

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST SPECIAL SESSION**

August 21, 1989 to August 22, 1989

and

**SECOND REGULAR SESSION**

January 3, 1990 to April 14, 1990

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TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1990

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**SECOND REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**January 3, 1990 to April 14, 1990**

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Title 22, section 2383 or a juvenile crime that would be defined as a criminal violation under Title 17-A, chapter 45 if committed by an adult.

See title page for effective date.

## CHAPTER 925

H.P. 1814 - L.D. 2486

### An Act Relating to Correctional Policy

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

**Sec. 1. 4 MRSA §454**, as amended by PL 1979, c. 47, §§1 and 2, is further amended to read:

#### §454. Maine Criminal Justice Sentencing Institute

There is established a Maine Criminal Justice Sentencing Institute under the administrative supervision of the State Court Administrator to provide a continuing forum for the regular discussion of the most appropriate methods of sentencing convicted offenders and adjudicated juveniles by judges in the criminal justice system, prosecutors, law enforcement and correctional personnel, representatives of advisory and advocacy groups and such representatives of the defense bar as the ~~chairman~~ chair of the Judicial Council may invite. All Supreme Judicial Court, Superior Court, District Court and Administrative Court Judges, all District Attorneys and attorneys within the Criminal Division of the Office of the Attorney General are, and such other criminal justice personnel as the Judicial Council may authorize ~~shall~~ may be members of the institute.

The institute shall meet not less than once every 3 years, at the call of the Judicial Council, for a 2-day period to discuss recommendations for changes in the sentencing authority and policies of the ~~state's~~ State's criminal and juvenile courts, in response to current law enforcement problems and the available alternatives for criminal and juvenile rehabilitation within the ~~state's~~ State's correctional system. Inasmuch as possible the deliberations of the institute ~~shall~~ must be open to the general public.

Members of the institute ~~shall~~ are not entitled to receive ~~no~~ compensation for their services, but ~~shall be~~ are allowed, out of any appropriation or other fund made available for the purpose, such expenses for clerical and other services, travel and incidentals as the Judicial Council may authorize.

**Sec. 2. 15 MRSA §3003, sub-§26**, as enacted by PL 1985, c. 439, §7, is amended to read:

**26. Temporary holding resource.** "Temporary holding resource" means an area not in a jail, consisting of not more than 2 rooms, with a capacity to serve no more than 4 juveniles, which may be used to provide secure or nonsecure ~~shelter~~ supervision for a juvenile for a period not to exceed ~~72 hours~~ 48 hours, excluding

Saturday, Sunday and legal holidays. The level of security provided is dependent on the intensity of personal supervision employed rather than on the physical characteristics of the facility.

**Sec. 3. 15 MRSA §3006** is enacted to read:

#### §3006. Review of Maine Juvenile Code

The Department of Corrections shall review the provisions of this Part that relate to detention, custody and supervision of juveniles and submit reports and recommended legislation to the joint committee having jurisdiction over juvenile corrections matters and to the Office of the Executive Director of the Legislative Council on January 15, 1992 and on January 15, 1994.

**Sec. 4. 15 MRSA §3203-A, sub-§1, ¶B-1**, as amended by PL 1989, c. 741, §3, is further amended to read:

B-1. When, in the judgment of a law enforcement officer, immediate secure detention is required to prevent a juvenile from imminently inflicting bodily harm ~~to~~ on others or ~~to~~ the juvenile, the officer may refer the juvenile for temporary, emergency detention ~~to a~~ in a jail or other secure facility intended or primarily used for the detention of adults approved pursuant to subsection 7, paragraph A or a facility approved pursuant to subsection 7, paragraph B, prior to notifying a juvenile caseworker or the Department of the Attorney General, as applicable. Such a facility may detain the juvenile ~~on an~~ emergency basis for up to 2 hours on an emergency basis, provided that the law enforcement officer immediately notifies the juvenile caseworker or the Department of the Attorney General and requests authorization to detain the juvenile beyond the term of the temporary, emergency detention pursuant to paragraph B. The juvenile caseworker or the Department of the Attorney General may, if continued emergency detention is required to prevent the juvenile from imminently inflicting bodily harm on others or the juvenile, authorize temporary emergency detention in that facility for an additional 4 hours. Following any temporary emergency detention, the juvenile caseworker or the Department of the Attorney General shall order the conditional or unconditional release of a juvenile or shall effect a detention placement within 2 hours following a temporary, emergency detention. After December 31, 1991, any detention beyond 6 hours must be in a placement other than a facility intended or primarily used for the detention of adults and must be authorized by a juvenile caseworker or the Department of the Attorney General. It ~~shall be~~ is the responsibility of the law enforcement officer to remain at the facility until the juvenile caseworker or the Department of the Attorney General has released the juvenile or has authorized detention.

**Sec. 5. 15 MRSA §3203-A, sub-§2, ¶A**, as amended by PL 1989, c. 318, is further amended to read:

A. When a juvenile is arrested, the law enforcement officer or the juvenile caseworker shall notify the legal custodian of the juvenile without unnecessary delay and inform the legal custodian of the juvenile's whereabouts, the name and telephone number of the juvenile caseworker who has been contacted and, if a juvenile has been placed in a secure detention facility, that a detention hearing will be held within 48 hours following this placement, excluding Saturday, Sunday and legal holidays. After December 31, 1991, if the juvenile is held under subsection 7, paragraph B-1, the law enforcement officer or the juvenile caseworker shall notify the legal custodian that a detention hearing will be held within 24 hours following this placement, excluding Saturday, Sunday and legal holidays.

**Sec. 6. 15 MRSA §3203-A, sub-§7, ¶A**, as amended by PL 1989, c. 231, §1, is further amended to read:

A. A juvenile may be detained in a jail or other ~~security~~ secure detention facility intended for use or primarily used for the detention of adults only when the serving facility:

- (1) Contains an area where juveniles are under direct staff observation at all times, in a separate section for juveniles which that complies with mandatory sight and sound separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208;
- (2) Provides for no regular contact between the juveniles with the adult detainees or inmates; and
- (3) Has an adequate staff to ~~monitor~~ provide direct observation and supervise the juvenile's activities at all times during emergency detention.

Juveniles detained in ~~adult-serving~~ adult-serving facilities ~~shall~~ may be placed only in the separate juvenile sections ~~which that~~ which that comply with mandatory separation standards established by the Department of Corrections pursuant to Title 34-A, section 1208, unless the court orders that the person be detained with adults for any period of detention occurring after the detainee has attained the age of 18 years.

**Sec. 7. 15 MRSA §3203-A, sub-§7, ¶B-1** is enacted to read:

B-1. After December 31, 1991 and until December 31, 1993, if the juvenile caseworker determines there is no acceptable alternative, a juvenile may be detained for up to 24 hours, excluding Saturday, Sunday and legal holidays, in a jail or other secure

detention facility intended or primarily used for the detention of adults, if:

- (1) The facility is not located in a standard metropolitan statistical area and meets the statutory criteria outlined in the federal Juvenile Justice Delinquency Act, Section 223(a)(14)(A), (B) and (C);
- (2) The facility complies with mandatory sight and sound separation standards established by the Department of Corrections in accordance with Title 34-A, section 1208;
- (3) The facility has adequate certified correctional staff to monitor and supervise the juvenile at all times during detention; and
- (4) The juvenile is detained only to await a detention hearing.

**Sec. 8. 15 MRSA §3203-A, sub-§7-A** is enacted to read:

7-A. Nonsecure custody in secure detention facility. Notwithstanding other provisions of this Part, a juvenile may be held for up to 12 hours in nonsecure custody in a building housing a jail or other secure detention facility intended or primarily used for the detention of adults if the following criteria are met:

A. The area where the juvenile is held is an unlocked, multipurpose area not designed or intended for use as a residential area, such as a lobby, office or interrogation room which is not designated, set aside or used as a secure detention area or is not a part of such an area, or if a secure area, is used only for processing purposes;

B. The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;

C. Use of the area is limited to providing nonsecure custody only long enough and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court; and

D. The juvenile is under continuous visual supervision by a law enforcement officer or facility staff person.

**Sec. 9. 15 MRSA §3205**, as enacted by PL 1989, c. 571, Pt. A, §2, is amended to read:

**§3205. Juvenile in adult-serving jail**

No After December 31, 1991, no juvenile may be committed or detained in an ~~adult-serving~~ jail after December 31, 1991, or other secure detention facility intended or primarily used for the detention of adults

except when bound over as an adult, or as provided for under the provisions of section 3203-A, subsection 1, paragraph B-1, or subsection 7, paragraph A or B-1.

**Sec. 10.** 17-A MRSA §1203, sub-§1, ¶C is enacted to read:

C. Beginning January 1, 1995, for a Class A, Class B or Class C crime, the court must:

(1) Specify a county jail as the place of imprisonment for any portion of the sentence that is 12 months or less; and

(2) Commit the person to the Department of Corrections for any portion of the sentence that is more than 12 months.

**Sec. 11.** 17-A MRSA §1252, sub-§1, ¶C is enacted to read:

C. Beginning January 1, 1995, for a Class A, Class B or Class C crime, the court must:

(1) Specify a county jail as the place of imprisonment if the term of imprisonment is 12 months or less; or

(2) Commit the person to the Department of Corrections if the term of imprisonment is more than 12 months.

**Sec. 12.** 30-A MRSA §451, sub-§4, as enacted by PL 1987, c. 737, Pt. A, §2 and Pt. C, §106 and as amended by PL 1989, c. 6; c. 9, §2; and c. 104, Pt. C, §§8 and 10, is further amended to read:

**4. Detention.** "Detention" In the case of an adult, "detention" means the confining of an adult or juvenile held in lawful custody in a specially constructed or modified facility designed to ensure continued custody and control. Detention may be confinement before trial or another hearing by a court or confinement to serve court-imposed sentences or dispositions and may be in a jail or lock-up. In the case of a juvenile, "detention" means being held in a secure detention facility, as defined in Title 15, section 3003, subsection 24-A.

**Sec. 13.** 30-A MRSA §458-A is enacted to read:

**§458-A. Temporary holding capacity**

By January 1, 1992, each county shall establish the capacity to hold a juvenile for 48 hours, excluding Saturday, Sunday and legal holidays, either in a temporary holding resource or in a secure detention facility, as defined in Title 15, section 3003, subsection 24-A.

**Sec. 14.** 34-A MRSA §1203, sub-§2, ¶C, as enacted by PL 1983, c. 459, §6, is amended to read:

C. The chief advocate and all other advocates shall be are classified state employees, except that the

chief advocate may assign volunteers and interns to duties within the office with the approval of the commissioner.

**Sec. 15.** 34-A MRSA §1203, sub-§3, ¶D, as enacted by PL 1983, c. 459, §6, is amended to read:

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. The chief advocate shall report annually to the joint committee of the Legislature having jurisdiction over corrections matters regarding the activities of the office. A copy of the report must be provided to the Office of the Executive Director of the Legislative Council.

**Sec. 16.** 34-A MRSA §1203, sub-§§6 to 8 are enacted to read:

**6. Protection for advocates.** An advocate may not be disciplined or sanctioned for any actions taken on behalf of clients if the advocate acts within the law and within the rules of the department.

**7. Protection for employees.** Employees of the department may not be disciplined or sanctioned for reporting abuse or suspected abuse to an advocate.

**8. Budget.** When submitting any budget request to the Legislature, the department and the Governor shall provide that all funds for the Office of Advocacy be listed in a separate account.

**Sec. 17.** 34-A MRSA §1402, sub-§9 is enacted to read:

**9. Statement of correctional system impact.** The commissioner shall prepare statements pertaining to the impact that proposed legislation has upon correctional system resources, including the cost that the correctional system would bear. For purposes of this subsection, the correctional system includes correctional facilities and services operated or funded by the State or by any county government. The statements must be furnished to the appropriate committee of the Legislature for the information of its members and for inclusion in bills that receive an "ought to pass" report when reported by the committee. A statement is not required for any legislation that has no impact upon the correctional system.

**Sec. 18.** 34-A MRSA §3010 is enacted to read:

**§3010. Limit on prison population in Knox County**

The population of state correctional facilities in Knox County may not exceed 800 prisoners, unless there are no other beds available for housing prisoners else-

where, based on the prisoners' security classifications. Exceeding this population in such an emergency situation may be done only for the length of time necessary to resolve the emergency.

**Sec. 19. Reports.** The Department of Corrections shall examine its hiring and training standards for correctional officers and determine the feasibility of increasing the entry-level requirements for correctional officers.

The Department of Corrections shall begin implementation of its master plan recommendations regarding substance abuse treatment, including the establishment of inpatient treatment programs within its facilities.

The Department of Corrections shall consult with officials from labor organizations, the Maine State Retirement System and the Department of Administration to determine the feasibility of equalizing employee benefits across correctional institutions.

By January 15, 1991, the Department of Corrections shall report its findings and progress regarding this section to the joint committee of the Legislature having jurisdiction over corrections matters. A copy of this report must be provided to the Office of the Executive Director of the Legislative Council.

See title page for effective date.

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## CHAPTER 926

### S.P. 1004 - L.D. 2492

#### **An Act to Reduce Costs to County and Municipal Government by Delaying the Implementation Dates of Certain State Mandates**

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

**Sec. 1. 38 MRSA §451-A, sub-§1-A,** as enacted by PL 1987, c. 492, is amended to read:

**1-A. Time schedule for salt and sand-salt storage program.** An owner or operator of a salt or sand-salt storage area is not in violation of any ground water classification or reclassification adopted on or after January 1, 1980, at any time prior to ~~October 1, 1996~~ October 1, 1997, with respect to discharges to the ground water from those facilities, if by that time the owner or operator has completed all steps then required to be completed by the schedules set forth in this subchapter. The department shall administer this schedule according to the project priority list adopted by the board pursuant to section 411 and the provisions of this subsection.

A. Preliminary plans and engineers' estimates ~~shall~~ must be completed and submitted to the Department of Transportation by the following dates:

(1) For Priority 1 and 2 projects - ~~January 1989~~ January 1990;

(2) For Priority 3 project - ~~January 1990~~ January 1991;

(3) For Priority 4 project - ~~January 1991~~ January 1992; and

(4) For Priority 5 project - ~~January 1992~~ January 1993.

B. Arrangements for administration and financing ~~shall~~ must be completed within 12 months of the dates established in paragraph A for each priority category.

C. Detailed engineering and final plan formulation ~~shall~~ must be completed within 24 months of the dates established in paragraph A for each priority category.

D. Review of final plans with the Department of Transportation ~~shall~~ must be completed and construction commenced within 36 months of the dates established in paragraph A for each priority category. The Department of Transportation shall consult with the department in reviewing final plans.

E. Construction ~~shall~~ must be completed and in operation on or before ~~January 1, 1996~~ January 1, 1997.

In no case ~~shall~~ may violations of the lowest ground water classification be allowed. In addition, no violations of any ground water classifications adopted after January 1, 1980, may be allowed for more than 3 years from the date of an offer of a state grant for the construction of those facilities or after ~~January 1, 1996~~ January 1, 1997, whichever is earlier.

The board ~~shall~~ may not issue time schedule variances under subsection 1 to owners or operators of salt or sand-salt storage areas.

An owner or operator of a salt or sand-salt storage area who is in compliance with this section is exempt from the requirements of licensing under section 413, subsection 2-D.

An owner or operator is not in violation of a schedule established pursuant to this subsection if the owner or operator is eligible for a state grant to implement the schedule and the state grant is not available.

**Sec. 2. 38 MRSA §563-A, sub-§1,** as enacted by PL 1987, c. 491, §10, is amended by amending the first paragraph to read:

**1. Compliance schedule.** ~~No~~ Notwithstanding subsection 1-A, no person may operate, maintain or store oil in a registered underground oil storage facility or tank ~~which~~ that is not constructed of fiberglass, cathodically