

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

	1997-98	1998-99
INLAND FISHERIES AND WILDLIFE, DEPARTMENT OF		
Licensing Services - Inland Fisheries and Wildlife		
All Other	\$5,000	\$5,000
Provides funds for the printing of deer and bear transportation tags.		
See title page for effective date.		

CHAPTER 464

H.P. 1050 - L.D. 1467

An Act to Amend the Law to Be Consistent with the Organizational Structure of the Department of Corrections and for Other Purposes

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

Sec. 1. 15 MRSA §2121, sub-§2, as amended by PL 1985, c. 556, §1, is further amended to read:

2. Post-sentencing proceeding. "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence ~~which that~~ affects whether there is incarceration or its length, including revocation of parole ~~or entrustment of a juvenile,~~ failure to grant parole, an error of law in the computation of a sentence and default in payment of a fine or restitution. It does not include administrative disciplinary proceedings resulting in a withdrawal of good-time deductions, revocation of probation, cancellation of supervised community confinement or ~~aftercare status of a juvenile~~ or proceedings before the Appellate Division of the Supreme Judicial Court.

Sec. 2. 15 MRSA §3315, sub-§3, as enacted by PL 1995, c. 502, Pt. F, §8, is amended to read:

3. Court review of determination. Whenever a court makes a determination pursuant to section 3314, subsection 1, paragraph F or section 3314, subsection 2, that determination must be reviewed by the court not less than once every ~~18~~ 12 months until the juvenile is discharged or no longer residing outside the juvenile's home.

Sec. 3. 17-A MRSA §15, sub-§1, ¶A, as repealed and replaced by PL 1995, c. 668, §2 and c.

680, §3, is repealed and the following enacted in its place:

A. Any person who the officer has probable cause to believe has committed or is committing:

- (1) Murder;
- (2) Any Class A, Class B or Class C crime;
- (3) Assault while hunting;
- (4) Any offense defined in chapter 45;
- (5) Assault, criminal threatening, terrorizing or stalking, if the officer reasonably believes that the person may cause injury to others unless immediately arrested;
- (5-A) Assault or reckless conduct if the officer reasonably believes that the person and the victim are family or household members, as defined in Title 15, section 321;
- (6) Theft as defined in section 357, when the value of the services is \$2,000 or less if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (7) Forgery, if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (8) Negotiating a worthless instrument if the officer reasonably believes that the person will not be apprehended unless immediately arrested;
- (9) A violation of a condition of probation when requested by a probation officer or juvenile caseworker;
- (10) Violation of a condition of release in violation of Title 15, section 1026, subsection 3; Title 15, section 1027, subsection 3; Title 15, section 1051, subsection 2; and Title 15, section 1092;
- (11) Theft involving a detention under Title 17, section 3521;
- (12) Harassment, as set forth in section 506-A;
- (13) Violation of a protection order, as specified in Title 5, section 4659, subsection 2; Title 15, section 321, subsection 6; Title 19, section 769, subsection 2; and Title 19, section 770, subsection 5; or

(14) A violation of a sex offender registration provision under Title 34-A, chapter 11 or 13; and

Sec. 4. 17-A MRSA §1253, sub-§2, as amended by PL 1987, c. 104, Pt. C, §§8 and 10, is further amended to read:

2. Each person sentenced to imprisonment who has previously been detained for the conduct for which the sentence is imposed in any state ~~correctional~~ facility or county institution or facility or in any local lockup awaiting trial, during trial, post-trial awaiting sentencing or post-sentencing prior to the date on which the sentence commenced to run either to await transportation to the place of imprisonment specified, or pursuant to court order, and not in execution of any other sentence of confinement, ~~shall be~~ is entitled to receive a day-for-day deduction from the total term of imprisonment required under that sentence. Each person ~~shall be~~ is entitled to receive the same deduction for any such period of detention in any federal, state or county institution, local lockup or similar facility in another jurisdiction, including any detention resulting from being a fugitive from justice, as defined by Title 15, section 201, subsection 4, unless ~~he~~ the person is simultaneously being detained for non-Maine conduct.

For the purpose of calculating the day-for-day deduction specified by this subsection, a "day" means 24 hours.

The total term required under the sentence of imprisonment ~~shall be~~ is reduced by the total deduction of this subsection prior to applying any of the other deductions specified in this section or in Title 30-A, section 1606.

The attorney representing this State shall furnish the court, at the time of sentencing or within 10 days thereafter, a statement showing the total deductions of this subsection, to that point in time, and the statement ~~shall~~ must be attached to the official records of the commitment.

The sheriff or other person upon whom the legal duty is imposed to deliver a sentenced person who is entitled to a deduction for a period of detention post-sentencing shall, at the time of delivery, furnish to the custodian a statement showing the length of that post-sentencing detention. In addition, the transporter shall furnish to the sentencing court the same statement ~~which shall~~ that must be attached to the official records of the commitment.

Sec. 5. 25 MRSA §2801-B, sub-§1, ¶A, as enacted by PL 1989, c. 521, §§2 and 17, is amended to read:

A. Employees of the Department of Corrections, ~~Division of Probation and Parole~~ with a duty to perform probation functions or to perform intensive supervision functions;

Sec. 6. 30-A MRSA §1656, sub-§§1 and 2, as amended by PL 1995, c. 368, Pt. R, §7, are further amended to read:

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

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

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

C. Order removal, at the expense of the sending county, of the prisoner or prisoners to ~~a state correctional facility~~ the Department of Corrections pending hearing, as long as the Commissioner of Corrections and the sending sheriff agree; and

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

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

(2) Issue a warrant for the transfer of the prisoner or prisoners, at the expense of the sending county, to ~~a state correctional facility, if the Justice of the Superior Court finds that the receiving institution is able to resolve the problem causing the need to transfer, the nature of the offense committed or alleged to have been 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~~ the Department of Corrections.

A warrant for transfer may be issued only when the Justice of the Superior Court finds that the receiving jail or the Department of Corrections is able to resolve the problem causing the need to

transfer, the nature of the offense committed or alleged to have been committed by the prisoner is so severe that it requires transfer and the security of the sending facility is inadequate to handle the problem.

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

Sec. 7. 34-A MRSA §1001, sub-§11, as enacted by PL 1983, c. 459, §6, is amended to read:

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

Sec. 8. 34-A MRSA §1001, sub-§15-A is enacted to read:

15-A. Regional correctional administrator. "Regional correctional administrator" means the supervisor of adult probation and parole and intensive supervision services or the supervisor of juvenile caseworker services for a region.

Sec. 9. 34-A MRSA §3003, sub-§1, as amended by PL 1995, c. 418, Pt. A, §39, is further amended to read:

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, must be kept confidential and may not be disclosed by any person, except that criminal history record information may be disseminated in accordance with Title 16, chapter 3, subchapter VIII, and documents, other than those documents pertaining to information obtained by the department for the purpose of evaluating a client's ability to participate in a community-based program or from informants in a correctional or detention facility for the purpose of determining whether facility rules have been violated, or a victim's request for notice of release, may be disclosed:

A. To any person, if the person receiving services, that person's legal guardian, if any, and, if that person is a minor, that person's parent or legal guardian, gives informed written consent to the disclosure of the documents referred to in this subsection after being given the opportunity to review the documents sought to be disclosed;

B. To any state agency if necessary to carry out the statutory functions of that agency;

C. If ordered by a court of record, subject to any limitation in the Maine Rules of Evidence, Rule 503;

D. To any criminal justice agency if necessary to carry out the administration of criminal justice, the administration of juvenile criminal justice or for criminal justice agency employment; and

E. To persons engaged in research if:

(1) The research plan is first submitted to and approved by the commissioner;

(2) The disclosure is approved by the commissioner; and

(3) Neither original records nor identifying data are removed from the facility or office that prepared the records.

The commissioner and the person doing the research shall preserve the anonymity of the person receiving services from the department and may not disseminate data that refer to that person by name, number or in any other way that might lead to the person's identification.

Notwithstanding any other provision of law, the department may release the names, dates of birth and social security numbers of juveniles receiving services from the department and, if applicable, ~~the Medicaid~~ eligibility numbers and the dates on which those juveniles received ~~Medicaid~~ services to ~~the Bureau of Medical Services and the Bureau of Family Independence within~~ the Department of Human Services for the sole purpose of determining eligibility and billing for ~~Medicaid~~ services under federally funded programs administered by the Department of Human Services and provided by or through the department. The department may also release to the Department of Human Services information required for, and to be used solely for, audit purposes, consistent with federal law, for ~~Medicaid~~ those services provided by or through the department. Department of Human Services personnel must treat this information as confidential in accordance with federal and state law and must return the records when their purpose has been served.

Sec. 10. 34-A MRSA §3003, sub-§1-A, as enacted by PL 1993, c. 13, §2, is repealed.

Sec. 11. 34-A MRSA §3032, sub-§4, as enacted by PL 1983, c. 459, §6, is amended to read:

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

Sec. 12. 34-A MRSA §3036-A, sub-§9, as enacted by PL 1993, c. 170, §1, is amended to read:

9. Probation violation; revocation. If a prisoner on supervised community confinement violates a condition of supervised community confinement imposed on the prisoner and if the violation conduct is also a violation of a condition of probation imposed as part of the sentence the prisoner is serving while on supervised community confinement, ~~the Director of Probation and Parole, or a designated representative, a probation officer~~ may file with any court a motion for revocation of probation and the court may revoke probation as specified in Title 17-A, section 1206.

Sec. 13. 34-A MRSA §3063-A, as amended by PL 1995, c. 647, §6, is further amended to read:

§3063-A. Transfer from jails

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

Sec. 14. 34-A MRSA §3810, as amended by PL 1989, c. 591, §2, is further amended to read:

§3810. Aftercare status

1. Commissioner's powers. During a juvenile client's commitment to the center, the commissioner may, at the commissioner's discretion:

- A. Keep the juvenile client at the center; or
- B. ~~Upon prior mutual agreement, entrust~~ Place the juvenile client; on aftercare status for a period not exceeding the term of the juvenile's commitment; ~~to the care of:~~

- ~~(1) Any suitable person or persons;~~
- ~~(2) The Division of Probation and Parole;~~
- ~~(3) The Department of Human Services;~~
- ~~(4) Some other public or private child care agency; or~~
- ~~(5) The Bureau of Juvenile Corrections.~~

2. Reports. As often as the commissioner requires, the person or agency ~~to whom caring for the juvenile client is entrusted~~ while on aftercare status shall report to the commissioner:

- 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 commissioner shall provide aftercare ~~and entrustment~~ services to juvenile clients.

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

Sec. 15. 34-A MRSA §3811, first ¶, as amended by PL 1983, c. 581, §53, is further amended to read:

When a juvenile client who has been placed on ~~entrustment~~ aftercare status, who has been granted a furlough or work or education release or who has ~~absented himself~~ been absent 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 commissioner, or by a law enforcement officer, at the request of the commissioner, 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:

Sec. 16. 34-A MRSA §5602, sub-§2, ¶C, as enacted by PL 1985, c. 439, §22, is amended to read:

- C. To provide appropriate services to juveniles committed to the Maine Youth Center who are ~~on leave or~~ in the community on ~~entrustment~~ aftercare status.

Sec. 17. 34-A MRSA §6001, 6002 and 6003, as enacted by PL 1989, c. 591, §3, are repealed.

See title page for effective date.

CHAPTER 465

H.P. 1206 - L.D. 1706

An Act to Review Registration of Certified Nursing Assistants