

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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SEPTEMBER 17, 2005

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

Penmor Lithographers
Lewiston, Maine
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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. If placement in a licensed residential care facility providing a mental health treatment program is an appropriate alternative to psychiatric hospitalization, that placement may be made by the commissioner with the juvenile client's or juvenile detainee's consent.

Sec. 25. 34-A MRSA §5402, sub-§2, ¶H, as enacted by PL 1983, c. 459, §6, is amended to read:

H. Issue warrants for the arrest of parole violators and juveniles who violate conditions of placement on community reintegration status pursuant to sections 3810 and 4112;

See title page for effective date.

CHAPTER 329

H.P. 943 - L.D. 1360

An Act To Improve the Management and Safety of State Correctional Facilities

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

Sec. 1. 15 MRSA §2162, as amended by PL 1975, c. 771, §160, is further amended to read:

§2162. Commutation to jail

When a person is sentenced ~~to confinement in the State Prison~~ and committed to the custody of the Department of Corrections, the Governor may, if ~~he deems the Governor considers~~ it consistent with the public interest and the welfare of the ~~convict~~ prisoner, commute ~~said that prisoner's~~ sentence to imprisonment in any county jail, there to be supported at the charge of the State at an expense not exceeding the price paid for the support of other prisoners in ~~said that county~~ jail.

Sec. 2. 17-A MRSA §757-B is enacted to read:

§757-B. Trafficking of alcoholic beverages in adult correctional facilities

1. A person is guilty of trafficking of an alcoholic beverage in an adult correctional facility if:

A. That person intentionally conveys or attempts to convey an alcoholic beverage to a person confined in an adult correctional facility; or

B. That person is confined in an adult correctional facility and the person intentionally makes, obtains or possesses an alcoholic beverage.

2. As used in this section, "adult correctional facility" means a county jail or correctional facility other than a juvenile facility under the control of the Department of Corrections.

3. Trafficking of an alcoholic beverage in an adult correctional facility is a Class E crime.

Sec. 3. 17-A MRSA §760 is enacted to read:

§760. Failure to report sexual assault of person in custody

1. A member of the staff of a hospital, prison or other institution who knows that a person detained in that institution is the victim of a crime of sexual assault that occurred while the person was in the institution but does not report that crime to an appropriate criminal justice agency is guilty of failure to report a sexual assault of a person in custody.

2. For purposes of this section, "sexual assault" means a crime under chapter 11.

3. Failure to report a sexual assault of a person in custody is a Class E crime.

Sec. 4. 17-A MRSA §1256, sub-§1, as amended by PL 1999, c. 458, §1, is further amended to read:

1. ~~Other provisions of this section notwithstanding, when a person subject to an undischarged term of imprisonment is convicted of a violation of section 752 A, 755 or 757 or of any other crime against the person of a member of the staff of the institution in which the convicted person was imprisoned or of a violation of section 806 involving government property in the institution in which the convicted person was imprisoned or any other crime against government property in the institution in which the convicted person was imprisoned, or of an attempt to commit any of the crimes mentioned in this subsection crime committed while in execution of any term of imprisonment or of an attempt to commit a crime while in execution of any term of imprisonment, the sentence is not concurrent with the any undischarged terms term of imprisonment. The court may order that the any undischarged terms term of imprisonment be tolled and service of the nonconcurrent sentence commence immediately and the court shall so order if any undischarged term of imprisonment is a split sentence. No portion of the nonconcur-~~

rent sentence may be suspended. All sentences that the convicted person receives as a result of the crimes mentioned in this subsection must be nonconcurrent with all other sentences.

Sec. 5. 25 MRSA §1575, sub-§2-A, as enacted by PL 2003, c. 393, §4, is amended to read:

2-A. Person to collect biological sample. A person described in subsection 2, a corrections officer or other staff member of a county jail or Department of Corrections facility who is designated by the sheriff or jail administrator of that county jail or by the Commissioner of Corrections and is trained to collect biological samples, a probation officer or a juvenile community corrections officer may collect a biological sample that is not a blood sample.

Sec. 6. 28-A MRSA §2083, as enacted by PL 1987, c. 45, Pt. A, §4, is repealed.

Sec. 7. 34-A MRSA §3032, sub-§5, ¶A, as amended by PL 1999, c. 583, §10, is further amended to read:

A. Punishment at all correctional facilities, except juvenile correctional facilities, may consist of warnings, loss of privileges, restitution, monetary sanctions, labor at any lawful work, confinement to a cell, segregation or a combination of these.

Sec. 8. 34-A MRSA §3032, sub-§5-B is enacted to read:

5-B. Monetary sanctions. The imposition of monetary sanctions at adult correctional facilities is subject to the following conditions.

A. When a monetary sanction is imposed at a facility, a prisoner who is subject to that monetary sanction and who is able to generate money shall pay 25% of that money to the facility where the monetary sanction was imposed. The facility shall collect that money and apply it to defray the cost of holding disciplinary hearings.

B. A prisoner who is transferred to another facility remains liable for any monetary sanction authorized under this chapter. The facility receiving the prisoner shall collect the monetary sanction and transfer it to the facility where the monetary sanction was imposed.

C. A prisoner who is discharged from a facility remains liable for any monetary sanction authorized under this chapter. If the prisoner is returned to the custody of the department, any facility in which the prisoner resides shall collect the monetary sanction and ensure that it is used to defray costs as set out in this chapter.

D. A monetary sanction is not authorized if its imposition would create an excessive financial hardship, as determined by the department, on the dependents of the prisoner. Any payments made for the support of the dependents that are required by the Department of Health and Human Services may not be used for monetary sanction payments.

Sec. 9. 34-A MRSA §3032, sub-§6, as amended by PL 1991, c. 314, §39, is further amended to read:

6. Impartial hearing. If the punishment may affect the term of commitment, sentence or parole eligibility or may involve restitution, monetary sanctions, labor at any lawful work or segregation, the chief administrative officer of the facility shall, before imposing punishment, provide an impartial hearing at which the client has the following rights.

A. The client is entitled to be informed in writing of the specific nature of the alleged misconduct.

B. The client is entitled to the right to be present at the hearing, except that the client may be prevented from attending or be removed if the client's behavior indicates that the client is in danger of self-injury or a danger to other persons or property.

C. The client is entitled to present evidence on the client's behalf.

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

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

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

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

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

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

Sec. 10. 34-A MRSA §3038, as amended by PL 1991, c. 314, §43, is repealed.

Sec. 11. 34-A MRSA §3039, sub-§1, as amended by PL 1991, c. 314, §45, is further amended to read:

1. Accounts. The ~~chief administrative officer~~ commissioner shall ~~promulgate~~ adopt rules for use of the clients' account. These rules must include a provision allowing a client to remove that client's money from the clients' account and place it in any type of investment outside the facility chosen by the client. The chief administrative officer shall keep a record of all money in the clients' account and is responsible for safekeeping of the money while the client is in the custody of the department and for the delivery of that money to the client upon the client's discharge.

Sec. 12. 34-A MRSA §3069, sub-§1, as amended by PL 2003, c. 482, Pt. B, §1, is further amended to read:

1. Involuntary. When an ~~inmate~~ prisoner of a correctional ~~or detention~~ facility has been determined by a competent medical authority to require inpatient treatment for mental illness, the chief administrative officer of that facility 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~~ 4, Article ~~III~~ 3 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 facility must 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, the person must be returned by the appropriate officers of the correctional ~~or detention~~ 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.

Sec. 13. 34-A MRSA §9887 is enacted to read:

§9887. Supervision fee

The department may impose on a person accepted for supervision under this compact a supervision fee of between \$10 and \$50 per month, as determined by the department, for the term of supervision by the department. In determining the amount of the fee, the department shall take into account the financial resources of the person and the nature of the burden the payment imposes. A request for transfer of supervision may not be denied solely because the person is not able to pay the fee. When a person fails to pay the supervision fee, the department may request the person's return to the sending state unless the failure to pay was not attributable to the person's willful refusal to pay or to a failure on the person's part to make a good faith effort to obtain the funds required for the payment.

See title page for effective date.

CHAPTER 330

H.P. 1124 - L.D. 1588

An Act To Amend Certain Laws Administered by the Department of Environmental Protection

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

Sec. 1. 12 MRSA c. 421, sub-c. 2, as amended, is repealed.

Sec. 2. 32 MRSA §10015, last ¶, as enacted by PL 1989, c. 845, §14 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the ~~District Superior~~ Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter ~~IV~~ 4, and is subject to judicial review exclusively in the ~~District Superior~~ Court in accordance with Title 5, chapter 375, subchapter ~~VII~~ 7, ~~substituting the term "District Court" for "Superior Court,"~~ notwithstanding any other provision of law.

Sec. 3. 36 MRSA §5219-X, as enacted by PL 2003, c. 698, §1, is amended to read:

§5219-X. Biofuel commercial production and commercial use

1. Definition. As used in this section, unless the context otherwise indicates, the term "biofuel" means any commercially produced liquid or gaseous product