

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION

July 29, 2005

SECOND REGULAR SESSION

January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR

SECOND SPECIAL SESSION

NON-EMERGENCY LAWS IS

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THE GENERAL EFFECTIVE DATE FOR

SECOND REGULAR SESSION

NON-EMERGENCY LAWS IS

AUGUST 23, 2006

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

Penmor Lithographers

Lewiston, Maine

2006

The commissioner may adopt commercial fishing safety rules recommended by the Commercial Fishing Safety Council. Rules authorized by this section must be adopted and amended in accordance with the procedures outlined in subchapter 2 and are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 6. Report. The Commissioner of Marine Resources and the Commercial Fishing Safety Council shall jointly report to the joint standing committee of the Legislature having jurisdiction over marine resources matters by January 2, 2007 regarding any rule-making activity conducted pursuant to the Maine Revised Statutes, Title 12, section 6176.

See title page for effective date.

CHAPTER 506

H.P. 1324 - L.D. 1884

An Act To Improve the Prisoner Telephone System

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

Whereas, this legislation reduces the costs of telephone calls for prisoners and their families through the use of prepaid phone accounts; and

Whereas, immediate enactment of this legislation is necessary for the timely implementation of the Department of Corrections' telephone system; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 4 MRSA §1058, sub-§§1, 3 and 4, as enacted by PL 1997, c. 75, §1, are further amended to read:

1. Prepayment of filing fee and certified copies required. A person who is confined in a federal, state, county or local correctional or detention facility may not bring a civil action arising under federal or state law in any court in this State with respect to a condition of that person's confinement or the effect of an action or inaction by a government official on the life of that person confined and may not appeal a judgment in such a civil action without prepayment of

the filing fee unless, in addition to the in forma pauperis application and affidavit required by the Maine Rules of Civil Procedure, Rule 91, that person submits a certified copy of the facility general client account statement for that person for the 6-month period immediately preceding the filing of the action or appeal, obtained from the appropriate official of each facility at which that person is or was confined.

3. Full payment of filing fee required; initial partial filing fee. Notwithstanding subsection 2, the person shall pay the full amount of the filing fee. The court shall assess the person's financial status and, when funds exist, collect as a partial payment of the filing fee an initial partial filing fee of 20% of the greater of:

A. The average monthly deposits to the person's facility general client account credited to the person for the 6-month period immediately preceding the filing of the action or appeal; or

B. The average monthly balance in the person's facility general client account for the person for the 6-month period immediately preceding the filing of the action or appeal.

4. Payments from account. After payment of the initial partial filing fee, the person shall make monthly payments of 20% of the preceding month's deposits to the general client account credited to the person's facility account person. The facility having custody of the person shall forward monthly payments from the account to the clerk of the court each time the amount in the account for the person exceeds \$10 until the filing fee is paid in full.

Sec. 2. 17-A MRSA §1330, sub-§1, as amended by PL 1999, c. 469, §2, is further amended to read:

1. Work program; payment of restitution and fines. A prisoner who has been ordered to pay restitution or fines may not be released pursuant to a work program administered by the Department of Corrections under Title 34-A, section 3035, or a sheriff under Title 30-A, section 1605, or participate in an industry program under Title 34-A, section 1403, subsection 9 or any other program administered by the Department of Corrections or a sheriff by which a prisoner is able to generate money, unless the prisoner consents to pay at least 25% of the prisoner's gross weekly wages or other money generated to the victim or the court until such time as full restitution has been made or the fine is paid in full. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's wages or other money generated agreed to as payment of restitution. The chief administrative officer of the

correctional facility where the prisoner is incarcerated shall also collect and disburse to the court that portion of the prisoner's wages or other money generated agreed to as payment of fines after the restitution is paid in full. If the victim or victims ordered by the court to receive restitution cannot be located, the correctional facility shall inform the court that ordered restitution. The court shall determine the distribution of these funds.

Sec. 3. 17-A MRSA §1330, sub-§2, as amended by PL 1999, c. 469, §3, is further amended to read:

2. Payment of restitution or fines from other sources. A prisoner, other than one addressed by subsection 1, who ~~is able to generate~~ receives money, from ~~whatever~~ any source, shall pay 25% of that money to any victim or the court if the court has ordered that restitution or a fine be paid. The chief administrative officer of the correctional facility in which the prisoner is incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's money ordered as restitution. The chief administrative officer of the correctional facility where the prisoner is incarcerated shall also collect and disburse to the court that portion of the prisoner's money ordered as fines after the restitution is paid in full. If the victim or victims ordered by the court to receive restitution can not be located, the correctional facility shall inform the court that ordered restitution. The court shall determine the distribution of these funds. Money received by the prisoner and directly deposited into a telephone call account established by the Department of Corrections for the sole purpose of paying for use of the department's client telephone system is not subject to this subsection, except that 25% of any money received by the prisoner and transferred from the telephone call account to the department's general client account at the time of the prisoner's discharge or transfer to supervised community confinement must be collected and disbursed as provided in this subsection.

Sec. 4. 34-A MRSA §3032, sub-§5-A, ¶A, as amended by PL 1995, c. 197, §2, is further amended to read:

A. Restitution may be imposed for the purpose of replacing or repairing property destroyed or damaged by the prisoner or juvenile while the prisoner or juvenile is at the institution. When restitution is imposed at a facility, a prisoner or a juvenile who is subject to that restitution and who ~~is able to generate~~ receives money from ~~whatever~~ any source shall pay 25% of that money to the facility where the damage occurred. The facility shall collect that money and apply it to defray the cost of replacement or repair of the items destroyed or damaged. Money received by

the prisoner or juvenile and directly deposited into a telephone call account established by the department for the sole purpose of paying for use of the department's client telephone system is not subject to this paragraph, except that 25% of any money received by the prisoner or juvenile and transferred from the telephone call account to the department's general client account at the time of the prisoner's or juvenile's discharge or transfer to supervised community confinement or community reintegration status must be collected and disbursed as provided in this paragraph.

Sec. 5. 34-A MRSA §3032, sub-§5-A, ¶A-1, as enacted by PL 1995, c. 197, §2, is amended to read:

A-1. Restitution may be imposed for the purpose of paying the cost of medical care incurred as a result of the conduct of a prisoner or juvenile while the prisoner or juvenile is at the institution. When restitution is imposed at a facility, a prisoner or a juvenile who is subject to that restitution and who ~~is able to generate~~ receives money from ~~whatever~~ any source shall pay 25% of that money to the facility where the medical care was provided. The facility shall collect that money and apply it to defray the cost of medical care. Money received by the prisoner or juvenile and directly deposited into a telephone call account established by the department for the sole purpose of paying for use of the department's client telephone system is not subject to this paragraph, except that 25% of any money received by the prisoner or juvenile and transferred from the telephone call account to the department's general client account at the time of the prisoner's or juvenile's discharge or transfer to supervised community confinement or community reintegration status must be collected and disbursed as provided in this paragraph.

Sec. 6. 34-A MRSA §3032, sub-§5-B, ¶A, as enacted by PL 2005, c. 329, §8, is amended to read:

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~~ receives money from any source 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. Money received by the prisoner and directly deposited into a telephone call account established by the department for the sole purpose of paying for use of the department's client telephone system is not subject to this paragraph, except that 25% of any money received by the prisoner and transferred from the telephone call account to the department's gen-

eral client account at the time of the prisoner's discharge or transfer to supervised community confinement must be collected and disbursed as provided in this paragraph.

Sec. 7. 34-A MRSA §3039, as amended by PL 2005, c. 329, §11, is further amended to read:

§3039. Clients' money

When any client confined in a correctional or detention facility receives money from any source, including compensation for work authorized under other sections of Maine law or by a policy of the department, the money must be deposited in ~~that facility's clients'~~ the department's general client account or, as provided in subsection 4, in the department's telephone call account. Money deposited in either account must be credited to the client receiving it.

1. General client account. The commissioner shall adopt rules for use of the ~~clients'~~ general client account. These rules must include a provision allowing a client to remove that client's money from the ~~clients'~~ general client account and place it in any type of investment outside the facility chosen by the client. ~~The chief administrative officer~~ commissioner shall keep a record of all money in the ~~clients'~~ general client account and is responsible for safekeeping of the client's money while the client is in the custody of the department and for the delivery of that money to the client, subject to any collections provided for by statute or rule, upon the client's discharge or transfer to supervised community confinement or community reintegration status.

2. Interest. Any interest accruing as a result of the deposit of ~~that~~ money in the ~~clients'~~ general client account may, after first being used to defray expenses of the account, be expended by the ~~chief administrative officer of the facility~~ commissioner for the general welfare of ~~all clients at that facility~~ clients confined in the department's correctional and detention facilities in accordance with rules adopted by the commissioner.

3. Use. During the client's confinement, any client may use that client's money in the ~~clients'~~ general client account by authorizing the ~~chief administrative officer~~ commissioner to disburse the money in accordance with the rules governing the ~~clients'~~ general client account.

4. Telephone call account. The commissioner may establish a telephone call account for the sole purpose of paying for use of the department's client telephone system and into which money received by clients may be deposited. Money received by a client and clearly designated by the sender for paying for telephone calls must be directly deposited into the telephone call account. In addition, a client may

remove the client's money from the general client account and deposit it into the telephone call account. Once deposited into the telephone call account, the client may use the money only for paying for the client's telephone calls. Any money received by a client and not used for paying for the client's telephone calls must be transferred from the telephone call account to the department's general client account at the time of the client's discharge or transfer to supervised community confinement or community reintegration status and is subject to any collections provided for by statute or rule prior to delivery to the client. The commissioner shall keep a record of all money in the telephone call account and is responsible for safekeeping of the client's money while the client is in the custody of the department and for the transfer of that money to the general client account and delivery to the client as set out in this section.

Sec. 8. 34-A MRSA §3040-A, sub-§1, as amended by PL 1991, c. 824, Pt. A, §69, is further amended to read:

1. Payment. Except as provided in subsection 4, if any client under the control of the department dies, leaving on deposit in the ~~client's~~ department's general client account and telephone call account at a correctional or detention facility an amount not exceeding \$1,000, and no personal representative of the client's estate is appointed, the chief administrative officer may pay the balance of the ~~client's account~~ deposits in the accounts to the surviving spouse or next of kin in accordance with the Probate Code, Title 18-A, sections 2-101 to 2-114, to the funeral director having any bill outstanding for the burial of the decedent or to any other preferred creditor or creditors who may appear to be entitled thereto, and shall deliver personal property in the chief administrative officer's custody to the surviving spouse or next of kin in accordance with the Probate Code, Title 18-A, sections 2-101 to 2-114.

Sec. 9. 34-A MRSA §3040-A, sub-§4, as amended by PL 1991, c. 824, Pt. A, §69, is further amended to read:

4. Alternative payment. Notwithstanding subsection 1, upon presentation of an affidavit under Title 18-A, section 3-1201, the chief administrative officer shall pay the balance of any deposit left by a decedent in the client's department's general client account or telephone call account at a correctional or detention facility and deliver the decedent's personal property to the ~~client's~~ decedent's successor under Title 18-A, sections 3-1201 and 3-1202. The payments under this subsection take precedence over payments under subsection 1 to the extent of the balance of the deposits in the ~~clients' account~~ accounts and the personal property remaining in the custody of the chief administrative officer at the time the affidavit is presented.

Sec. 10. 34-A MRSA §3047, sub-§2, ¶A, as amended by PL 1991, c. 314, §52, is further amended to read:

A. Has, within the 6 months prior to the date of parole or discharge, transferred from the ~~clients'~~ department's general client account to any person more than \$500, excluding any money transferred for the support of dependents; or

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective March 24, 2006.

CHAPTER 507

S.P. 688 - L.D. 1771

An Act To Amend the Maine Criminal Code and Various Provisions Related to Juveniles

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

Sec. 1. 12 MRSA §6004, as amended by PL 2005, c. 328, §1, is further amended to read:

§6004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility ~~for a period of detention~~ that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not to Title 17-A, section 1253, subsection 2, paragraph A or subsection 3-B, 4, 5, 8, 9 or 10. If the court suspends the period of ~~detention~~ confinement in whole or in part, the court shall impose a period of administrative release not to exceed one year. The administrative release must be administered pursuant to Title 17-A, chapter 54-G, and revocation of the administrative release is governed by the provisions of that chapter.

Sec. 2. 12 MRSA §8004, as amended by PL 2005, c. 328, §2, is further amended to read:

§8004. Juvenile violations

Notwithstanding other provisions of law, a person who has not attained 18 years of age and who is convicted of a crime for a violation of a provision of this Part that is not defined as a juvenile crime under Title 15, section 3103, subsection 1 may not be sentenced to imprisonment but may be ~~committed~~ ordered to serve a period of confinement in a Department of Corrections juvenile correctional facility ~~for a period of detention~~ that may not exceed 30 days, which may be suspended in whole or in part, if the court determines that:

1. Crime. The crime is one that, if committed by a person who has attained 18 years of age, would carry a mandatory term of imprisonment that may not be suspended;

2. Nature. The aggravated nature and seriousness of the crime warrants a period of ~~detention~~ confinement; or

3. History. The record or previous history of the defendant warrants a period of ~~detention~~ confinement.

The court is not required to impose a period of ~~detention~~ confinement notwithstanding that there is a mandatory term of imprisonment applicable to a person who has attained 18 years of age.

Any period of ~~detention~~ confinement must be served concurrently with any other period of ~~detention~~ confinement previously imposed and not fully discharged or imposed on the same date. Any period of ~~detention~~ confinement is subject to Title 17-A, section 1253, subsection 2, except that a statement is not required to be furnished and the day-for-day deduction must be determined by the facility, but not