

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

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

Penmor Lithographers
Lewiston, Maine
2004

(a)(17), but only for interest paid after 60 months from the start of the loan repayment period; and

Sec. 9. 36 MRSA §5122, sub-§1, ¶W is enacted to read:

W. For tax years beginning on or after January 1, 2004, for an eligible individual as defined by the Code, Section 223 (c)(1), the amount of contributions to the eligible individual's health savings account under the Code, Sections 106 and 223 to the extent that those contributions, exclusive of rollovers, for the taxable year are not included in the eligible individual's federal adjusted gross income.

Sec. 10. 36 MRSA §5122, sub-§2, ¶B, as amended by PL 2003, c. 390, §31, is further amended to read:

B. An amount equal to the taxpayer's federal work opportunity credit as determined under the Code, Section 51 or empowerment zone employment credit as determined under the laws of the United States Code, Section 1396;

Sec. 11. 36 MRSA §5122, sub-§2, ¶L, as repealed and replaced by PL 2001, c. 358, Pt. CC, §1, is amended to read:

L. For income tax years beginning on or after January 1, 2000 and before January 1, 2004, an amount equal to the total premiums spent for qualified long-term care insurance contracts as defined in the Code, Section 7702B(b), as long as the amount subtracted is reduced by the long-term care premiums claimed as an itemized deduction pursuant to section 5125. For income tax years beginning on or after January 1, 2004, an amount equal to the total premiums spent for qualified long-term care insurance contracts as defined in the Code, Section 7702B(b), as long as the amount subtracted is reduced by any amount claimed as a deduction for federal income tax purposes in accordance with the Code, Section 162(l) and by the long-term care premiums claimed as an itemized deduction pursuant to section 5125;

Sec. 12. 36 MRSA §5122, sub-§2, ¶T, as reallocated by RR 2003, c. 1, §37, is amended to read:

T. For income tax years beginning on or after January 1, 2002 and before January 1, 2004, an amount equal to the total premiums spent for long-term care insurance policies certified under Title 24-A, section 5075-A as long as the amount subtracted is reduced by the long-term care premiums claimed as an itemized deduction pursuant to section 5125.

For income tax years beginning on or after January 1, 2004, an amount equal to the total premiums spent for qualified long-term care insurance contracts certified under Title 24-A, section 5075-A, as long as the amount subtracted is reduced by any amount claimed as a deduction for federal income tax purposes in accordance with the Code, Section 162(l) and by the long-term care premiums claimed as an itemized deduction pursuant to section 5125.

Sec. 13. 36 MRSA §5200-A, sub-§2, ¶C, as amended by PL 2003, c. 390, §42, is further amended to read:

C. An amount equal to the taxpayer's federal work opportunity credit as determined under the Code, Section 51 or empowerment zone employment credit as determined under the laws of the United States Code, Section 1396;

Sec. 14. Application. That section of this Act that amends the Maine Revised Statutes, Title 36, section 111, subsection 1-A applies to tax years beginning on or after January 1, 2003 and to any prior years as specifically provided by the United States Internal Revenue Code. Those sections of this Act that amend Title 36, section 5122, subsection 2, paragraphs B, L and T and section 5200-A, subsection 2, paragraph C apply to tax years beginning on or after January 1, 2004. That section of this Act that amends Title 36, section 1760, subsection 16 applies to sales occurring on or after August 1, 2004.

See title page for effective date.

CHAPTER 706

H.P. 1286 - L.D. 1764

An Act To Improve the Operations of the Department of Corrections and the Safety of State Correctional Facilities

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

PART A

Sec. A-1. 15 MRSA §3101, sub-§4, ¶E-2 is enacted to read:

E-2. If the Juvenile Court binds a juvenile over to Superior Court and has not directed the detention of the juvenile in a section of a jail that is used primarily for the detention of adults pursuant to paragraph E-1, the court shall order that, if the juvenile attains 18 years and 6 months of age

and is being detained, the juvenile be detained in an adult section of a jail.

Sec. A-2. 15 MRSA §3203-A, sub-§5, ¶B, as repealed and replaced by PL 1999, c. 127, Pt. A, §32 and c. 260, Pt. A, §5, is amended to read:

B. Following a detention hearing, a court shall order a juvenile's release, in accordance with subsection 4, unless it finds, by a preponderance of the evidence, that continued detention is necessary to meet one of the purposes of detention provided in that subsection. The Juvenile Court shall ensure, by appropriate order, that any such continued detention is otherwise in accordance with the requirements of subsection 4. The court may order that detention be continued pending further appearances before the court or pending conditional release to a setting satisfactory to the juvenile community corrections officer.

Sec. A-3. 15 MRSA §3203-A, sub-§5, ¶C, as amended by PL 2003, c. 180, §4, is further amended to read:

C. Continued detention or conditional release may not be ordered unless a Juvenile Court Judge or justice of the peace has determined pursuant to subsection 4-A or the Juvenile Court determines at the detention hearing that there is probable cause to believe that the juvenile has committed a juvenile crime.

Sec. A-4. 15 MRSA §3306-A, as amended by PL 2001, c. 696, §2, is further amended to read:

§3306-A. Release or detention at first appearance

At the juvenile's first appearance or at any subsequent appearance before the court, the court may order, ~~pending further appearances before the court,~~ the juvenile's unconditional release, ~~conditioned~~ conditional release or detention in accordance with section 3203-A. Unless the court orders otherwise, any juvenile put on conditional release by a juvenile community corrections officer remains on conditional release until disposition.

Conditional release or detention may not be ordered at any appearance unless it has been determined by a Juvenile Court Judge or a justice of the peace that there is probable cause to believe that the juvenile has committed a juvenile crime.

When a court orders detention or a conditional release that authorizes even temporarily the juvenile's removal from the juvenile's home or when a court allows a conditional release ordered by a juvenile community corrections officer that authorizes, even temporarily, the juvenile's removal from the juvenile's home to remain in effect, the court shall determine

whether reasonable efforts have been made to prevent or eliminate the need for removal of the juvenile from the juvenile's home or that no reasonable efforts are necessary because of the existence of an aggravating factor as defined in Title 22, section 4002, subsection 1-B, and whether continuation in the juvenile's home would be contrary to the welfare of the juvenile. This determination does not affect whether the court orders detention or a conditional release or allows a conditional release to remain in effect, ~~which continues to be governed by section 3203-A.~~

Sec. A-5. 17-A MRSA §1204, sub-§1-B, as amended by PL 1995, c. 502, Pt. F, §12, is further amended to read:

1-B. Upon the request of the Department of Corrections, the court shall attach as a condition of probation that the convicted person pay, through the department, an electronic monitoring fee, a substance testing fee or both, as determined by the court, for the term of probation. In determining the amount of the fees, the court shall take into account the financial resources of the convicted person and the nature of the burden the payment imposes. A person may not be sentenced to imprisonment without probation solely for the reason the person is not able to pay the fees. When a person on probation fails to pay the fees, the court may revoke probation as specified in section 1206, unless the person shows that failure to pay was not attributable to a willful refusal to pay or to a failure on that person's part to make a good faith effort to obtain the funds required for the payment. The court, if it determines that revocation of probation is not warranted, shall issue a judgment for the total amount of the fees and shall issue an order attaching a specified portion of money received by or owed to the person on probation until the total amount of the fees has been paid. If the person makes this showing, the court may allow additional time for payment within the remaining period of probation or reduce the size of the fees, but may not revoke the requirement to pay the fees unless the remaining period of probation is 30 days or less. Fees received from probationers must be deposited into the department's ~~Correctional Program Improvement Fund~~ adult community corrections account, except that when authorized by the Department of Corrections, a person on probation may be required to pay fees directly to a provider of electronic monitoring, substance testing or other services. Funds from this account, which may not lapse, must be used to defray costs associated with the purchase and operation of electronic monitoring and substance testing programs.

Sec. A-6. 17-A MRSA §1253, sub-§2, as amended by PL 2003, c. 205, §6, 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 has been detained as specified in this subsection shall, within 30 days of delivery, furnish to the custodian a statement showing the length of that detention. In addition, the transporter shall furnish to the attorney for the State the same statement. 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. A-7. 17-A MRSA §1326-D is enacted to read:

§1326-D. Victim unable to be located

If the location of a victim can not, with due diligence, be ascertained, the money collected as restitution must be forwarded to the Treasurer of State to be handled as unclaimed property.

Sec. A-8. 20-A MRSA §1, sub-§34-A, ¶E, as enacted by PL 1997, c. 326, §1 and amended by PL 2001, c. 439, Pt. G, §6, is further amended to read:

E. In the custody or under the supervision of the Department of Corrections, including, but not limited to, a juvenile on conditional release, an informally adjusted juvenile, a probationer or a juvenile on ~~aftercare~~ community reintegration status from the Long Creek Youth Development Center or the Mountain View Youth Development Center and who is placed, for reasons other than educational reasons, pursuant to a court order or with the agreement of an authorized agent of the Department of Corrections, outside the juvenile's home.

Sec. A-9. 34-A MRSA §3032, sub-§5-A, ¶B-1 is enacted to read:

B-1. A prisoner or juvenile who is discharged from the facility remains liable for any restitution authorized under this chapter. If the prisoner or juvenile is returned to the custody of the department, any facility in which the prisoner or juvenile resides shall collect the restitution and ensure that it is used to defray the costs as set out in this chapter.

Sec. A-10. 34-A MRSA §3805, sub-§2, as amended by PL 1999, c. 583, §31 and PL 2001, c. 354, §3, is further amended to read:

2. Limitations. A person may not be detained at or committed to the facility ~~who is blind or who is a proper subject for any residential~~ if that person is more appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Behavioral and Developmental Services as agreed upon by the commissioner and the Commissioner of Behavioral and Developmental Services or their designees.

Sec. A-11. 34-A MRSA §3809-A, sub-§3, as amended by PL 2003, c. 410, §15, is further amended to read:

3. Psychiatric hospitalization. The commissioner has all the power over a juvenile client or juvenile detainee that a guardian has over a ward and that a parent has over a child with regard to necessary psychiatric hospitalization, including hospitalization in a nonstate mental health institution or hospital for the mentally ill. If a juvenile client or juvenile detainee is or becomes 18 years of age while still under commitment or while still detained, the statutory guardianship of the commissioner over the juvenile client or juvenile detainee terminates, but the juvenile client or juvenile detainee remains subject to the control of the commissioner and staff and rules of the facility until

the expiration of the period of commitment or until release or discharge from the facility. Nothing in this subsection may be construed to override the requirement to make application for psychiatric hospitalization in accordance with Title 34-B, section 3863, unless hospitalization is made with the juvenile client's or juvenile detainee's consent in accordance with Title 34-B, section 3831. ~~The commissioner may make application for necessary psychiatric hospitalization of a juvenile detainee, including hospitalization in a nonstate mental health institution or hospital for the mentally ill, in accordance with Title 34-B, section 3863.~~

Sec. A-12. 34-A MRSA §4104, sub-§2, as amended by PL 1999, c. 583, §42 and PL 2001, c. 354, §3 and c. 439, Pt. G, §8, is further amended to read:

2. Limitations. A person may not be detained at or committed to the ~~Mountain View Youth Development Center who is blind or who is a proper subject for any residential facility if that person is more~~ appropriately a subject for intensive temporary out-of-home treatment services or for in-home treatment services provided by or through the Department of Behavioral and Developmental Services as agreed upon by the commissioner and the Commissioner of Behavioral and Developmental Services or their designees.

Sec. A-13. 34-A MRSA §4111, sub-§3, as amended by PL 2003, c. 410, §19, is further amended to read:

3. Psychiatric hospitalization. The commissioner has all the power over a juvenile client or juvenile detainee that a guardian has over a ward and that a parent has over a child with regard to necessary psychiatric hospitalization, including hospitalization in a nonstate mental health institution or hospital for the mentally ill. If a juvenile client or juvenile detainee is or becomes 18 years of age while still under commitment or while still detained, the statutory guardianship of the commissioner over the juvenile client or juvenile detainee terminates, but the juvenile client or juvenile detainee remains subject to the control of the commissioner and staff and rules of the facility until the expiration of the period of commitment or until release or discharge from the facility. Nothing in this subsection may be construed to override the requirement to make application for psychiatric hospitalization in accordance with Title 34-B, section 3863, unless hospitalization is made with the juvenile client's or juvenile detainee's consent in accordance with Title 34-B, section 3831. ~~The commissioner may make application for necessary psychiatric hospitalization of a juvenile detainee, including hospitalization in a nonstate mental health institution or hospital for the mentally ill, in accordance with Title 34-B, section 3863.~~

Sec. A-14. 34-B MRSA §6205, as amended by PL 1995, c. 560, Pt. K, §2, PL 1999, c. 401, Pt. J, §4 and PL 2001, c. 439, Pt. G, §6, is further amended to read:

§6205. Services for juveniles committed to the youth development centers

1. Department authority. The department may provide consultation services to any juvenile with mental retardation committed to the Long Creek Youth Development Center or the Mountain View Youth Development Center if those services are requested by the Commissioner of Corrections or the commissioner's designee. Consultation services may include participation by appropriate department professionals on the ~~Clinical Services Classification~~ Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center in order to assist in the design of individual treatment plans to provide habilitation, education and skill training to juveniles with mental retardation in residence at the Long Creek Youth Development Center or the Mountain View Youth Development Center.

2. Support services. Whenever a program has been designed for a juvenile with mental retardation by the ~~Clinical Services Classification~~ Classification Committee of the Long Creek Youth Development Center or the Classification Committee of the Mountain View Youth Development Center and the ~~clinical services classification~~ classification committee has included participation by the department professionals, the department shall provide, insofar as possible, support services to implement that program.

3. Case management. The department may provide case management services to juveniles with mental retardation who are released from the Long Creek Youth Development Center or the Mountain View Youth Development Center.

Sec. A-15. Report to Legislature. By March 1, 2005, the Department of Corrections shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice matters regarding any impact on the corrections system due to detention and commitment changes in that section of this Part that enacts the Maine Revised Statutes, Title 15, section 3101, subsection 4, paragraph E-2 and those sections of this Part that amend Title 15, section 3230-A, subsection 5, paragraph B; Title 34-A, section 3805, subsection 2; and Title 34-A, section 4104, subsection 2. Upon hearing the department's report, the committee may report out a bill to the First Regular Session of the 122nd Legislature.

PART B

Sec. B-1. 17-A MRSA §759 is enacted to read:

§759. Violation of interstate compact for adult supervision

1. A person is guilty of violating an interstate compact for adult offender supervision if that person, after being convicted and sentenced for a crime in a state that is a member of an interstate compact for adult offender supervision and subsequently released on probation or parole, resides in this State without complying with the requirements of the interstate compact as enacted by the sentencing state.

2. Violation of an interstate compact for adult offender supervision is a Class D crime.

Sec. B-2. 17-A MRSA c. 54-E, as amended, is repealed.

Sec. B-3. 34-A MRSA §5003, sub-§1, ¶B, as amended by PL 1995, c. 502, Pt. F, §31, is further amended to read:

B. This subsection applies to interferences with the probation of probationers who are under the supervision and control of the department at the request of other states under terms of the ~~Uniform Act for Out of State Parolee Supervision~~ Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles.

Sec. B-4. 34-A MRSA §5003, sub-§2, ¶B, as amended by PL 1995, c. 502, Pt. F, §31, is further amended to read:

B. This subsection applies to interferences with the parole of parolees who are under the supervision and control of the department at the request of other states under terms of the ~~Uniform Act for Out of State Parolee Supervision~~ Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles.

Sec. B-5. 34-A MRSA c. 9, sub-c. 5, as amended, is repealed.

Sec. B-6. 34-A MRSA §9872, sub-§4, as enacted by PL 2003, c. 495, §1, is amended to read:

4. Compact administrator. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact. The compact administra-

tor for Maine is the Commissioner of Corrections or the commissioner's designee.

Sec. B-7. 34-A MRSA §§9885 and 9886 are enacted to read:

§9885. Notification of law enforcement agencies

Prior to the department's consideration of a request under this compact, the department shall notify the district attorney for the district in which the person will reside; the sheriff for the county in which the person will reside; the chief of police of any municipality in which the person will reside; and the Department of Public Safety.

§9886. Violation of interstate compact for adult offender supervision

Violation of the requirements of an interstate compact for adult offender supervision as enacted by the sentencing state is a Class D crime as provided in Title 17-A, section 759.

Sec. B-8. 34-A MRSA §9902, sub-§3, as enacted by PL 2003, c. 500, §1, is amended to read:

3. Compact administrator. "Compact administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of juveniles subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact. The compact administrator for Maine is the Commissioner of Corrections or the commissioner's designee.

Sec. B-9. 34-A MRSA sub-c. 8 is enacted to read:

SUBCHAPTER 8

STATE COUNCIL

§9921. State Council for Juvenile and Adult Offender Supervision established

The State Council for Juvenile and Adult Offender Supervision, referred to in this section as "the council," is established to provide oversight and guidance to the State's participation in the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles.

1. Membership. The council consists of at least 8 members as follows:

A. One member of the Senate, appointed by the President of the Senate;

B. One member of the House of Representatives, appointed by the Speaker of the House;

C. Three members who are appointed by the Governor for a term of 4 years, or until a successor is appointed, and who are eligible for reappointment at the discretion of the Governor:

(1) One prosecutor;

(2) One representative of a statewide association representing victims of crime; and

(3) One representative representing law enforcement;

D. The compact administrators for the Interstate Compact for Adult Offender Supervision and the Interstate Compact for Juveniles, who may be designees appointed by the Commissioner of Corrections to administer the Interstate Compact for Adult Supervision and the Interstate Compact for Juveniles;

E. The Associate Commissioner for Adult Services or the associate commissioner's designee; and

F. The Associate Commissioner for Juvenile Services or the associate commissioner's designee.

The council shall invite the Chief Justice of the Supreme Judicial Court to designate a trial judge to act as advisor to the council.

See title page for effective date.

CHAPTER 707

H.P. 1382 - L.D. 1856

An Act To Implement the Recommendations of the Commission To Improve the Sentencing, Supervision, Management and Incarceration of Prisoners

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

Sec. 1. PL 2003, c. 451, Pt. K, §2, sub-§1 is amended to read:

1. Initial commission membership. The commission consists of 17 initial members appointed as follows:

A. Two members of the Senate appointed by the President of the Senate;

B. Two members of the House of Representatives appointed by the Speaker of the House;

C. The Attorney General or a designee;

D. The Commissioner of the Department of Corrections or a designee;

E. The Commissioner of Behavioral and Developmental Services or a designee;

F. A representative of Adult Community Corrections appointed by the Commissioner of Corrections;

G. A representative of a statewide association of prosecutors nominated by the association and appointed by the Governor;

H. A representative of a statewide association of county commissioners nominated by the association and appointed by the Governor;

I. A representative of a statewide association of county sheriffs nominated by the association and appointed by the Governor;

J. A representative of a statewide association of criminal defense lawyers appointed by the Governor;

K. A member of the public appointed by the Governor; and

L. A representative of a statewide membership organization representing people with mental illness and their families appointed by the Governor.

The commission shall ask the Chief Justice of the Supreme Judicial Court to serve or name a designee to serve as a voting member of the commission and to appoint 2 trial judges or their designees to serve as voting members of the commission.

Sec. 2. PL 2003, c. 451, Pt. K, §2, sub-§1-A is enacted to read:

1-A. Additional members; appointments. In addition to the commission members in subsection 1, the commission includes 6 members appointed as follows:

A. One member of the Senate representing the political party holding the 2nd-largest number of seats in the Senate, appointed by the President of the Senate;

B. One member of the House of Representatives representing the political party holding the 2nd-largest number of seats in the House, appointed by the Speaker of the House;