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Legislative Document

No. 1440

S.P. 542

In Senate, June 1, 2015

An Act To Amend the Laws Regarding the Department of Corrections

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator ROSEN of Hancock. (GOVERNOR'S BILL)

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

2 **Sec. 1. 15 MRSA §3203-B** is enacted to read:

3 **§3203-B. Consultation with a juvenile community corrections officer**

4 When, in the judgment of a law enforcement officer, Juvenile Court proceedings
5 should not be commenced against a juvenile but referral to a diversion program or
6 restorative justice program is necessary, the law enforcement officer shall consult a
7 juvenile community corrections officer as soon as possible after the determination is
8 made. If the juvenile community corrections officer agrees with the determination, the
9 law enforcement officer may refer the juvenile to a diversion program or restorative
10 justice program and the law enforcement officer shall ensure that the same conditions are
11 met as if the referral had been made by a juvenile community corrections officer as an
12 informal adjustment under section 3301. The law enforcement officer shall inform the
13 attorney for the State, the complainant and the victim of the determination and the
14 reasons for the determination as soon as possible. If either the juvenile community
15 corrections officer or the attorney for the State does not agree with the determination, the
16 juvenile must be referred to the juvenile community corrections officer for an intake
17 assessment, and all relevant provisions of this Part apply.

18 **Sec. 2. 15 MRSA §3204, first ¶**, as amended by PL 1999, c. 624, Pt. B, §7, is
19 further amended to read:

20 Statements of a juvenile or of a juvenile's parents, guardian or legal custodian made
21 to a juvenile community corrections officer during the course of a preliminary
22 investigation or made ~~to a community resolution team~~ in connection with a diversion
23 program or restorative justice program to which the juvenile has been referred under
24 section 3203-B or section 3301 are not admissible in evidence at an adjudicatory hearing
25 against that juvenile if a petition based on the same facts is later filed.

26 **Sec. 3. 15 MRSA §3301, sub-§1**, as amended by PL 1999, c. 624, Pt. B, §8, is
27 further amended to read:

28 **1. Preliminary investigation.** When a juvenile accused of having committed a
29 juvenile crime is referred to a juvenile community corrections officer for an intake
30 assessment, the juvenile community corrections officer shall, except in cases in which an
31 investigation is conducted pursuant to Title 5, section 200-A, conduct a preliminary
32 investigation to determine whether the interests of the juvenile or of the community
33 require that further action be taken.

34 On the basis of the preliminary investigation, the juvenile community corrections officer
35 shall:

- 36 A. Decide that action requiring ongoing supervision is not required either in the
37 interests of the public or of the juvenile;
- 38 B. Make whatever informal adjustment is practicable without a petition; or
- 39 C. Request a petition to be filed.

1 **Sec. 4. 15 MRSA §3301, sub-§5, ¶B**, as amended by PL 1999, c. 624, Pt. B, §9,
2 is further amended to read:

3 B. Make whatever informal adjustment is practicable without a petition. The
4 juvenile community corrections officer may effect whatever informal adjustment is
5 agreed to by the juvenile and the juvenile's parents, guardian or legal custodian if the
6 juvenile is not emancipated, including a restitution contract with the victim of the
7 crime ~~and~~, the performance of community service and referral to a diversion program
8 or a restorative justice program. Informal adjustments may extend no longer than 6
9 months and may not be commenced unless:

10 (1) The juvenile community corrections officer determines that the juvenile and
11 the juvenile's parents, guardian or legal custodian, if the juvenile is not
12 emancipated, were advised of their constitutional rights, including the right to an
13 adjudicatory hearing, the right to be represented by counsel and the right to have
14 counsel appointed by the court if indigent;

15 (2) The facts establish prima facie jurisdiction, except that any admission made
16 in connection with this informal adjustment may not be used in evidence against
17 the juvenile if a petition based on the same facts is later filed; and

18 (3) Written consent to the informal adjustment is obtained from the juvenile and
19 the juvenile's parents, guardian or legal custodian if the juvenile is not
20 emancipated;

21 **Sec. 5. 17-A MRSA §1175, first ¶**, as amended by PL 2013, c. 133, §10, is
22 further amended to read:

23 Upon complying with subsection 1, a victim of a crime of murder or of a Class A,
24 Class B or Class C crime or of a Class D crime under chapters 9, 11 and 12 for which the
25 defendant is committed to the Department of Corrections or to a county jail or is
26 committed to the custody of the Commissioner of Health and Human Services either
27 under Title 15, section 103 after having been found not criminally responsible by reason
28 of insanity or under Title 15, section 101-D after having been found incompetent to stand
29 trial must receive notice of the defendant's unconditional release and discharge from
30 institutional confinement upon the expiration of the sentence or upon release from
31 commitment under Title 15, section 101-D or upon discharge under Title 15, section
32 104-A and must receive notice of any conditional release of the defendant from
33 institutional confinement, including probation, supervised release for sex offenders,
34 parole, furlough, work release, funeral or deathbed visit, supervised community
35 confinement, home release monitoring or similar program, administrative release or
36 release under Title 15, section 104-A. For purposes of this section, "victim" includes a
37 person who has an active protective order or approved consent agreement against the
38 defendant under Title 19-A, section 4007.

39 **Sec. 6. 17-A MRSA §1175, sub-§1**, as enacted by PL 1995, c. 680, §5, is
40 amended to read:

41 **1.** A victim who wishes to receive notification must file a request for notification of
42 the defendant's release with the office of the attorney for the State.—~~The~~ and the attorney

1 for the State shall forward this request form to the Department of Corrections, to the state
2 mental health institute or to the county jail to which that defendant is committed- or if a
3 victim wishes to receive notification concerning a defendant who is committed to the
4 Department of Corrections, the victim may file a request for notification of the
5 defendant's release directly with the Department of Corrections.

6 **Sec. 7. 17-A MRSA §1175, sub-§3, ¶B**, as amended by PL 2013, c. 133, §11, is
7 further amended to read:

8 B. The nature of the release authorized, whether it is a conditional release, including
9 probation, supervised release for sex offenders, parole, furlough, work release,
10 funeral or deathbed visit, supervised community confinement, home release
11 monitoring or a similar program, administrative release or release under Title 15,
12 section 104-A, or an unconditional release and discharge upon release from
13 commitment under Title 15, section 101-D or upon the expiration of a sentence or
14 upon discharge under Title 15, section 104-A;

15 **Sec. 8. 17-A MRSA §1203, sub-§1-A, ¶E** is enacted to read:

16 E. The court may revoke probation if, during the initial unsuspended portion of the
17 term of imprisonment, the person has contact with a victim with whom the person has
18 been ordered not to have contact as a condition of probation.

19 **Sec. 9. 17-A MRSA §1259**, as amended by PL 2013, c. 28, §9, is further amended
20 to read:

21 **§1259. Commitments to the Department of Corrections of bound-over juveniles**
22 **who have not attained 18 years of age at the time of sentence imposition**

23 A juvenile who has been bound over, pursuant to Title 15, section 3101, subsection 4,
24 ~~for a juvenile crime for which the juvenile had the burden of proof with respect to the~~
25 ~~finding of appropriateness~~, who is subsequently, as to the juvenile crime's adult
26 counterpart, convicted and sentenced to a sentence alternative involving imprisonment
27 and who has not attained 18 years of age at the time of sentence imposition must be
28 committed to a Department of Corrections juvenile correctional facility for an
29 indeterminate period not to extend beyond the juvenile's 18th birthday to serve the term
30 of imprisonment or any unsuspended portion until discharge from the juvenile
31 correctional facility and once discharged must be transferred to a correctional facility in
32 which adult offenders are confined to serve out the remainder of the imprisonment term
33 or unsuspended portion, if any.

34 **Sec. 10. 30-A MRSA §1561, sub-§1, ¶D**, as enacted by PL 1995, c. 201, §1, is
35 amended to read:

36 D. Is seriously mentally ill or developmentally disabled. For the purposes of this
37 paragraph, "seriously mentally ill" or "developmentally disabled" means a prisoner
38 who, as a result of a mental disorder or developmental disability, exhibits emotional
39 or behavioral functioning that is so impaired as to interfere substantially with the
40 prisoner's capacity to remain in the general prison population without supportive
41 treatment or services of a long-term or indefinite duration, as determined by the

1 facility's psychiatrist or psychologist. The exemption under this paragraph applies
2 only to supportive treatment or services being provided to improve the prisoner's
3 emotional or behavioral functioning;

4 **Sec. 11. 34-A MRSA §1403, sub-§2, ¶D,** as enacted by PL 2013, c. 491, §3, is
5 repealed.

6 **Sec. 12. 34-A MRSA §3001, sub-§1,** as amended by PL 2013, c. 491, §5, is
7 further amended to read:

8 **1. Appointment.** The commissioner may appoint chief administrative officers as
9 necessary for the proper performance of the functions of the department, subject to the
10 Civil Service Law. An appointment is for an indeterminate term and until a successor is
11 appointed and qualified or during the pleasure of the commissioner.

12 A. To be eligible for appointment as a chief administrative officer, a person must be
13 experienced in correctional management.

14 B. Chief administrative officers shall report directly to the commissioner or to the
15 deputy commissioner or an associate commissioner if so directed by the
16 commissioner.

17 **Sec. 13. 34-A MRSA §3031, sub-§2,** as amended by PL 2011, c. 542, Pt. A, §59,
18 is further amended to read:

19 **2. Medical care.** Adequate professional medical care and adequate professional
20 mental health care, which do not include medical treatment or mental health treatment
21 requested by the client that the facility's treating physician or treating psychiatrist or
22 psychologist determines unnecessary. The commissioner may establish medical and
23 dental fees not to exceed \$5 for the medical and dental services that are provided pursuant
24 to this subsection and a fee not to exceed \$5 for prescriptions, medication or prosthetic
25 devices. Except as provided in paragraph A, every client may be charged a medical or
26 dental services fee for each medical or dental visit, prescription, medication or prosthetic
27 device. The facility shall collect the fee. All money received by the department under
28 this subsection is retained by the facility to offset the cost of medical and dental services,
29 prescriptions, medication and prosthetic devices.

30 A. A client is exempt from payment of medical and dental services fees and fees for
31 prescriptions, medication or prosthetic devices when the client:

32 (1) Receives treatment initiated by facility staff;

33 (2) Is a juvenile;

34 (3) Is pregnant;

35 (4) Is a person with a serious mental illness or developmental disability. For the
36 purposes of this paragraph, "a person with a serious mental illness or
37 developmental disability" means a client who, as a result of a mental disorder or
38 developmental disability, exhibits emotional or behavioral functioning that is so
39 impaired as to interfere substantially with the client's capacity to remain in the
40 general prison population without supportive treatment or services of a long-term

1 or indefinite duration, as determined by the facility's psychiatrist or psychologist.
2 The exemption under this paragraph applies only to supportive treatment or
3 services being provided to improve the client's emotional or behavioral
4 functioning;

5 (5) Is an inpatient at a state-funded mental health facility or is a resident at a
6 state-funded facility for individuals with adult developmental disabilities;

7 (6) Is undergoing follow-up treatment;

8 (7) Receives emergency treatment as determined by the facility's medical or
9 dental staff; or

10 (8) Has less than \$15 in the client's facility account and did not receive
11 additional money from any source for 6 months following the medical or dental
12 service or provision of the prescription, medication or prosthetic device.

13 B. Notwithstanding paragraph A, the State may bring a civil action in a court of
14 competent jurisdiction to recover the cost of medical, dental, psychiatric or
15 psychological expenses incurred by the State on behalf of a client incarcerated in a
16 facility. The following assets are not subject to judgment under this paragraph:

17 (1) Joint ownership, if any, that the client may have in real property;

18 (2) Joint ownership, if any, that the client may have in any assets, earnings or
19 other sources of income; and

20 (3) The income, assets, earnings or other property, both real and personal, owned
21 by the client's spouse or family;

22 ~~A person who has not attained 18 years of age but who is residing in a correctional~~
23 ~~facility pursuant to a conviction as an adult may consent to necessary medical care as if~~
24 ~~the person had attained 18 years of age.~~

25 **Sec. 14. 34-A MRSA §5402, sub-§3, ¶A-1**, as enacted by PL 2013, c. 491, §7,
26 is amended to read:

27 A-1. Appoint regional correctional administrators as necessary for the proper
28 performance of the functions of the department, subject to the Civil Service Law. ~~An~~
29 ~~appointment is for an indeterminate term and until a successor is appointed and~~
30 ~~qualified or during the pleasure of the commissioner.~~

31 (1) To be eligible for appointment as a regional correctional administrator, a
32 person must be experienced in correctional management.

33 (2) A regional correctional administrator shall report directly to the
34 commissioner or to the deputy commissioner or an associate commissioner if so
35 directed by the commissioner.

36 **Sec. 15. 34-A MRSA §5404, sub-§2**, as amended by PL 2013, c. 133, §31, is
37 further amended to read:

38 **2. Arrest.** Arrest, after completing the entry level and orientation training course
39 prescribed by the commissioner, in the following circumstances:

1 A. Arrest violators of probation or supervised release for sex offenders and parole
2 violators and return parole violators upon request of the commissioner;

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

5 C. If the officer has probable cause to believe that a person under the supervision of
6 the department has violated a condition of that person's probation, supervised release
7 for sex offenders or parole, the officer may arrest that person; and

8 D. Arrest and return to a correctional or detention facility persons who have escaped
9 from the official custody of the department. For the purposes of this paragraph,
10 "official custody" has the same meaning as set out in Title 17-A, section 755,
11 subsection 3;

12 **Sec. 16. 34-A MRSA c. 9, sub-c. 1** is repealed.

13 **SUMMARY**

14 This bill authorizes law enforcement officers and juvenile community corrections
15 officers to refer juveniles who commit minor offenses to diversion or restorative justice
16 programs. In order to facilitate the effectiveness of these programs, the protection
17 provided against admissibility in evidence for admissions made at other early stages of
18 the juvenile justice process is provided for admissions made in connection with these
19 diversion and restorative justice programs. An outdated reference to "community
20 resolution teams" is also removed.

21 The bill adds to the protections of the victim notification statute by requiring victim
22 notification of funeral and deathbed visits by prisoners, by adding to the definition of
23 "victim" a person who has obtained from a court a protection from abuse order or
24 received the court's approval for a protection from abuse agreement and by allowing
25 victims to request notification directly from the Department of Corrections.

26 The bill allows a court to revoke the probation of an offender who has contact with a
27 victim during incarceration if contact has been prohibited as a condition of probation.

28 The bill clarifies that the exemption from the payment of a health care copayment for
29 certain mentally ill or developmentally disabled prisoners applies only to health care
30 addressing the mental illness or developmental disability and not to unrelated health care.
31 These provisions apply to both jail and Department of Corrections prisoners. The bill
32 also removes a provision that is outdated as a result of recently enacted statutes
33 prohibiting anyone under 18 years of age from being incarcerated in an adult facility.

34 The bill removes language providing that certain positions in the Department of
35 Corrections serve at the pleasure of the commissioner. The positions include facility
36 heads and regional community corrections administrators.

37 The bill expands the arrest powers of probation officers so that, in addition to the
38 other categories of offenders they may arrest, they are also authorized to arrest escapees
39 from facilities of the Department of Corrections.

1 The bill repeals an outdated uniform interstate compact for juveniles.

2 The bill amends the provision of law requiring a court sentencing a juvenile bound
3 over and convicted as an adult to imprisonment to commit the juvenile to a Department of
4 Corrections juvenile facility until the person attains 18 years of age, with any
5 imprisonment time remaining after the person attains 18 years of age to be served in an
6 adult facility. Currently, this provision is limited to certain serious crimes. The bill
7 eliminates the limitation, thus preventing a person who has not attained 18 years of age
8 who commits a less serious crime from being incarcerated in an adult facility.