



# 125th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2011

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Legislative Document

No. 1419

H.P. 1045

House of Representatives, April 6, 2011

### An Act To Improve the Coordination of State and County Correctional Services

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

A handwritten signature in black ink that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST  
Clerk

Presented by Representative PLUMMER of Windham.  
Cosponsored by Senator SHERMAN of Aroostook and  
Representatives: BURNS of Whiting, DION of Portland, MARTIN of Eagle Lake,  
PICCHIOTTI of Fairfield, RIOUX of Winterport, WILLETTE of Presque Isle, Senator:  
THIBODEAU of Waldo.

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

2 **Sec. 1. 14 MRSA §5545, 2nd ¶**, as amended by PL 2007, c. 653, Pt. A, §4, is  
3 further amended to read:

4 Whenever, under this section or under any other section in this chapter, a court issues  
5 a writ of habeas corpus ordering before it a prisoner confined in any penal or correctional  
6 institution under the control of the Department of Health and Human Services or the  
7 Department of Corrections, or confined in any county jail, its order as to the  
8 transportation of the prisoner to and from the court must be directed to the sheriff of the  
9 county in which the court is located. It is the responsibility of the sheriff or any one or  
10 more of the sheriff's authorized deputies pursuant to any such order to safely transport a  
11 prisoner to and from the court and to provide safe and secure custody of the prisoner  
12 during the proceedings, as directed by the court. At the time of removal of a prisoner  
13 from an institution, the transporting officer shall leave with the head of the institution an  
14 attested copy of the order of the court, and upon return of the prisoner shall note that  
15 return on the copy. This paragraph as it relates to the responsibility for transportation is  
16 applicable to transfers from the county jail to any other county jail or to a state  
17 correctional facility under Title 34-A, section ~~1405~~ 1803-B, subsection 6.

18 **Sec. 2. 30-A MRSA §101, sub-§6-B**, as enacted by PL 2007, c. 653, Pt. A, §5, is  
19 amended to read:

20 **6-B. Support the State Board of Corrections.** Working with the ~~Commissioner~~  
21 Executive Director of the State Board of Corrections and sheriffs, support the State Board  
22 of Corrections, referred to in this subsection as "the board," in its efforts to accomplish its  
23 purpose and duties as defined in Title 34-A, sections 1801 and 1803 by:

- 24 A. Recommending a downsizing plan, a plan for capital construction and  
25 reinvestment strategies to the board;
- 26 B. Recommending uniform policies and procedures for pretrial, probation revocation  
27 and reentry services to the board;
- 28 C. Recommending a plan for the placement, housing and program development for  
29 inmates with mental illness in accordance with standards adopted by the board; and
- 30 D. Within available resources, providing support staff for and expertise to the board;  
31 and

32 **Sec. 3. 30-A MRSA §406, first ¶**, as enacted by PL 2007, c. 653, Pt. A, §6, is  
33 amended to read:

34 In addition to other duties set out in this Title, the sheriffs, working with the  
35 ~~Commissioner~~ Executive Director of the State Board of Corrections and the county  
36 commissioners, have the following duties to support the State Board of Corrections,  
37 referred to in this section as "the board," in its efforts to accomplish its purpose as defined  
38 in Title 34-A, section 1801.

1           **Sec. 4. 30-A MRSA §406, sub-§1**, as enacted by PL 2007, c. 653, Pt. A, §6, is  
2 amended to read:

3           **1. Managing jail and prison capacity and offender placement.** Consistent with  
4 the board's determination of facility use and purpose under Title 34-A, section 1803,  
5 subsection 2, paragraph A, the sheriffs shall assist the ~~Commissioner~~ Executive Director  
6 of the State Board of Corrections with respect to the daily management of offender bed  
7 space throughout the ~~unified~~ coordinated correctional system pursuant to Title 34-A,  
8 section 1801, subsection 1. The sheriffs shall daily provide the following information to  
9 the ~~Commissioner~~ Executive Director of the State Board of Corrections:

10           A. Facility population by gender; classification; legal status, including pretrial or  
11 sentenced; special needs; and any other parameters determined by the ~~Commissioner~~  
12 State Board of Corrections; and

13           B. Facility capacity and available bed space or bed space needs by the reportable  
14 parameters under paragraph A.

15           **Sec. 5. 30-A MRSA §406, sub-§2**, as enacted by PL 2007, c. 653, Pt. A, §6, is  
16 amended to read:

17           **2. Coordinated correctional system plan.** The sheriffs may recommend a  
18 downsizing plan, a plan for capital construction and a reinvestment ~~strategies~~ strategy to  
19 the board.

20           **Sec. 6. 30-A MRSA §709**, as enacted by PL 2007, c. 653, Pt. A, §11, is amended  
21 to read:

22           **§709. County correctional services budgets presented to State Board of Corrections**

23           Notwithstanding any other provision of law, beginning July 1, 2008 and for all  
24 subsequent fiscal years, ~~4~~ 8 months prior to the beginning of the state fiscal year ~~the~~  
25 ~~county clerk from~~ each county shall submit ~~that county's~~ its annual correctional services  
26 budget for the state fiscal year to the State Board of Corrections established in Title 5,  
27 section 12004-G, subsection 6-C. Beginning July 1, 2012, 8 months prior to the  
28 beginning of the state biennial budget period each county shall submit its biennial  
29 correctional services budget for the state fiscal biennium to the State Board of  
30 Corrections. The budget submitted must be signed by the chair of the county  
31 commissioners and attested to by the county commissioners' ~~clerk~~ chief administrative  
32 officer. The budget must include specific amounts for each correctional services related  
33 expenditure.

34           **Sec. 7. 30-A MRSA §710, sub-§1**, as enacted by PL 2007, c. 653, Pt. A, §12, is  
35 amended to read:

36           **1. Budget growth limitation and proposed budget.** At least ~~6~~ 12 months before  
37 the beginning of each state fiscal year, the State Board of Corrections, established in Title  
38 5, section 12004-G, subsection 6-C and referred to in this section as "the board," shall set  
39 a growth limitation for the correctional services expenditures in ~~the new~~ each fiscal year  
40 for each county biennial budget. The county commissioners shall submit itemized

1 correctional services budgets to the board in a format and by a date to be determined  
2 annually by the board, but no later than 8 months before the beginning of each state fiscal  
3 biennium.

4 **Sec. 8. 30-A MRSA §1557-B** is enacted to read:

5 **§1557-B. Emergency transfer of inmates**

6 The State Board of Corrections has control over and must authorize the transfer of  
7 inmates between a county or regional jail and a state correctional facility, except that a  
8 sheriff or regional jail administrator, in consultation with another sheriff or regional jail  
9 administrator, may transfer any inmate, pretrial or sentenced, between a county or  
10 regional jail and another county or regional jail when such transfer is necessary to protect  
11 that inmate, other inmates or correctional staff from an immediate threat directly related  
12 to the presence of the transferred inmate at the facility from which the inmate is  
13 transferred.

14 **Sec. 9. 34-A MRSA §1208**, as amended by PL 2007, c. 102, §6, is further  
15 amended to read:

16 **§1208. Standards for county and municipal detention facilities**

17 The ~~commissioner~~ State Board of Corrections, referred to in this section as "the  
18 board," shall establish standards, pursuant to the Maine Administrative Procedure Act,  
19 Title 5, chapter 375, for county and municipal jails, holding facilities and short-term  
20 detention areas, referred to in this section as county and municipal detention facilities, as  
21 follows and shall enforce them.

22 **1. Establishment.** The ~~commissioner~~ board shall establish both mandatory and  
23 desirable standards for all county and municipal detention facilities, setting forth  
24 requirements for maintaining safe, healthful and secure facilities.

25 **2. Inspections.** Inspections of county and municipal detention facilities must be  
26 conducted by the executive director of the board or that person's designee in accordance  
27 with standards adopted by the board pursuant to this section and are governed as follows.

28 A. The ~~commissioner~~ board shall ~~conduct~~ ensure that a comprehensive inspection of  
29 each county and municipal detention facility is conducted every 2 years, in order to  
30 provide the ~~department~~ board with information, verified by on-site inspection,  
31 regarding compliance with all ~~department~~ board standards.

32 B. The ~~commissioner~~ board shall ~~conduct~~ ensure that no fewer than 3 additional  
33 inspections of each county and municipal detention facility are conducted during the  
34 period between each comprehensive inspection, in order to determine continued  
35 compliance with standards.

36 C. The ~~commissioner~~ executive director of the board may inspect a county or  
37 municipal detention facility at any time, without prior notice, to determine  
38 compliance with standards.

1 C-1. As part of any inspection, the ~~commissioner~~ executive director of the board may  
2 access any records, including, but not limited to, the records of persons detained or  
3 committed in the facility, as considered necessary by the ~~commissioner~~ executive  
4 director of the board in order to determine compliance with standards.

5 D. The ~~commissioner~~ executive director of the board shall prepare a written report of  
6 each inspection and shall send a copy of the report to appropriate county or municipal  
7 officials within 15 days after the inspection.

8 (1) The report shall summarize inspection findings.

9 (2) The report shall list the standards with which the facility does not comply  
10 and set forth the reasons for noncompliance.

11 E. The ~~commissioner~~ board shall order the noncomplying county or municipality to  
12 respond to this report in accordance with subsection 3.

13 **3. Standards compliance.** Each county and municipal detention facility shall, unless  
14 granted a variance pursuant to subsection 5, comply with the mandatory standards  
15 established by the ~~commissioner~~ board.

16 A. Within 60 days from the receipt of an inspection report for each mandatory  
17 standard listed in subsection 2, paragraph D, subparagraph (2), the county or  
18 municipality shall either:

19 (1) Correct deficiencies listed in the report and submit to the ~~department~~ board a  
20 written response listing the corrections made; or

21 (2) Offer a plan to correct those deficiencies for consideration by the ~~department~~  
22 board.

23 B. If a county or municipality fails to correct deficiencies and offers no plan of  
24 correction, or if the plan of correction offered to the ~~department~~ board is determined  
25 inadequate by the ~~commissioner~~ board, the ~~commissioner~~ board shall determine an  
26 appropriate action to restrict or modify the operations of the facility, consistent with  
27 the nature of the uncorrected deficiencies, which action may include ordering an  
28 entire facility closed until the deficiencies have been corrected.

29 (1) Before any such action is taken, the ~~commissioner~~ board shall notify the  
30 county or municipality in writing of the planned action and shall offer the  
31 opportunity to meet and discuss the planned action.

32 (2) If a meeting is not requested by the county or municipality within 15 days  
33 after the county or municipality receives notice of the planned action, or if a  
34 meeting is held and fails to produce a plan of correction acceptable to the  
35 ~~commissioner~~ board, the ~~commissioner~~ board shall take the planned action.

36 **4. Emergency powers.** The ~~commissioner~~ executive director of the board may take  
37 immediate action in response to noncompliance with a mandatory standard, if the  
38 noncompliance is determined to endanger the safety of the staff, inmates or visitors of  
39 any county or municipal detention facility.

40 A. The ~~commissioner's~~ executive director of the board's action under this subsection  
41 ~~shall expire~~ expires within 90 days or upon compliance with the mandatory standard.

1 B. After having taken action under this section, the ~~commissioner~~ executive director  
2 of the board shall send a written inspection report to the affected facility.

3 C. The ~~commissioner~~ board shall decide what long-term action to take with respect  
4 to the affected facility on the basis of county or municipality response to the  
5 inspection report and subsequent meetings.

6 **5. Variances.** The ~~commissioner~~ board shall establish written procedures to govern  
7 the submission and consideration of requests for variances from established departmental  
8 standards, including provisions for ~~department~~ board consideration of appeals of  
9 decisions.

10 A. The ~~commissioner~~ board may grant a variance only when ~~he~~ the board determines  
11 that the variance will not result in diminishing the safety, health or security of staff,  
12 inmates or visitors of a county or municipal detention facility.

13 B. The ~~commissioner~~ board may grant variances to counties and municipalities for  
14 periods of up to 2 years.

15 C. County and municipal officials may request variances from mandatory  
16 ~~department~~ standards adopted pursuant to this section if:

17 (1) Efforts are underway to achieve compliance and continued failure to comply  
18 is only temporary; or

19 (2) The intent and spirit of the standards may be attained through other means.

20 D. The officials applying for a variance have the burden of showing clear  
21 justification for the variance.

22 **6. Advisory review.** The ~~commissioner~~ board shall create and maintain a county  
23 and municipal detention facility advisory committee.

24 A. The committee ~~shall consist~~ consists of representatives of the Department of  
25 Corrections, Maine Sheriffs' Association, Maine County Commissioners' Association,  
26 Maine Chiefs of Police Association, Attorney General, Legislature and citizens.

27 B. The terms of members of this committee ~~shall be~~ are one year.

28 C. Members of the county and municipal detention facility advisory committee are  
29 eligible for reappointment at the expiration of their term.

30 D. The ~~commissioner~~ board shall consult the committee when promulgating  
31 standards and may consult the committee when variances are sought, when actions  
32 are contemplated by the ~~commissioner~~ board in response to a failure to comply with  
33 standards and when the ~~commissioner~~ board determines that the consultation is  
34 necessary for other reasons.

35 **7. Technical assistance.** The ~~commissioner~~ board may provide technical assistance  
36 to county and municipal detention facilities to facilitate compliance with standards within  
37 available resources.

38 **Sec. 10. 34-A MRSA §1404**, as amended by PL 2009, c. 391, §9, is repealed.

1           **Sec. 11. 34-A MRSA §1404-A** is enacted to read:

2           **§1404-A. Duties and powers of the commissioner in support of the State Board of**  
3           **Corrections**

4           In addition to other duties and powers set out in this Title, the commissioner has the  
5           following duties and powers to support the State Board of Corrections, referred to in this  
6           section as "the board," in its efforts to accomplish its purpose as described in section  
7           1801.

8           **1. Emergency transfer of inmates.** The board has control over and must authorize  
9           the transfer of inmates between a county or regional jail and a state correctional facility,  
10           except that the commissioner, in consultation with a sheriff or regional jail administrator,  
11           may transfer any inmate, pretrial or sentenced, between a county or regional jail and a  
12           state correctional facility when such transfer is necessary to protect that inmate, other  
13           inmates or correctional staff from an immediate threat directly related to the presence of  
14           the transferred inmate at the facility from which the inmate is transferred.

15           **2. Coordinated correctional system plan.** The commissioner may recommend a  
16           downsizing plan and a reinvestment strategy to the board.

17           **3. Uniform policies and procedures.** The commissioner may recommend uniform  
18           practices for pretrial, revocation and reentry services to the board.

19           **4. Support of the board.** The commissioner shall provide administrative staffing  
20           for the board and expertise as requested by the board and shall serve as the fiscal agent  
21           for the board.

22           **Sec. 12. 34-A MRSA §1405**, as amended by PL 2009, c. 391, §10, is repealed.

23           **Sec. 13. 34-A MRSA §1801, sub-§1**, as enacted by PL 2007, c. 653, Pt. A, §30,  
24 is amended to read:

25           **1. Purpose of the board.** The purpose of the board is to develop and implement a  
26 ~~unified~~ coordinated correctional system that demonstrates sound fiscal management,  
27 achieves efficiencies, reduces recidivism and ensures the safety and security of  
28 correctional staff, inmates, visitors, volunteers and surrounding communities.

29           **Sec. 14. 34-A MRSA §1801, sub-§2**, as enacted by PL 2007, c. 653, Pt. A, §30,  
30 is amended to read

31           **2. State goals.** The board shall develop goals to guide the development of and  
32 evaluate the effectiveness of a ~~unified~~ coordinated correctional system. The board shall  
33 present its goals for review and approval by the joint standing committee of the  
34 Legislature having jurisdiction over criminal justice and public safety matters. The goals  
35 must include benchmarks for performance in the following areas:

- 36           A. Recidivism reduction;
- 37           B. Pretrial diversion; and

1 C. Rate of incarceration.

2 **Sec. 15. 34-A MRSA §1802, sub-§1**, as amended by PL 2009, c. 89, §1, is  
3 further amended to read:

4 **1. Appointments.** The board consists of 9 members who are appointed by the  
5 Governor. Each appointment is subject to review by the joint standing committee of the  
6 Legislature having jurisdiction over criminal justice and public safety matters and to  
7 confirmation by the Senate, except those members appointed pursuant to paragraph C.  
8 The following provisions govern member qualifications:

9 A. ~~One member~~ Two members must be a sitting ~~sheriff~~ sheriffs selected from a list  
10 of 3 nominations submitted to the Governor by a statewide organization representing  
11 sheriffs;

12 B. ~~One member~~ Two members must be a sitting county ~~commissioner~~  
13 commissioners selected from a list of 3 nominations submitted to the Governor by a  
14 statewide organization representing county commissioners;

15 C. ~~Two members~~ One member must be ~~representatives of the executive branch and~~  
16 ~~at least one of the 2 must be from the department~~ the commissioner or the  
17 commissioner's designee;

18 D. One member must be a municipal official selected from a list of 3 nominations  
19 submitted to the Governor by a statewide organization representing elected and  
20 appointed municipal officers and officials; ~~and~~

21 E. ~~Four members~~ One member must be broadly representative of the public ~~and the~~  
22 ~~geographical regions of the State. One of the 4 members appointed under this~~  
23 ~~paragraph must be selected from a list of 3 nominations submitted to the Governor by~~  
24 ~~a statewide organization representing county commissioners. — A~~ The member  
25 appointed under this paragraph may not be an elected state or county official or  
26 municipal officer and may not derive income in substantial portion from work as an  
27 employee of a state, county or municipal government or in the field of corrections;

28 F. One member must be a sitting county administrator selected from a list of 3  
29 nominations submitted to the Governor by a statewide organization representing  
30 county administrators; and

31 G. One member must be a sitting county or regional jail administrator selected from  
32 a list of 3 nominations submitted to the Governor by a statewide organization  
33 representing county or regional jail administrators.

34 Of the 9 members, one must be a person with expertise in issues relating to mental illness.

35 **Sec. 16. 34-A MRSA §1803, first ¶**, as enacted by PL 2007, c. 653, Pt. A, §30, is  
36 amended to read:

37 ~~The~~ In addition to other duties and powers set out in this Title, the board is charged  
38 with the following responsibilities and duties.

39 **Sec. 17. 34-A MRSA §1803, sub-§1**, as amended by PL 2009, c. 391, §§11 to  
40 13, is further amended to read:

1           **1. Manage the cost of corrections.** The board shall develop a plan to achieve  
2 systemic cost savings and cost avoidance throughout the ~~unified~~ coordinated correctional  
3 system with the goal of operating efficient correctional services. Additionally, the board  
4 shall:

5           A. Set and enforce a yearly growth limitation for the correctional services  
6 expenditures in each county budget under Title 30-A, section 710;

7           B. Develop reinvestment strategies within the ~~unified~~ coordinated correctional  
8 system to improve services and reduce recidivism;

9           C. Establish boarding rates for the ~~unified~~ coordinated correctional system, except  
10 boarding rates for federal inmates; ~~and~~

11           D. Review department biennial and supplemental budget proposals affecting adult  
12 correctional and adult probation services and submit recommendations regarding  
13 these budget proposals to the joint standing committee of the Legislature having  
14 jurisdiction over criminal justice and public safety matters and the joint standing  
15 committee of the Legislature having jurisdiction over appropriations and financial  
16 affairs; and

17           E. Develop parameters for facility population, including but not limited to gender;  
18 classification; legal status, including pretrial or sentenced; and special needs.

19           **Sec. 18. 34-A MRSA §1803, sub-§3, ¶C**, as enacted by PL 2007, c. 653, Pt. A,  
20 §30, is amended to read:

21           C. Coordinate transportation of inmates in the ~~unified~~ coordinated correctional  
22 system.

23           **Sec. 19. 34-A MRSA §1803, sub-§10**, as enacted by PL 2007, c. 653, Pt. A, §30,  
24 is amended to read:

25           **10. Reporting.** The board shall make initial reports to the joint standing committee  
26 of the Legislature having jurisdiction over criminal justice and public safety matters by  
27 January 15, 2009 and by April 1, 2009. Thereafter, the board shall report at least  
28 annually, beginning January 15, 2010, and as requested. Reports must include any  
29 recommendations for amending laws relating to the ~~unified~~ coordinated correctional  
30 system or the board.

31           **Sec. 20. 34-A MRSA §1803-A** is enacted to read:

32           **§1803-A. Office of executive director**

33           **1. Appointment.** The State Board of Corrections shall appoint the Executive  
34 Director of the State Board of Corrections, referred to in this section as "the executive  
35 director," to serve at its pleasure.

36           **2. Qualifications.** To qualify for appointment as executive director, a person must  
37 have training and experience in correctional administration or satisfactory experience in  
38 the direction of work of a comparable nature.

1           **Sec. 21. 34-A MRSA §1803-B** is enacted to read:

2           **§1803-B. Duties and powers of executive director**

3           In addition to other duties and powers set out in this Title, the Executive Director of  
4 the State Board of Corrections, referred to in this section as "the executive director," has  
5 the following duties and powers to support the State Board of Corrections, referred to in  
6 this section as "the board," in its efforts to accomplish its purpose as described in section  
7 1801. The executive director shall perform the following duties and exercise the  
8 following powers consistent with policies established by the board.

9           **1. Managing facility capacity and inmate placement.** Consistent with the board's  
10 determination of facility use and purpose under section 1803, subsection 2, paragraph A,  
11 the executive director is responsible for the daily management of inmate bed space  
12 throughout the coordinated correctional system and shall direct the transfer of inmates  
13 between facilities in order to fulfill this responsibility. The executive director shall  
14 develop a process for information sharing between the correctional facilities and the  
15 county jails, which must include at a minimum:

16           A. Daily reporting to the board by county jails of:

17                   (1) Facility population by gender; classification; legal status, including pretrial or  
18 sentenced; special needs; and any other parameters determined by the board; and

19                   (2) Facility capacity and available bed space or bed space needs by the  
20 reportable parameters under subparagraph (1); and

21           B. Regular consultation with sheriffs.

22           **2. Coordinated correctional system plan.** The executive director may recommend  
23 a downsizing plan and a reinvestment strategy to the board.

24           **3. Uniform policies and procedures.** The executive director may recommend  
25 uniform practices for pretrial, revocation and reentry services to the board.

26           **4. Inspections and investigation.** The executive director shall inspect county  
27 facilities consistent with sections 1208 and 1208-A.

28           **5. Inmates with mental illness.** The executive director shall determine the  
29 placement, housing and program development for inmates with mental illness within  
30 correctional facilities and county jails in accordance with standards adopted by the board.

31           **6. Transfer of inmates.** Except in the case of an emergency transfer of an inmate by  
32 the commissioner pursuant to section 1404-A, subsection 1, or by a sheriff or regional jail  
33 administrator pursuant to Title 30-A, section 1557-B, the executive director has the  
34 authority to transfer any inmate, pretrial or sentenced, from one county or regional jail to  
35 another or between a county or regional jail and a state correctional facility.

36           **7. Transferee subject to rules.** A sentenced person transferred under this section is  
37 subject to the general rules of the facility to which the person is transferred, except that:

38           A. The term of the original sentence remains the same unless altered by the court;



- 1 E. The Commissioner of Corrections or the commissioner's designee;
- 2 F. One municipal official; and
- 3 G. One public member.

4 2. It revises the provisions of law governing the submission of jail budgets to the  
5 State Board of Corrections by making those submissions on a biennial basis and by  
6 providing sufficient time before the beginning of the biennium for preparation and  
7 submission.

8 3. It creates a full-time position of Executive Director of the State Board of  
9 Corrections to replace a limited-period position established by financial order and  
10 enumerates the powers and duties of that position, including developing parameters for  
11 jail populations and standards for jails, transferring inmates between correctional  
12 facilities and inspecting the jails.

13 4. It allows the Commissioner of Corrections and the sheriffs and regional jail  
14 administrators the authority to make emergency transfers of inmates to protect against an  
15 immediate threat to the safety of inmates or correctional staff without prior authorization  
16 from the State Board of Corrections.

17 5. It changes references to "unified correctional system" to "coordinated correctional  
18 system" to more accurately reflect the role of the board.