

Drafter: JO

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An Act to Reform the Criminal Justice System

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

PART A

Sec. A-1. 5 MRSA section 3108 is enacted to read:

§3108. Community Justice and Behavioral Health Council

The Community Justice and Behavioral Health Council, hereinafter referred to as “the council,” is established within the Office of Policy Innovation and the Future.

1. Scope, duties and priorities. The purpose of the council is to coordinate and administer state criminal justice and public safety grants and programs, including support for local law enforcement, diversion, pretrial services, supervision, and reentry from jail or prison. Within that scope the council shall ensure coordination among grants from and programs within the Department of Public Safety, Department of Corrections, Department of Health and Human Services, Maine State Housing Authority, Department of Education and Department of Labor. The council shall act as a clearinghouse to coordinate state action, grants and programs that relate to the purposes listed in paragraphs A through I. Using state appropriations to the council or to any of the listed agencies the council shall give highest priority to the following state action, grants and programs:

- A. Crisis services available for law enforcement referrals;
- B. Behavioral health resources to assist law enforcement responding to calls for assistance;
- C. Pre-arrest diversion for people with mental illness or substance use disorders;
- D. Restorative justice initiatives to reduce crime and recidivism;
- E. Peer support specialists in jails to address transportation needs and to assist with navigation of the healthcare system;
- F. Intensive case management provided in or through jails to include reentry supports for people with mental illnesses, substance use disorders or co-occurring disorders;

G. Services of opioid health home and behavioral health home personnel provided in or through jails to assist with enrollment in the MaineCare program, coordination of health care, medication-assisted treatment for substance use disorder and counseling services;

H. Increased capacity of co-occurring disorder treatment; and

I. Assistance with reentering society provided to a person after a term of incarceration, including, but not limited to, resources, programs or facilities as follows:

(1) Increased housing options and a continuum of housing options including, but not limited to, permanent supportive housing;

(2) Innovative transportation services; and

(3) Access to childcare.

2. Grants; contracts; memoranda of understanding. Using state appropriations to the council for the purposes of this section, the council may provide formula grants and discretionary grants to municipalities, counties, councils of government, and non-profit organizations. If formula grants are used, the judging of grant applications must be based on a formula that provides comparable weight to population and land area. If discretionary grants are provided, the judging of grant applications must be competitive and targeted to the priorities in subsection 1. The council may enter into contracts and memoranda of understanding in order to achieve efficiencies in the delivery of programs and services.

3. Requirements. The following requirements apply to the council and to municipalities, counties, councils of government and nonprofit organizations that have been awarded grants under subsection 2.

- A. The council shall report annually to the Legislature and to the joint standing committee having jurisdiction over criminal justice and public safety matters, the joint standing committee having jurisdiction over health and human services matters and the joint standing committee having jurisdiction over judiciary matters on activities conducted under this section, including the collection of data on performance measures adopted by the council.
- B. The council shall collaborate with the Maine Criminal Justice Academy and the Department of Health and Human Services to develop training curricula for criminal justice personnel regarding work interactions with persons with mental illness and substance use disorder and training curricula for providers of behavioral health services regarding work interactions with people in the criminal justice system.
- C. The council shall adopt rules regarding application procedures and judging to receive funding, operational, auditing and reporting requirements and performance measures to be used by municipalities, counties, councils of government and nonprofit organizations that have been awarded grants under subsections 2 and 4. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

4. Local and county options and requirements. The following provisions apply to municipalities, counties, councils of government and nonprofit organizations.

- A. As a condition of receiving a grant, the grant recipient is required to demonstrate comprehensive stakeholder collaboration.
- B. Using funds distributed under this section, each county shall join a master contract for pretrial services entered into by the council, or shall provide a program, directly or through contract with an organization, to supervise defendants subject to a pretrial release condition imposed pursuant to Title 15, section 1026, subsection 3, paragraph A, subparagraph (1) and such requirements as may be established by rule or order of the Supreme Judicial Court.

5. Membership. The membership of the council must include a representative of the Chief Justice of the Maine Supreme Court and members who are appointed by the Governor. The membership must reflect the gender and racial populations of the state and must include the following persons designated or appointed by the Governor:

- A. The Commissioner of Public Safety or the commissioner's designee;
- B. The Director of the Maine Criminal Justice Academy or the director's designee;
- C. The Director of the Office of Substance Abuse and Mental Health Services or the director's designee;
- D. The Commissioner of Corrections or commissioner's designee;
- E. The Associate Commissioner for Juvenile Services in the Department of Corrections or the associate commissioner's designee;
- F. The Commissioner of Education or the commissioner's designee;
- G. The Attorney General or the Attorney General's designee;
- H. The Chief of the Maine State Police or the chief's designee;
- I. One member who represents the Maine Commission on Domestic and Sexual Abuse;
- J. One member who represents a statewide coalition against sexual assault;
- K. One member who represents a statewide association working to end domestic violence;
- L. An elected district attorney;
- M. One member who represents a statewide association of police chiefs;
- N. One member who represents a statewide association of county sheriffs;

- O. One member who represents the Maine State Housing Authority;
- P. One member who represents a statewide association of county commissioners, county managers and county administrators;
- Q. One member who represents a statewide association of municipal welfare directors;
- R. One member who represents a statewide association of municipalities;
- S. One member who represents a nonprofit community organization working to advance the practice of restorative justice;
- T. One member recommended to the Governor by the Wabanaki tribal governments of the Aroostook Band of Micmacs, the Houlton Band of Maliseet Indians, the Passamaquoddy Tribe at Motahkmikuk, the Passamaquoddy Tribe at Sipayik and the Penobscot Nation; and
- U. One member who is a resident of the state who is a member of a minority population.

PART B

Sec. B-1. 5 MRSA 199, as amended by PL 1989, c. 502, Pt. A, §11, is further amended to read:

§199. Consultation with, and advice to, district attorneys

The Attorney General shall consult with and advise the district attorneys in matters relating to their duties. If in the Attorney General's judgment the public interest so requires, the Attorney General shall assist them by attending the grand jury in the examination of a case in which the accused is charged with treason or murder, and if in the Attorney General's judgment the public interest so requires, the Attorney General shall appear for the State in the trial of indictments for treason or murder. The Attorney General may institute and conduct prosecutions for all offenses against Title 21-A, and for that purpose attend and present evidence to grand juries and assist them in the examination of witnesses and drawing indictments. The Attorney General may, in the Attorney General's discretion, act in place of or with the district attorneys, or any of them, in instituting and conducting prosecutions for crime, and is invested, for that purpose, with all the rights, powers and privileges of each and all of them. Any or all of the powers and duties enumerated in this chapter may, at the discretion of the Attorney General, be delegated to and performed by, any deputy attorney general, assistant attorney general or staff attorney. The authority given under this section shall not be construed to deny or limit the duty and authority of the Attorney General as heretofore authorized, either by statute or under the common law. The Attorney General shall employ staff and implement procedures to advise district attorneys on effective policies and practices related to domestic violence.

Sec. B-2. 5 MRSA §200-L, subsection 3 is enacted to read:

3. Data; analysis. The Attorney General must have access to all law enforcement data submitted to the State Bureau of Identification under Title 25, section 1544 and shall contract with the Maine Statistical Analytical Center to conduct a yearly analysis of traffic stop data by age, gender, race and ethnicity beginning with agencies that employ more than 25 officers.

PART C

Sec. C-1. 15 MRSA §2151, as amended by PL 1997, c. 354, §1, is further amended to read:

§2151. Application to the Supreme Judicial Court by defendant for review of certain sentences

In cases arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, or sentenced to a term of imprisonment under Title 17-A section 1602, subsection 4, the defendant may apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence, except:

1. Different term could not be imposed. In any case in which a different term of imprisonment could not have been imposed;

2. Plea agreements. In any case in which the particular disposition involving imprisonment was imposed as a result of a court accepting a recommendation of the type specified in the Maine Rules of Unified Criminal Procedure, Rule 11A, subsection (a)(2) or (a)(4); or

3. Restitution. As limited by Title 17-A, section 2017.

Sec C-2. 17-A MRSA §1602, subsection 4 is enacted to read:

4. Departure from the presumption of probation. In imposing a sentence for a crime listed in section 1605, subsection 3, except for a crime exempted in section 1605 subsection 2, paragraphs A through C, the court shall determine if relevant aggravating sentencing factors justify a departure from the presumption of a sentencing alternative of probation, and only if the court has determined that a departure is justified, employ the sentencing process for a term of imprisonment as specified in subsection 1.

Sec. C-3. 17-A MRSA §1605, as added by PL 2019, c. 113, Pt. A, §2, is amended to read:

§1605. Suspension of all or part of the term of imprisonment imposed; presumptive probation

1. Suspension permitted. Unless the law that the individual is convicted of violating expressly provides that an authorized term of imprisonment may not be suspended, if the individual is eligible for probation as authorized by chapter 67, subchapter 1 or administrative release as authorized by chapter 67, subchapter 2, a sentencing court may suspend the authorized term of imprisonment in whole or in part and accompany the suspension with a period of probation, which may not exceed the maximum period of probation authorized for the crime pursuant to section 1804, or a period of administrative release, which may not exceed one year.

2. Probation presumed. A sentencing alternative of probation is presumed to be the appropriate sentence for a Class C crime listed in subsection 3, unless:

- A. The punishment for the crime has been enhanced to Class C because the person has one or more predicate convictions;
- B. The crime was committed with the use of a dangerous weapon; or
- C. The person waives the presumption of probation.

3. Class C crimes. Probation is presumed to be the appropriate sentence for the following crimes:

- A. Title 1, section 202;
- B. Title 8, section 223, 280 and 1054;
- C. Title 9-B, section 466;
- D. Title 10, section 1101 and 1102;
- E. Title 13, section 1319-T;
- F. Title 15, section 1091;
- G. Title 17-A, chapter 15; section 405; chapter 18; chapter 25; chapter 29 and chapter 45;
- H. Title 20-A section 10802;
- I. Title 21-A;
- J. Title 22, section 7251;
- K. Title 29-A, section 2106;
- L. Title 30-A, section 5802;
- M. Title 32, section 11304 and 16508;
- N. Title 34-B, section 3805; and
- O. Title 35-A, section 1508.

Sec. C-4. 17-A MRSA §1812, sub-§4, as added by PL 2019, c. 113, Pt. A, §2, is amended to read:

4. Failure to comply with requirement of probation. If the alleged violation does not constitute a crime and the court finds by a preponderance of the evidence that the person on probation has inexcusably failed to comply with a requirement imposed as a condition of probation, it may ~~revoke probation~~ impose a term of imprisonment up to 60 days for the first violation considered by the court that does not constitute a crime and up to 120 days for the second violation considered by the court that does not constitute a crime. The court may revoke probation for the third violation considered by the court that does not constitute a crime.

Sec. C-5. 17-A MRSA §1901, as added by PL 2019, c. 113, Pt. A, §2, is amended to read:

§1901. Eligibility for deferred disposition

A person who has pleaded guilty to unlawful possession of a scheduled drug under 1107-A, section 1, paragraph A or a Class C, Class D or Class E crime and who consents to a deferred disposition in writing is eligible for a deferred disposition.

PART D

Sec. D-1. 17-A MRSA §1354, as amended by PL 1997, c. 134, §10, is further amended to read:

§1354. Duties

1. It shall be the duty of the commission:

- A. To examine the sections of the Revised Statutes outside of the Criminal Code which pertain to the criminal law and to draft such amendments to those sections as the commission deems advisable in light of the Criminal Code;
- B. To evaluate the operation of the Criminal Code and to recommend amendments to the code based on such evaluation;
- C. To examine the present laws pertaining to criminal pleadings and to consider possible changes, including, but not limited to, the adoption of code pleading and the preparation of pleading forms;
- D. To examine any other aspects of Maine's criminal law, including substantive, procedural and administrative matters, which the commission deems relevant; ~~and~~
- E. To evaluate the operation of the Maine Juvenile Code, Title 15, Part 6, and to recommend amendments to that code based on that evaluation;
- F. To obtain case-level data, including age, gender, race and ethnicity data; and

G. To conduct data analysis of arrests, deferred dispositions, sentencing, probation supervision including violations, and incarceration including discipline.

2. The commission shall submit to the Legislature, at the start of each session, data analysis and such changes in the criminal laws and in related provisions as the commission may determine appropriate. The commission may also make recommendations to the Chief Justice of the Supreme Judicial Court, the Advisory Committee on Criminal Rules and to any other organization or committee whose affairs pertain to the criminal justice system.

Sec. D-2. 17-A MRSA §1355, sub-§2, as amended by PL 2003, c. 143, §13, is further amended to read:

2. Within the limits of its budget, the commission shall be authorized to contract and employ staff members, who need not be residents of this State, to assist in the data collection and analysis under section 1354, subsection 1, paragraph D, legal research, and drafting required in connection with the duties of the commission.

Sec. D-3. 17-A MRSA §1357, as added by PL 1975, c. 740, §124, is amended to read:

§1357. Federal funds

The commission shall be authorized on behalf of the State to accept federal funds ~~and may seek the advice and assistance of the Criminal Justice Planning and Assistance Agency in carrying out its duties.~~

PART E

Sec. E-1. 22 MRSA §8705-B is enacted to read:

§8705-B. Study of current health coverage status and costs

The board shall conduct research on the current health coverage status and costs of people eligible for the MaineCare program who have been involved in the criminal justice system, in order to assist in planning and targeting needed behavioral and physical health services for people who have or currently are involved in the criminal justice system and live in community-based settings. The board may contract for this research under section 8704, subsection 2.

Sec E-2. 34 MRSA §1210-D, sub-§§1, 2, 2-A and 3 are amended to read:

§1210-D. County Jail Operations Fund

1. County Jail Operations Fund. Notwithstanding any provision of law to the contrary, at least \$12,202,104 in state funding must be appropriated annually and used for the purposes of the County Jail Operations Fund, as established pursuant to this section and referred to in this section as "the fund." The department shall administer the fund and shall distribute funds to the jails in accordance with this section for the purposes set forth in subsections ~~2 and~~ 3.

~~**2. Community corrections.** The fund must be used for the purpose of establishing and maintaining community corrections. For purposes of this subsection, "community corrections" means the delivery of correctional services for adults in the least restrictive manner that ensures the public safety by the county or for the county under contract with a public or private entity. "Community corrections" includes, but is not limited to, preventive or diversionary correctional programs, pretrial release or conditional release programs, alternative sentencing or housing programs, electronic monitoring, residential treatment and halfway house programs, community correctional centers and temporary release programs from a facility for the detention or confinement of persons convicted of crimes. The following provisions apply to community corrections funding.~~

- ~~A. Thirty percent of the funds distributed to the counties under this section must be used for the purpose of community corrections.~~
- ~~B. The county treasurer shall deposit 30% of the funds received under subsection 4 into an account for community corrections purposes.~~
- ~~C. Before distributing to a county that county's entire distribution under this section, the department shall require that county to submit appropriate documentation verifying that the county expended 30% of its prior distribution for the purpose of community corrections as required by this section.~~
- ~~D. If a county fails to submit appropriate documentation verifying that the county expended 30% of its prior distribution for the purpose of community corrections under paragraph C, the department shall distribute to that county only 80% of its distribution. The department shall hold in escrow the 20% not distributed to a county to give the county jail an opportunity to comply with the requirement that 30% of the total distribution be used for community corrections purposes and qualify for disbursement of the withheld funds.~~

~~**2-A. Pretrial release or conditional release programs.** Using community corrections funds distributed under this section, each county shall provide a program, directly or through contract with an organization, to supervise defendants subject to a pretrial release condition imposed pursuant to Title 15, section 1026, subsection 3, paragraph A, subparagraph (1) and such requirements as may be established by rule or order of the Supreme Judicial Court.~~

3. Prisoner support. The fund must be used to provide a portion of the counties' costs of the support of prisoners detained or sentenced to county jails. The following provisions apply to prisoner support funding.

- ~~A. Up to 70% of the~~ The funds distributed to a county under this section may be used for the purpose of support of prisoners detained or sentenced to county jails and for such other jail operations and correctional services purposes as the sheriff determines to be appropriate.
- ~~B. The county treasurer shall deposit 70% of the funds received under subsection 4 into an account for prisoner support, jail operations and correctional services purposes.~~

Sec. E-3. 34-A MRSA §5402, sub-§ 2, ¶L is amended to read:

- ~~L. Be executive officer and secretary of the board; and~~

Sec. E-4. 34-A MRSA §5402, sub-§2, ¶M is amended to read:

M. Aggregate the statistics contained in any reports the department receives on individual probationers and make the aggregated statistics available to other state agencies provided the data is aggregated in such a way that statistics pertaining to any individual probationer can not be disaggregated. ;

Sec. E-5. 34-A MRSA §5402, sub-§2, sub-sections N, O and P are enacted to read:

N. Maintain a workforce of probation officers sufficient for probation officers to carry manageable caseloads and utilize specialized caseloads to better address the needs of specific adult populations including mental illness, substance use disorders, co-occurring mental and substance use disorders, and gender-responsivity;

O. Provide for programs, interventions and service offerings at probation offices; and

P. Promote within probation services care coordination with community health and social service providers.

Sec. 15. Effective Dates. The provisions of this bill take effect September 1, 2020, except that the following provisions take effect January 1, 2021: the provision that enacts Title 17-A, section 1602, subsection 2; the provision that amends Title 17-A, section 1605, subsection 1; the provision that enacts Title 17-A, section 1605, subsections 2 and 3; the provision that amends Title 17-A, section 1812, subsection 4; and the provision that amends Title 17-A, section 1901.

SUMMARY

This bill implements criminal justice system reforms discussed by the Commission to Improve the Sentencing, Supervision, Management and Incarceration of Prisoners. The bill establishes within the Office of Policy Innovation and the Future the Community Justice and Behavioral Health Council to coordinate and administer state criminal justice and public safety grants and programs, in particular the funding used for community corrections purposes from the County Jail Operations Fund.

The bill provides the Attorney General with access to all law enforcement data submitted to the State Bureau of Identification and requires the Attorney General to contract for a yearly analysis of traffic stop data by age, gender, race and ethnicity.

The bill provides for a presumption of probation as the sentence for certain crimes and provides for penalties for first and subsequent violations of probation. The bill makes deferred disposition available for a person who pleads guilty to unlawful possession of a scheduled drug under Title 17-1, section 1107-A, section 1, paragraph A.

The bill assigns to the Criminal Law Advisory Commission the duties to obtain case-level data, including age, gender, race and ethnicity data and directs the commission to conduct analyses of arrests, deferred dispositions, sentencing, probation supervision including violations and incarceration including

discipline. The bill authorizes the commission to contract and employ staff members to assist in data collection and analysis.

The bill directs the Board of Directors of the Maine Health Data Organization to conduct research on the health coverage status and costs of certain persons who have been involved with the criminal justice system. The bill repeals the community corrections provisions of the County Jail Operations Fund and redirects the funding to prisoner support funding. The bill directs the Commissioner of Corrections to maintain a workforce of probation officers sufficient for probation officers to carry manageable caseloads and directs the use of specialized caseloads. The bill directs the Commissioner of Corrections to provide programs, interventions and service offerings at probation offices and to promote within probation services care coordination with community health and social service providers.

The provides a general effective date of September 1, 2020, except that the following provisions take effect January 1, 2021: the provision that enacts Title 17-A, section 1602, subsection 2; the provision that amends Title 17-A, section 1605, subsection 1; the provision that enacts Title 17-A, section 1605, subsections 2 and 3; the provision that amends Title 17-A, section 1812, subsection 4; and the provision that amends Title 17-A, section 1901.