

MAINE STATE LEGISLATURE

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STATE OF MAINE
124TH LEGISLATURE
SECOND REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed during the Second Regular Session of the 124th Maine Legislature coming from the

**JOINT STANDING COMMITTEE ON CRIMINAL JUSTICE
AND PUBLIC SAFETY**

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STATE OF MAINE

124TH LEGISLATURE
SECOND REGULAR SESSION



LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* summarizes all bills and adopted amendments and all laws enacted or finally passed during the Second Regular Session of the 124th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by LD number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each bill title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. The appendices include a summary of relevant session statistics, an index of all bills by LD number and an index of enacted laws by law type and chapter number.

Final action on each bill is noted to the right of the bill title. The abbreviations used for various categories of final action are as follows:

<i>CARRIED OVER</i>	<i>Carried over to a subsequent session of the Legislature</i>
<i>CON RES XXX</i>	<i>Chapter # of Constitutional Resolution passed by both Houses</i>
<i>CONF CMTE UNABLE TO AGREE</i>	<i>Committee of Conference unable to agree; bill died</i>
<i>DIED BETWEEN HOUSES</i>	<i>House & Senate disagree; bill died</i>
<i>DIED IN CONCURRENCE</i>	<i>One body accepts ONTP report; the other indefinitely postpones the bill</i>
<i>DIED ON ADJOURNMENT</i>	<i>Action incomplete when session ended; bill died</i>
<i>EMERGENCY</i>	<i>Enacted law takes effect sooner than 90 days</i>
<i>FAILED EMERGENCY ENACTMENT/FINAL PASSAGE</i>	<i>Emergency bill failed to get 2/3 vote</i>
<i>FAILED ENACTMENT/FINAL PASSAGE</i>	<i>Bill failed to get majority vote</i>
<i>FAILED MANDATE ENACTMENT</i>	<i>Bill imposing local mandate failed to get 2/3 vote</i>
<i>NOT PROPERLY BEFORE THE BODY</i>	<i>Ruled out of order by the presiding officers; bill died</i>
<i>INDEF PP</i>	<i>Bill Indefinitely Postponed; bill died</i>
<i>ONTP (or Accepted ONTP report)</i>	<i>Ought Not To Pass report accepted; bill died</i>
<i>P&S XXX</i>	<i>Chapter # of enacted Private & Special Law</i>
<i>PUBLIC XXX</i>	<i>Chapter # of enacted Public Law</i>
<i>RESOLVE XXX</i>	<i>Chapter # of finally passed Resolve</i>
<i>UNSIGNED</i>	<i>Bill held by Governor</i>
<i>VETO SUSTAINED</i>	<i>Legislature failed to override Governor's Veto</i>

The effective date for non-emergency legislation enacted in the Second Regular Session of the 124th Legislature is Monday, July 12, 2010. The effective date for legislation enacted as an emergency measure is specified in the enacted law summary for those bills.

Joint Standing Committee on Criminal Justice and Public Safety

enforcement officers. The program and training must be developed and implemented within existing resources. The amendment removes the requirement for Board of Trustees of the Maine Criminal Justice Academy to establish mandatory minimum standards by January 1, 2011 and for law enforcement agencies to certify that their policies are consistent with those standards.

Enacted Law Summary

Public Law 2009, chapter 583 requires the Department of Public Safety to develop a Silver Alert Program for missing senior citizens in cooperation with the Department of Transportation, the Maine Turnpike Authority, the Office of the Governor, a statewide organization representing broadcast groups in the State and appropriate law enforcement agencies. The Silver Alert Program must include standards of procedure for receiving reports of a missing person with an irreversible deterioration of intellectual faculties such as dementia, activating a Silver Alert at the appropriate local or statewide level, and a plan for alerting the public through the media and highway message signs. The Silver Alert Program must also include appropriate training for all law enforcement officers. The program and training must be developed and implemented within existing resources.

LD 1611

Resolve, Directing the Department of Corrections To Coordinate Review of Due Process Procedures and To Ensure Transparency in Policies Regarding the Placement of Special Management Prisoners

RESOLVE 213

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
SCHATZ MARRACHE	ONTP A OTP-AM B OTP-AM C	H-763

This bill proposes minimum standards for the humane treatment of special management prisoners of the Department of Corrections. As defined in this bill, a "special management prisoner" is a prisoner assigned to one of several high-risk categories and confined in a secure special management unit. The bill also defines "serious mental illness" and "special management unit (SMU)."

The minimum standards established in this bill include the following.

The confinement of prisoners with serious mental illness to a SMU is prohibited.

The department shall provide a private evaluation by a licensed mental health professional within 48 hours of a prisoner's placement in a SMU and shall provide subsequent evaluations at least every seven days after the initial evaluation. Evaluations must be in person, not through a cell door and must assess the current mental status and condition of the prisoner, the current risk of suicide or other self-harming behavior and include a review of the prisoner's inpatient and outpatient treatment history. A prisoner determined to suffer from a serious mental illness at the time of an evaluation must be removed from the SMU within seven days. If the prisoner is subsequently transferred to a psychiatric or mental health unit or a hospital, the commissioner shall ensure that the prisoner is held in conditions that are consistent with those established in the bill.

A prisoner's confinement to a SMU may be no more than 45 consecutive days, unless it is determined at a hearing that the prisoner has committed or attempted to commit a sexual assault, an escape from confinement or an act of violence within the previous 45 days of incarceration. Hearings must be held by a panel of at least three persons appointed by the Commissioner of Corrections, one of whom must be a clinician representing the mental health staff at that facility.

The hearing process, at which the department has the burden of proof, involves the following. The Commissioner must provide written notice to the prisoner at least 72 hours before the hearing and the notice must set forth the factual basis for the continued placement in the SMU. Notice must also be provided to the prisoner indicating that

Joint Standing Committee on Criminal Justice and Public Safety

the prisoner has the right to: appear in person at the hearing, to submit evidence in the prisoner's own defense, to call witnesses and to be represented by an attorney. The Commissioner shall make audiovisual recording of hearing and maintain the recording and all related records until at least 120 days after the person is released from incarceration. The panel shall issue a written decision within five days after the hearing and provide a copy, including the reasons for the decision, to the prisoner. If the decision is to hold prisoner in SMU longer than 45 days, the decision must include guidance to the prisoner as to how to gain release from the SMU, and the panel shall review its decision every seven days to determine if the prisoner should continue to be held in the SMU. After receipt of the decision, a prisoner may appeal the decision of the panel to the Commissioner. The Commissioner shall respond to the appeal in writing within seven days. A decision by the Commissioner on an appeal or a failure to issue a decision within seven days is a final agency action as defined in Title 5, section 8002, and the prisoner is entitled to judicial review of that decision under title 5, chapter 375, subchapter 7.

Corporal punishment of special management prisoners is prohibited, and the use of chemical agents or instruments of physical restraint on special management prisoners is prohibited, unless an audiovisual record of that process is made and the procedure is conducted in the presence of appropriate medical staff. The recording must be retained until at least 120 days after the prisoner is released from incarceration. Instruments of physical restraint, including but not limited to handcuffs, chains, leg shackles, restraint chairs and four-point restraints, may not be used on special management prisoners.

A special management prisoner's access to food, medical or sanitary facilities, mail or legal assistance may not be restricted for disciplinary reasons.

The Commissioner is required to maintain a current list of all special management prisoners that includes the date of confinement in the SMU, the date of last review, the reasons for placement in the SMU and when the prisoner has been housed in the SMU for more than 60 days, a written statement of the criteria to support the extended confinement. The Commissioner shall provide the list on a quarterly basis to each board of visitors for each correctional facility.

The Commissioner, to the extent permitted by an interstate compact in effect at the time, may not transfer a prisoner to an out-of-state facility unless the administrator of that out-of-state facility has agreed in writing to adhere to the provisions of special management proposed in this bill with respect to the treatment of that prisoner. The Commissioner shall return that prisoner to Maine if these special management standards are not met.

The board of visitors of each correctional facility is required to annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management prisoners complies with the law. Each board is required to include its findings in its annual report to this committee.

The Commissioner is required to review the status of all current special management prisoners in the State to determine whether prisoners confined to SMUs should remain in those units and to ensure that prisoners held in SMUs more than 45 days receive a hearing as outlined in this bill.

The Commissioner is also required to review all policies in effect on the effective date of this Act relating to special management prisoners and update those policies as necessary to conform to the law.

Committee Amendment "A" (H-763)

This amendment is one of two minority amendments of the committee. The amendment replaces the title and creates a resolve directing the Commissioner of Corrections, in consultation with the mental health and substance abuse focus group of the State Board of Corrections, to review due process procedures and other policies related to the placement of special management prisoners. The amendment also requires the Commissioner to consider an appropriate timeline for regular reporting to the joint standing committee of the Legislature having jurisdiction over corrections matters and to report all recommendations, including any suggested policy or legislative changes, to that

Joint Standing Committee on Criminal Justice and Public Safety

committee by January 15, 2011. Upon receiving that report, the committee may report out a bill to the 125th Legislature.

Committee Amendment "B" (H-764)

This amendment is one of two committee minority amendments and establishes minimum standards for the humane treatment of special management prisoners of the Department of Corrections. As defined in this amendment, a "special management prisoner" is a prisoner assigned to disciplinary, high-risk or administrative segregation and confined in a SMU. The amendment amends the definition of "severe mental illness" to mean schizophrenia, bipolar disorder, schizoaffective disorder, major depression or any other psychiatric condition that is recognized by a statewide association of psychiatric physicians that would tend to cause the prisoner's emotional stability to deteriorate if confined in a SMU for an extended period.

The amendment amends the provision addressing special management unit criteria for persons with serious mental illness by adding the requirement that evaluations must be conducted with audio privacy.

The minimum standards established in the amendment include limiting a prisoner's confinement to a special management unit to 45 days unless it is determined at a hearing that within the previous 45 days the prisoner has committed or attempted to commit a sexual assault, an escape from confinement, an act of serious physical violence or that housing the prisoner in the general population of a correctional facility would pose an immediate and unacceptable risk to the safety of staff or other prisoners. At hearings, the department has the burden of proof by a preponderance of the evidence. The amendment prohibits the confinement of prisoners with serious mental illness to a SMU and requires that a special management prisoner determined to be suffering from serious mental illness be removed from the SMU within seven days. The amendment strikes language that addresses corporal punishment and restrictions on transferring prisoners out of state.

The amendment also authorizes the calling of relevant witnesses and having an attorney at hearings, but requires that these be secured and paid for by the prisoner. The amendment requires panel review of a placement decision every 30 days instead of every seven days and specifies that appeals are made to the chief administrative officer of the facility and not to the Commissioner of Corrections. The amendment also clarifies that holding a prisoner for more than 45 days must be based on a finding as outlined in the Maine Revised Statutes, Title 34-A, section 1406, subsection 3.

The amendment also requires the Commissioner to maintain a current list of all special management prisoners and, when the prisoner has been retained for more than 60 days in one or more of the units of the SMU, to also retain a written statement of the criteria relied upon to support that extended confinement. The Commissioner shall provide the boards of visitors, the State Board of Corrections and the joint standing committee of the Legislature having jurisdiction over corrections matters with a copy of that list on a quarterly basis.

The amendment further requires the State Board of Corrections to annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management prisoners complies with the law. The State Board of Corrections is required to include its findings in its annual report to the joint standing committee of the Legislature having jurisdiction over corrections matters.

The amendment maintains the requirement of the bill that the Commissioner of Corrections review the status of all special management prisoners in the State to determine whether prisoners confined to SMUs should remain in those units and to ensure that prisoners held in SMUs more than 45 days receive a hearing. The Commissioner is also required to review all policies in effect on the effective date of the bill relating to special management prisoners and update those policies as necessary to conform to the law.

This amendment was not adopted.

House Amendment "A" To Committee Amendment "A" (H-820)

Joint Standing Committee on Criminal Justice and Public Safety

This amendment removes the review of policies related to placement of special management prisoners provided in Committee Amendment "A". The amendment requires the Department of Corrections to divert or remove an inmate with a serious mental illness, as defined in the amendment, from confinement in a SMU when such confinement could last for a period in excess of one week and states that this provision may not prevent the disciplinary process from proceeding in accordance with department rules for disciplinary hearings.

The amendment also requires the Commissioner of Corrections to maintain a current list of all special management prisoners and, when a prisoner has been retained for more than 60 days in one or more of the units of the SMU, to also maintain a written statement of the criteria relied upon to support that extended confinement. The Commissioner shall provide the boards of visitors, the State Board of Corrections and the joint standing committee of the Legislature having jurisdiction over corrections matters a copy of the list on a quarterly basis.

The amendment further requires the State Board of Corrections to annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management prisoners complies with the law. The State Board of Corrections is required to include its findings in an annual report to the joint standing committee of the Legislature having jurisdiction over corrections matters.

This amendment was not adopted.

House Amendment "B" To Committee Amendment "A" (H-823)

This amendment replaces the review of policies related to placement of special management inmates provided in Committee Amendment "A" with a requirement that the Director of the Office of Program Evaluation and Government Accountability convene a working group to review the policy of secure and humane use of segregation as set forth in this amendment and departmental policies, rules and practices related to the placement of special management inmates. The amendment requires the working group to provide an interim report to the joint standing committee of the Legislature having jurisdiction over corrections matters by November 15, 2010 and a final report including any suggested legislation to the committee by December 15, 2011. It also adds an appropriations and allocations section.

This amendment was not adopted.

Senate Amendment "A" To Committee Amendment "A" (S-518)

This amendment replaces the review of policies related to placement of special management inmates provided in Committee Amendment "A" with a requirement that the Director of the Office of Program Evaluation and Government Accountability convene a working group to review the policy of secure and humane use of segregation as set forth in this amendment and departmental policies, rules and practices related to the placement of special management inmates. The amendment requires the working group to provide an interim report to the joint standing committee of the Legislature having jurisdiction over corrections matters by November 15, 2010 and a final report including any suggested legislation to the committee by December 15, 2011. It also adds an appropriations and allocations section.

This amendment was not adopted.

Enacted Law Summary

Resolve 2009, chapter 213 directs the Commissioner of Corrections, in consultation with the mental health and substance abuse focus group of the State Board of Corrections, to review due process procedures and other policies related to the placement of special management prisoners. Resolve 2009, chapter 213 also requires the Commissioner to consider an appropriate timeline for regular reporting to the joint standing committee of the Legislature having jurisdiction over corrections matters and to report all recommendations, including any suggested policy or legislative changes, to that committee by January 15, 2011. Upon receiving that report, the committee may

Joint Standing Committee on Criminal Justice and Public Safety

report out a bill to the 125th Legislature.

LD 1612 An Act To Amend the Laws Regarding the Unlawful Use of License or Identification Card

PUBLIC 493

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
STRANG BURGESS	OTP-AM	H-617

This bill amends the offense of possessing or displaying a suspended license by creating a two-tier violation, a crime and a traffic infraction, which parallels the changes made to the operating after suspension statute by Public Law 2009, chapter 297. The bill provides that a person commits a Class E crime if that person displays or possesses a suspended driver's license or identification card when operation of the motor vehicle by that person is punishable as a crime. The bill also provides that a person commits a traffic infraction if that person displays or possesses a suspended driver's license or identification card when operation of the motor vehicle by that person is punishable as a traffic infraction.

The bill further adds a cross-reference to clarify what is intended by the conduct of "operating while license suspended." The conduct is as described in the Maine Revised Statutes, Title 29-A, section 2412-A, subsection 1-A, paragraph A. The bill also clarifies which prohibited acts are strict liability crimes.

Committee Amendment "A" (H-617)

This amendment strikes from the bill language regarding the suspension of an identification card, as it is not suspended like a driver's license. The amendment also gives a law enforcement officer the authority to have towed a motor vehicle of a person who is issued a summons for a traffic infraction operating after suspension.

Enacted Law Summary

Public Law 2009, chapter 493 amends the offense of possessing or displaying a suspended license by creating a two-tier violation, a crime and a traffic infraction, which parallels the changes made to the operating after suspension statute by Public Law 2009, chapter 297. Public Law 2009, chapter 493 provides that a person commits a Class E crime if that person displays or possesses a suspended driver's license when operation of the motor vehicle by that person is punishable as a crime. Public Law 2009, chapter 493 further provides that a person commits a traffic infraction if that person displays or possesses a suspended driver's license when operation of the motor vehicle by that person is punishable as a traffic infraction. Public Law 2009, chapter 493 also gives a law enforcement officer the authority to have towed a motor vehicle of a person who is issued a summons for a traffic infraction operating after suspension.

Public Law 2009, chapter 493 also adds a cross-reference to clarify what is intended by the conduct of "operating while license suspended." The conduct is as described in the Maine Revised Statutes, Title 29-A, section 2412-A, subsection 1-A, paragraph A.