C. Persons residing in a state institution providing care, treatment or security, or otherwise in state custody; or

D. Persons from whom a physician could not obtain informed consent.

§7005. Sterilization authorized by court

1. Court order required. A District Court order authorizing sterilization is required before the sterilization of any person described in section 7004, subsection 2.

2. Determination prior to issuance of order. Before an order may be issued, the court shall determine whether the person seeking sterilization or for whom sterilization is sought is able to give informed consent for sterilization and, if so, whether he has given informed consent for sterilization.

§7006. Contents of petition for determination of ability to give informed consent for sterilization

The petition for determination of ability to give informed consent for sterilization shall be executed under oath and shall set forth:

1. Person seeking sterilization or for whom sterilization is sought. Name, age and residence of the person seeking sterilization or for whom sterilization is sought;

2. Parent, guardian or spouse. Names and residences of any parents, spouse or guardian of the person seeking sterilization or for whom sterilization is sought;

3. Basis of petition. A statement of the factors, including any listed in section 7004, subsection 2, and mental condition, when appropriate, which necessitate a determination of the ability of the person seeking sterilization or for whom sterilization is sought to give informed consent for sterilization;

4. Reasons for sterilization. A statement of the reasons for which sterilization is sought; and

5. Person initiating petition. The name, address, position and statement of interest of the person initiating the petition or any person assisting with a self-initiated petition.

§7007. Submitting petition to determine informed consent; notice of hearing

1. Petition submission. The petition for a determination of ability to give informed consent shall be submitted to the District Court in the division of residence of the person seeking sterilization or for whom sterilization is sought.

2. Notice of hearing. Upon the receipt of a petition to determine informed consent, the District Court shall assign a time, not later than 30 days thereafter, and a place for hearing the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom if it would facilitate the presence of the person seeking sterilization or for whom sterilization is sought.

3. Service of notice. The court shall cause a copy of the petition and notice of hearing to be served on the person seeking sterilization or for whom sterilization is sought and his guardian or custodian, if any, at least 7 days prior to the hearing date. If a guardian or custodian of the person seeking sterilization or for whom sterilization is sought is not a resident of this State, notice may be served by registered mail. If the residence of a guardian or custodian is unknown, an affidavit so stating shall be filed in lieu of service.

§7008. Hearing upon a petition to determine informed consent for sterilization

1. Counsel. If the person seeking sterilization

or for whom sterilization is sought requests counsel and cannot afford counsel, the court shall appoint counsel to represent that person at public expense. If the person is not represented by counsel and appears to the court unable to request counsel, the court shall order that counsel be retained or shall appoint counsel to represent the person at public expense if the person cannot afford counsel. A reasonable fee shall be set for appointed counsel by the District Court. Counsel, or the person seeking sterilization or for whom sterilization is sought, may present evidence, call witnesses and cross-examine witnesses who testify or present evidence at any hearing on the petition.

2. Appointment of disinterested experts. For the purpose of determining a person's ability to give informed consent, the court shall appoint not less than 2 disinterested experts experienced in the field of developmental disabilities or mental health, including at least one psychologist or psychiatrist, to examine the person, to report on that examination and to testify at the hearing as to his competency. Other evidence regarding the person's capabilities may be introduced at the hearing by any party.

3. Preference of person seeking sterilization or for whom sterilization is sought. If the person seeking sterilization or for whom sterilization is sought has any preference as to a disinterested expert by whom he would prefer to be examined, the court shall make a reasonable effort to accommodate that preference.

4. Person's presence at hearing. The person seeking sterilization or for whom sterilization is sought shall be present at any hearing regarding his ability to give informed consent for sterilization, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The court shall inquire at the time of the hearing as to the types and effects of any medications being administered to or taken by the person.

5. Determination that person is able to give informed consent for sterilization. If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization and that the person does consent to sterilization, it shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization, the physician and hospital involved shall also obtain the written consent of the person for sterilization.

If the court determines by clear and convincing evidence that the person is able to give informed consent for sterilization, but determines that the person does not consent to sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless that person later makes a different choice and only after a rehearing under this section.

6. Determination that person is not able to give informed consent for sterilization. If the court determines that the person is not able to give informed consent for sterilization, it shall issue an order so stating and forbidding sterilization of the person, unless a determination is made under section 7013 that sterilization is in the best interest of the person.

§7009. Limitations

1. Consent not to be a condition for exercise of any right, privilege or freedom. Consent to sterilization may not be made a condition for release from or confinement in any institution nor shall it be made a condition for the exercise of any right, privilege or freedom, nor shall it be made a condition for receiving any form of public assistance, nor as a prerequisite for any other service. The consent shall be free from express or implied inducements or constraints.

2. Guarantees and limitations to be given to person to be sterilized. The guarantees and limitations provided in this section shall be communicated to the person seeking sterilization or for whom sterilization is sought by the court prior to issuing an order under section 7008. These guarantees and limitations shall also appear prominently at the top of the consent document used by a physician or hospital to obtain written consent for sterilization.

§7010. Determination of the best interests of a person unable to give informed consent for sterilization

The parent, spouse, guardian or custodian of any person found unable to give informed consent for sterilization may petition the District Court, in the county of residence of the person being considered for sterilization, to determine if sterilization is in the best interest of that person. The court shall have sole jurisdiction and authority to order that a sterilization procedure may be performed when a person is incapable of giving informed consent, as determined by the hearing required in section 7008.

§7011. Contents of petition for consideration of sterilization of a person based upon a determination of best interest

The petition for determination if sterilization is in the best interest of a person shall be executed under oath and shall set forth:

1. Person being considered for sterilization. The name, age and residence of the person being considered for sterilization;

2. Parents, spouse, custodian or guardian of person being considered for sterilization. The names and residences of any parents, spouse, custodian or guardian of the person being considered for sterilization;

3. Mental condition. The mental condition of and effects of any medications being administered to or taken by the person being considered for sterilization;

4. Reasons sterilization is sought. A statement, in terms of the best interest of the person, of the reasons for which sterilization is sought;

5. Petitioner. The name and relationship of the petitioner to the person being considered for sterilization;

6. Alternatives. Less drastic alternative contraceptive methods which have been tried or the reason those methods are believed to be unworkable or inappropriate for the person being considered for sterilization;

7. Physiological capability to procreate. A medical statement assessing the physiological capability of the person to procreate;

8. Risk to life or health. A medical statement regarding the potential risk to the life or health of the person which could be caused by procreation or child rearing;

9. Person's attitudes or desires regarding sterilization. Any attitudes or desires expressed by the person regarding sterilization; and

10. Informed consent order. The date and contents of the order issued under section 7008 concerning the ability to give informed consent for sterilization of the person being considered for sterilization.

§7012. Notice of hearing upon the petition to determine the best interest of a person being considered for sterilization

Upon the receipt of a petition, the court shall assign a time, not later than 30 days thereafter, and a place for a hearing on the petition. The court may, at its discretion, hold the hearing on the petition at a place within the county other than the usual courtroom, if it would facilitate the presence of the person being considered for sterilization. The court shall cause the petition and notice of the hearing to be served on the person being considered for sterilization and his guardian or custodian at least 20 days prior to the hearing date. The court shall direct that personal service be made upon the person being considered for sterilization and his guardian or custodian. If the guardian or custodian of the person being considered for sterilization is not a resident of this State, notice may be served by registered mail. If the residence of the guardian or custodian of the person being considered for sterilization is unknown, an affidavit so stating shall be filed in lieu of service.

§7013. Hearing upon a petition to determine the best interest of a person being considered for sterilization

1. Ability to give or withhold informed consent. In all instances where the issue of whether sterilization is in the best interest of a person is to be considered, a prior determination, as required by section 7008, that the person cannot give or withhold informed consent shall be required.

2. Presence of person; counsel; findings. The person being considered for sterilization shall be physically present throughout the entire best interest hearing, unless that right is waived by the person, personally or through his attorney, and that waiver is approved by the court. The person being considered for sterilization shall be represented by counsel and provided the right and opportunity to be confronted with and to cross-examine all witnesses. The right to counsel may not be waived. If the person cannot afford counsel, the court shall appoint an attorney, not less than 20 days before the scheduled hearing, to represent the person at public expense. A reasonable fee shall be set for appointed counsel by the District Court. Counsel shall represent the person being considered for sterilization in assuring that information and evidence in opposition to sterilization without informed consent is fully represented. All stages of the hearing shall be recorded by a tape recorder or a court reporter,

as the court may direct. In all cases, the court shall issue written findings to support its decision.

3. Disinterested experts; evidence. The court shall hear the petition to determine whether sterilization is in the best interest of the person being considered for sterilization. The court shall appoint not less than 3 disinterested experts with experience related to the condition of the person as alleged in the petition, including at least one physician and one licensed psychologist or psychiatrist, to examine the person and to testify at the hearing. The court shall hear and consider evidence on the following:

A. All issues raised by the petition executed under section 7011; and

B. The beneficial or detrimental psychological and physiological effects of sterilization on the person being considered for sterilization.

Any other relevant evidence concerning the mental and physical condition of the person being considered for sterilization may be introduced at the hearing.

4. Burden of proof. The burden of proof by clear and convincing evidence that sterilization is in the best interest of the person being considered for sterilization shall rest with the party seeking to establish that sterilization is the appropriate course of action.

5. Finding that sterilization is in person's best interest. The court shall find that sterilization is in the best interest of the person being considered for sterilization if it is shown by clear and convincing evidence that:

A. Methods of contraception less drastic than sterilization have proven to be unworkable or inappropriate for the person; and

B. Sterilization is necessary to preserve the physical or mental health of the person.

6. Court order. If the court finds that sterilization is in the best interest of the person being considered for sterilization, the court shall order that sterilization may be performed. The sterilization procedure used shall be the most reversible procedure available at the time when, in the judgment of the physician performing the sterilization, that procedure is not inconsistent with the health or safety of his patient. If the court finds that sterilization is not in the best interest of the

person being considered for sterilization, the court shall order that sterilization may not be performed, unless the order is amended by a District Court to permit sterilization.

7. Appeal. Appeal of a final order of a District Court shall be by right in accordance with the Maine Rules of Civil Procedure, except that, upon a finding of inability to pay the required fees for an appeal, those fees shall be waived. Pendency of an appeal of an order under this section shall stay any order allowing sterilization.

§7014. Confidentiality; court costs

1. Confidentiality of proceedings and records. All court proceedings occurring under this chapter shall be confidential and closed to the public, unless the person seeking sterilization or being considered for sterilization, personally or through his attorney, requests that the proceedings be open to the public. Records of the court proceedings shall not be open to inspection by the public, except under section 7017, without the consent, personally or through his attorney, of the person seeking sterilization or for whom sterilization is being considered.

2. Costs and fees. The court, after considering the financial resources of the parties concerned and the source of a petition under this chapter, shall assess court costs and attorneys' fees.

§7015. Penalties

1. Violations. Anyone knowingly or willfully violating section 7009, subsection 1, is guilty of a Class D crime.

2. Falsification of petition; aiding or procuring unlawful sterilization. Anyone knowingly or willfully falsifying a petition under this chapter or otherwise aiding or procuring the performance of a sterilization without a court order in a situation covered by this chapter is guilty of a Class D crime.

§7016. Liability

1. Participation in sterilization. Nothing in this chapter requires any hospital or any person to participate in performing any sterilization procedure, nor may any hospital or any person be civilly or criminally liable for refusing to participate in performing any sterilization procedure.

2. Immunity. A physician, psychiatrist or psy-

chologist acting nonnegligently and in good faith in his professional capacity under this chapter is immune from any civil liability that might otherwise result from his actions. In a proceeding regarding immunity from liability, there shall be a rebuttable presumption of good faith.

§7017. Sterilization procedures review committee

A committee shall be established whose purpose shall be to review annually the authorization of sterilizations under this chapter for the purpose of assessing the need for any changes in the procedures or standards set forth in this chapter. The committee shall consist of not less than 6 members, including representatives of the Maine court system, the medical community, a designee from the Department of Mental Health and Mental Retardation, a designee from the Department of Human Services, a member of the joint standing committee of the Legislature having jurisdiction over health and institutional services, and a member of the joint standing committee of the Legislature having jurisdiction over the judiciary. The representatives of the 2 joint standing legislative committees shall be appointed by the chairmen of those legislative committees. Other members of the review committee shall be appointed annually by the Governor who shall also designate the chairman of the committee.

CHAPTER 9

INTERSTATE COMPACT ON MENTAL HEALTH

§9001. Purpose--Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families and society as a whole. The party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient, but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in term of such welfare.

§9002. Definitions--Article II

As used in this compact, unless the context otherwise indicates, the following words have the following meanings.

1. Aftercare. "Aftercare" means care, treatment and services provided a patient, as defined, on convalescent status or conditional release.

2. Institution. "Institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

3. Mental deficiency. "Mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness.

4. Mental illness. "Mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare or the welfare of others or of the community.

5. Patient. "Patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to this compact.

6. Receiving state. "Receiving state" means a party state to which a patient is transported pursuant to the compact or to which it is contemplated that a patient may be so sent.

7. Sending state. "Sending state" means a party state from which a patient is transported pursuant to the compact or from which it is contemplated that a patient may be so sent.

8. State. "State" means any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

§9003. Care and treatment--Article III

1. Eligibility. Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

2. Transfer. Subsection 1 to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

3. Duties of receiving and sending states. No state shall be obliged to receive any patient pursuant to subsection 2 unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

4. Priorities. In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

5. Review and further transfer. Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

§9004. Aftercare--Article IV

1. Investigation. Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the

appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

2. Aftercare in receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

3. Standards. In supervising, treating or caring for a patient on aftercare pursuant to the terms of this Article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

§9005. Escape--Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

§9006. Transportation of patient--Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

§9007. Costs; reciprocal agreements--Article VII

1. Patient at only one institution. No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of

any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

2. Costs. The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any 2 or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

3. Internal relationships not affected. No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs or responsibilities therefor.

4. Asserting rights for costs. Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible, pursuant to any provision of this compact.

5. Reciprocal agreements not invalidated. Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

§9008. Guardians--Article VIII

1. Supplemental or substitute guardian. Nothing in this compact shall be construed to abridge, diminish or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state

shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

2. Guardian defined. The term "guardian" as used in subsection 1 shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with power to act for or have responsibility for the person or property of a patient.

§9009. Incarceration in penal or correctional institution--Article IX

1. Application. No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

2. Policy not to jail. To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

§9010. Compact administrators--Article X

1. Duties. Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

2. Rules and regulations. The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

§9011. Supplementary agreements--Article XI

The duly constituted administrative authorities of any 2 or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

§9012. Effective date of compact--Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

§9013. Withdrawal from compact--Article XIII

1. Procedure; effective date; effect. A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. The withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the compact.

2. Costs and supplementary agreements. Withdrawal from any agreement permitted by Article VII, subsection 2, as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

§9014. Constitutionality--Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in

full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

Effective date. This Act shall take effect on January 15, 1984.

Effective January 15, 1984.

CHAPTER 460

H.P. 1199 - L.D. 1593

AN ACT to Recodify the State Military Laws.

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

Sec. 1. 22 MRSA §3185, 4th ¶, as enacted by PL 1977, c. 714, §5, is amended to read:

In addition to other payments authorized by this section, the department shall, upon receipt of an accounting as authorized under Title 37-A, ~~section 207-A~~ 37-B, section 183, transfer to the Department of Defense and Veterans' Services a sum not to exceed \$10,000 from money appropriated pursuant to this section as reimbursement for costs of rendering emergency medical services, including, but not limited to, the costs of liability insurance.

Sec. 2. 37-A MRSA, as amended, is repealed.

Sec. 3. 37-B MRSA is enacted to read:

TITLE 37-B

DEPARTMENT OF DEFENSE AND VETERANS' SERVICES

CHAPTER 1

GENERAL PROVISIONS - ORGANIZATION

§1. Purpose

The Department of Defense and Veterans' Services, as previously established and referred to in this Title as the "department," shall coordinate and improve the discharge of the State Government's responsibility for military affairs, veterans' services and civil emergency preparedness matters.