

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTIETH LEGISLATURE

FIRST SPECIAL SESSION
November 13, 2002 to November 14, 2002

ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST REGULAR SESSION
December 4, 2002 to June 14, 2003

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
FEBRUARY 13, 2003

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FIRST REGULAR SESSION
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SEPTEMBER 13, 2003

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

Penmor Lithographers
Lewiston, Maine
2003

PART H

Sec. H-1. 32 MRSA §2102, sub-§2-A, ¶A, as enacted by PL 1993, c. 379, §4 and affected by §11, is repealed.

Sec. H-2. 32 MRSA §2103, sub-§4, as amended by PL 1993, c. 600, Pt. A, §113, is further amended to read:

4. Licensure in another state or jurisdiction. The practice of:

A. Nursing by a registered nurse or a licensed practical nurse currently licensed in another state or United States territory for a period of 90 days pending licensure in the State if the nurse, upon employment, has furnished the employer with satisfactory evidence of current licensure in another state or United States territory and the nurse furnishes a letter of authorization to the prospective employer of having submitted proper application and fees to the board for licensure prior to employment;

B. A currently licensed nurse of another United States jurisdiction or foreign country who is providing educational programs or consultative services within this State for a period not to exceed a total of 21 days per year;

C. A currently licensed nurse of another state who is transporting patients into, out of or through this State. The exemption is limited to a period not to exceed 48 hours for each transport; ~~or~~

D. Nursing in this State by a currently licensed nurse whose employment was contracted outside this State but requires the nurse to accompany and care for the patient while in this State. This practice is limited to the particular patient to 3 months within one year and is at the discretion of the board; or

E. Nursing by a registered nurse or licensed practical nurse currently licensed in a jurisdiction outside the United States or its territories for a period not to exceed 90 days pending receipt of a United States social security number as long as all other requirements for licensure have been submitted and verified and the registered or licensed nurse has furnished upon employment satisfactory evidence of current licensure in another jurisdiction and the nurse furnishes a letter of authorization to the prospective employer of having submitted proper application and fees to the board for licensure prior to employment;

Sec. H-3. 32 MRSA §2103, sub-§6, as amended by PL 1993, c. 600, Pt. A, §113, is further amended to read:

6. Nursing services; practice of religious principles. ~~This chapter does not prohibit nursing~~ Nursing services performed in accordance with the practice of the religious principles or tenets of a church or denomination that relies upon prayer or spiritual means alone for healing; or

Sec. H-4. 32 MRSA §2103, sub-§7 is enacted to read:

7. Nursing services by successful candidates of the National Council of State Boards of Nursing, Inc.'s National Council's Learning Extension licensure examination pending receipt of United States social security number. The practice of nursing for a period not to exceed 90 days by an applicant for licensure as a registered professional nurse or practical nurse who has passed the National Council of State Boards of Nursing, Inc.'s National Council's Learning Extension licensure examination and has met all requirements for licensure except obtaining a United States social security number, as required by Title 36, section 175.

Sec. H-5. 32 MRSA §2201, sub-§2, as amended by PL 1993, c. 600, Pt. A, §126, is repealed.

Sec. H-6. 32 MRSA §2251-A, sub-§1, as amended by PL 1993, c. 600, Pt. A, §133, is repealed.

See title page for effective date.

CHAPTER 205

H.P. 1094 - L.D. 1497

An Act To Amend the Laws Pertaining to the Department of Corrections

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

Sec. 1. 5 MRSA §9057, sub-§6, as amended by PL 1997, c. 271, §1, is further amended to read:

6. Confidential information. Information may be disclosed that is confidential pursuant to Title 22, chapters 958-A and 1071 and sections 7703 and 1828; Title 24, section 2506; and Title 34-A, except for information, the disclosure of which is absolutely prohibited under Title 34-A, section ~~3003~~ 1216. Disclosure may be only for the determination of issues involving unemployment compensation proceedings relating to a state employee, state agency personnel

actions and professional or occupational board licensure, certification or registration.

A. For the purpose of this subsection, "hearing officer" means presiding officer, judge, board ~~chairman~~ chair, arbitrator or any other person considered responsible for conducting a proceeding or hearing subject to this subsection. In the case of the Civil Service Appeals Board, the presiding officer is the entire board. "Employees of the agency" means employees of a state agency or department or members, agents or employees of a board who are directly related to and whose official duties involve the matter at issue.

B. The confidential information disclosed pursuant to this subsection is subject to the following limitations:

(1) The hearing officer determines that introduction of the confidential information is necessary for the determination of an issue before the hearing officer;

(2) During the introduction of confidential information, the proceeding is open only to the hearing officer, employees of the agency, parties, parties' representatives, counsel of record and the witness testifying regarding the information, and access to the information is limited to these people. Disclosure is limited to information directly related to the matter at issue;

(3) Witnesses are sequestered during the introduction of confidential information, except when offering testimony at the proceeding;

(4) The names or identities of reporters of confidential information or of other persons may not be disclosed, except when disclosure is determined necessary and relevant by the hearing officer; and

(5) After hearing, the confidential information is sealed within the record and may not be further disclosed, except upon order of court.

Sec. 2. 15 MRSA §1105, as enacted by PL 2001, c. 318, §1, is amended to read:

§1105. Alcohol and drug treatment program

As a condition of post-conviction release, the court may impose the condition of participation in an alcohol and drug treatment program for a period not to exceed 24 months pursuant to Title 4, chapter 8. Upon request of the Department of Corrections, the court may require the defendant to pay a substance abuse

testing fee as a requirement of participation in the alcohol or drug treatment program. If at any time the court finds probable cause that a defendant released with a condition of participation in an alcohol and drug treatment program has intentionally or knowingly violated any requirement of the defendant's participation in the alcohol or drug treatment program, the court may suspend the order of bail for a period of up to 7 days for any such violation. The defendant must be given an opportunity to personally address the court prior to the suspension of an order of bail under this section. A period of suspension of bail is a period of detention under Title 17-A, section 1253, subsection 2. This section does not restrict the ability of the court to take actions other than suspension of the order of bail for the violation of a condition of participation in an alcohol and drug treatment program or the ability of the court to entertain a motion to revoke bail under section 1098 and enter any dispositional order allowed under section 1099-A. If the court orders participation in a drug and alcohol treatment program under this section, upon sentencing the court shall consider whether there has been compliance with the program.

Sec. 3. 15 MRSA §3009, sub-§2, as enacted by PL 2001, c. 452, §1, is amended to read:

2. Release of information. Upon the request of the superintendent or the superintendent's designee under subsection 1, the Department of Corrections shall release information as authorized under section 3308, subsection 7, paragraph B-1, subparagraph (3) and Title 34-A, section ~~3003~~ 1216, subsection 1, paragraph F to be used by the reintegration team. Information received pursuant to this subsection is confidential and may not be further disseminated, except as otherwise provided by law.

Sec. 4. 17-A MRSA §752-A, sub-§1, ¶B, as amended by PL 1983, c. 408, §1, is further amended to read:

B. While in custody ~~in a penal institution or other facility~~ pursuant to an arrest or pursuant to a court order, ~~he~~ the person commits an assault on a corrections officer, corrections supervisor or another member of the staff of the an institution or facility while the staff member is performing official duties. As used in this paragraph "assault" means the crime defined in section 207, subsection 1, paragraph A.

Sec. 5. 17-A MRSA §1231, sub-§6, as enacted by PL 1999, c. 788, §7, is amended to read:

6. The court may revoke a period of supervised release pursuant to section 1233. If the court revokes a period of supervised release, the court may require the person to serve time in prison under the custody of the Department of Corrections. This time in prison

may equal all or part of the period of supervised release, without credit for time served on post-release supervision, but may not exceed 1/3 of the straight term of imprisonment imposed. The remaining portion of the period of supervised release that is not required to be served in prison remains in effect to be served after the person's release and is subject to revocation at a later date.

Sec. 6. 17-A MRSA §1253, sub-§2, as amended by PL 1997, c. 464, §4, 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 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, is entitled to receive a day-for-day deduction from the total term of imprisonment required under that sentence. Each person 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 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 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 deduction of this subsection, to that point in time, and the statement 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~~ has been detained as specified in this subsection shall, ~~at the time~~ within 30 days 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~~ attorney for the State the same statement ~~that must be attached to the official records of the com-~~

~~mitment.~~ The custodian shall use the statement furnished to determine the day-for-day deduction to which the person is entitled, if any, unless, within 15 days of its receipt, the attorney for the State furnishes a revised statement to the custodian.

Sec. 7. 20-A MRSA §1055, sub-§12, as enacted by PL 2001, c. 452, §4, is amended to read:

12. Reintegration team. Within 10 days after receiving information from the Department of Corrections pursuant to Title 15, section 3009, the superintendent shall convene a reintegration team to carry out reintegration planning pursuant to section 254, subsection 12. The reintegration team must consist of the administrator of the school or the administrator's designee; at least one classroom teacher to whom the student will be assigned or who is involved in the school's student assistance team; a parent, guardian or custodian of the student; and a guidance counselor. The reintegration team is entitled to receive the information described in Title 15, section 3308, subsection 7, paragraph B-1, subparagraph (3) and Title 34-A, section ~~3003~~ 1216, subsection 1, paragraph F. The reintegration team shall also determine, on the basis of need, which school employees may receive that information.

Confidentiality of the criminal justice information regarding juveniles must be ensured at all times and the information may be released by a member of the reintegration team only under the conditions of this subsection. The superintendent shall ensure that confidentiality training is provided to all school employees who have access to the information.

Sec. 8. 20-A MRSA §6001-B, sub-§3-A, as enacted by PL 2001, c. 452, §14, is amended to read:

3-A. Determination of status of juvenile applying for admission; discretion of school to accept juvenile. If the receiving school administrative unit receives information under Title 15, section 3308, subsection 7, paragraph B-1, subparagraph (3) and Title 34-A, section ~~3003~~ 1216, subsection 1, paragraph F that a student is not in compliance with a condition of an individualized plan for the juvenile's rehabilitation and that condition is relevant to the juvenile's reintegration into the school, the receiving school administrative unit may deny admission or participation in public school programs, facilities or activities as part of an equivalent instruction program pursuant to section 5021 until the school administrative unit is satisfied that the condition has been met.

Sec. 9. 34-A MRSA §1203, sub-§5, ¶B, as enacted by PL 1983, c. 459, §6, is amended to read:

B. The records and accounts may be released only as provided in section ~~3003~~ 1216.

Sec. 10. 34-A MRSA §1216 is enacted to read:

§1216. 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 must be kept confidential and may not be disclosed by any person, except that public records must be disclosed in accordance with Title 1, section 408; criminal history record information may be disseminated in accordance with Title 16, chapter 3, subchapter 8; 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 pertaining to a victim's request for notice of release may, and must upon request, 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 give 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 or the administration of juvenile criminal justice or for criminal justice agency employment;

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 or number or in any other way that might lead to the person's identification; or

F. To persons who directly supervise or report on the health, behavior or progress of a juvenile, to the superintendent of a juvenile's school and the superintendent's designees and to agencies that are or might become responsible for the health or welfare of a juvenile if the information is relevant to and disseminated for the purpose of creating or maintaining an individualized plan for the juvenile's rehabilitation, including reintegration into the school.

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, eligibility numbers and the dates on which those juveniles received services to the Department of Human Services for the sole purpose of determining eligibility and billing for 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 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.

2. Release of certain information to victims.

Notwithstanding subsection 1, upon the request of a person who was the victim of a crime for which a client was incarcerated, as verified by the department or the prosecuting attorney, the department shall disclose the following information to the victim:

A. Whether the client has been charged with committing any crime while incarcerated and, if so, the crime with which the client has been charged; and

B. Whether the client has been disciplined while incarcerated and, if so, the offense for which the disciplinary action was taken and the type of disciplinary action taken.

3. Civil violation. A person who discloses information in violation of this section commits a civil violation for which a fine not to exceed \$1,000 may be adjudged.

4. Disclosure of confidential information. The disclosure of confidential information as provided by this section is also governed by Title 5, section 9057, subsection 6.

5. Disclosure of information. Nothing in this section permits or requires the disclosure of information to the extent it is designated confidential by another provision of law.

6. Assessment tools. Documents in the possession of the department used to screen or assess clients, including, but not limited to, questionnaires and test materials, are not public records for purposes of Title 1, chapter 13, subchapter 1. The department shall release these documents on request to any other state agency if necessary to carry out the statutory functions of that agency and to any committee or study commission established by the Legislature with authority to examine issues related to mental health.

Sec. 11. 34-A MRSA §3003, as amended by PL 2001, c. 452, §15, is repealed.

Sec. 12. 34-A MRSA §3036, as amended by PL 1999, c. 583, §13, is repealed.

Sec. 13. 34-A MRSA §3036-A, sub-§10, as enacted by PL 2001, c. 141, §2, is amended to read:

10. Terminally ill prisoner. With the consent of the prisoner, the commissioner may permit a prisoner committed to the department to be transferred from a correctional facility to supervised community confinement without meeting the requirements of subsection 2, paragraphs B and C if the facility's treating physician has determined that the prisoner is terminally ill and that care outside the correctional facility for the remainder of the prisoner's illness is medically ~~necessary~~ appropriate. The prisoner shall live in a hospital or other appropriate care facility, such as a nursing facility or residential care facility, approved by the commissioner. As approved by the commissioner, the prisoner may receive hospice services from an entity licensed pursuant to Title 22, chapter 1681, subchapter 1. The commissioner may exempt a prisoner transferred to supervised community confinement pursuant to this subsection from any mandatory condition under subsection 3 that the commissioner determines to be inapplicable.

Sec. 14. 34-A MRSA §5404, sub-§2, ¶B, as amended by PL 1995, c. 502, Pt. F, §37, is further amended to read:

B. Arrest and return to a correctional facility persons released from the correctional facility under section 3035 ~~or 3036~~ or transferred from the facility under section 3036-A; and

Sec. 15. 34-A MRSA §5404, sub-§3, ¶B, as amended by PL 1995, c. 502, Pt. F, §38, is further amended to read:

B. Supervise persons released from a correctional facility under section 3035 ~~or 3036~~ and

supervise persons transferred to supervised community confinement under section 3036-A if the commissioner directs;

Sec. 16. Appropriations and allocations. The following appropriations and allocations are made.

CORRECTIONS, DEPARTMENT OF

Adult Community Corrections

Initiative: Provides funds for costs associated with substance abuse testing.

Other Special Revenue Funds	2003-04	2004-05
All Other	\$500	\$500
Other Special Revenue		
Funds Total	\$500	\$500

See title page for effective date.

CHAPTER 206

S.P. 493 - L.D. 1487

An Act To Allow Judges' Faxed Signatures in Involuntary Psychiatric Commitment Proceedings

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

Sec. 1. 34-B MRSA §3863, sub-§3, ¶A, as amended by PL 1993, c. 596, §3, is further amended to read:

A. If the judge or justice finds the application and accompanying certificate to be regular and in accordance with the law, the judge or justice shall endorse them and promptly send them to the admitting mental hospital. For purposes of carrying out the provisions of this section, an endorsement transmitted by facsimile machine has the same legal effect and validity as the original endorsement signed by the judge or justice.

See title page for effective date.

CHAPTER 207

H.P. 1120 - L.D. 1528

An Act To Permit Electronic Notification of Rulemaking for Interested Parties

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and