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Legislative Document

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H.P. 1225

House of Representatives, May 5, 2021

An Act To Stabilize State Funding for County Corrections

(EMERGENCY)

Received by the Clerk of the House on May 3, 2021. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WARREN of Hallowell.
Cosponsored by Representatives: MORALES of South Portland, PICKETT of Dixfield,
PLUECKER of Warren, RECKITT of South Portland, Senator: CYRWAY of Kennebec.

1 (1) Is being held as a result of an arrest, indictment or conviction of murder or a
2 Class A, B or C crime;

3 (2) Is being held for the purposes of a mental examination or treatment pursuant
4 to Title 15, section 101-D with regard to:

5 (a) Competency to proceed pursuant to Title 15, section 101-D, subsection 1
6 and has been held beyond the date and time set by that subsection or the court
7 for the mental health examination and treatment;

8 (b) Insanity or abnormal condition of the mind pursuant to Title 15, section
9 101-D, subsection 2 and has been held beyond the date and time set by that
10 subsection or the court for the mental health examination and treatment;

11 (c) Mental condition relevant to other issues pursuant to Title 15, section
12 101-D, subsection 3 and has been held beyond the date and time set by that
13 subsection or the court for the mental health examination and treatment;

14 (d) Commitment for observation pursuant to Title 15, section 101-D,
15 subsection 4 and has been held beyond the date and time set by that subsection
16 or the court for the mental health examination and treatment; or

17 (e) Court-ordered bail if the person was found incompetent to stand trial
18 pursuant to Title 15, section 101-D, subsection 5, paragraph B;

19 (3) Is being held pursuant to probation revocation proceedings or hearings under
20 Title 17-A, section 1809, 1810, 1811 or 1812 with regard to a preceding conviction
21 as a result of which the person was committed to the custody of the Department of
22 Corrections;

23 (4) Is being held pursuant to an order of the court finding the person in contempt
24 of court pursuant to Maine Rules of Civil Procedure, Rule 66 or Maine Rules of
25 Unified Criminal Procedure, Rule 42; or

26 (5) Is being held in execution of consecutive sentences that together exceed 9
27 months in duration.

28 **2. County Jail Operations Fund.** The County Jail Operations Fund is established to
29 provide funding for county jails and the regional jail. State funding must be appropriated
30 annually for the fund in an amount that equals 20% of total jail operating costs for the prior
31 fiscal year or \$50 per day per state-sanctioned prisoner during the prior fiscal year,
32 whichever is greater. The department shall administer the fund and shall distribute funds
33 to the jails in accordance with this section for the purposes set forth in subsections 3 and 4
34 and in accordance with the distribution formula set forth in subsection 9.

35 **3. Community corrections; pretrial release program.** At least 25% of all funding
36 provided under this section must be used by the county jails and regional jail for
37 establishing, providing and maintaining community corrections and programs and services
38 required by section 1208-B, subsection 3. Jail programs and services must include a
39 program, directly or through contract with an organization, to supervise defendants subject
40 to pretrial release conditions imposed pursuant to Title 15, section 1026, subsection 3,
41 paragraph A, subparagraph (1) and such requirements as may be established by rule or
42 order of the Supreme Judicial Court.

1 **4. Prisoner support.** The fund must be used to provide a portion of the counties' costs
2 of the support of prisoners detained or sentenced to county jails.

3 **5. Annual payments to counties.** The department shall distribute funding payable to
4 the counties for operation of the jails annually if the jails have reported on a timely basis
5 the revenues, expenses and populations information as required by subsection 6. Failure
6 to report revenues, expenses and populations information as required by rule adopted
7 pursuant to subsection 7 may result in delayed payment of funds required to be paid by this
8 section.

9 **6. Required reporting.** The county jails and the regional jail shall report revenues,
10 expenses and populations of persons committed to the custody of the sheriff on the required
11 schedule and in the required format to the department as provided in this subsection.
12 Failure of a jail to report as required by the department may result in delayed annual
13 payments to the counties as provided in subsection 5 as set forth by rule.

14 A. Each jail shall report its revenues and budgeted expenses.

15 B. Each jail shall report its population of persons committed to the custody of the
16 sheriff. The rules must require population reporting on a daily basis and must provide
17 data to the department on actual daily population of persons who are incarcerated and
18 persons on all forms of community release. Population data must be reported in the
19 format required and must record data specific to the definition of "state-sanctioned
20 prisoner."

21 C. Each jail shall report any use of the percentage of funds for programs and services
22 as required by section 1208-B, subsection 3 to the department on a quarterly basis.

23 **7. Rulemaking.** The council shall adopt rules to implement this section. Rules
24 adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter
25 375, subchapter 2-A.

26 **8. Surcharge.** In addition to the 14% surcharge collected pursuant to Title 4, section
27 1057, an additional 1% surcharge must be added to every fine, forfeiture or penalty imposed
28 by any court in this State, which, for the purposes of collection and collection procedures,
29 is considered a part of the fine, forfeiture or penalty. All funds collected pursuant to this
30 subsection are nonlapsing and must be deposited monthly in the fund.

31 **9. Formula; distribution.** The council shall establish by rule a formula for the
32 distribution of funds from the fund to the counties for jail operations. The department shall
33 distribute annually to each county from the fund the amount due to that county calculated
34 pursuant to subsection 2 at a rate of either \$50 per day per state-sanctioned prisoner or 20%
35 of the county's total operating costs for the prior fiscal year as determined according to the
36 following formula. The formula must be based on the most recent fiscal year for which
37 data is available for the county and must:

38 A. Take into consideration total statewide county jail prisoner days for all jails;

39 B. Take into consideration and assign to a jail the number of county jail prisoner days
40 attributable to each prisoner who was charged with committing a crime in that county
41 or who was committed to the custody of or detained by the sheriff of that county; and

42 C. Determine the proportion of statewide county jail prisoner days attributable to each
43 county.

1 **10. Annual reporting to legislative committee.** By October 1st annually, a statewide
2 association of county commissioners and a statewide association of sheriffs shall report to
3 the joint standing committee of the Legislature having jurisdiction over criminal justice and
4 public safety matters regarding the following issues: county jail and regional jail funding
5 through the General Fund, Title 30-A, section 701 and any other revenue sources; funding
6 and operation of community corrections and programs and services required by this
7 section; distribution of funding to the county jails and regional jail; jail reporting of
8 revenues, expenses and populations as required by this section; the experiences of the jails
9 and the Department of Corrections in adopting reporting and fund distribution systems that
10 incorporate the concept of state-sanctioned prisoners; the experiences of the counties in
11 setting their tax assessments for correctional services under Title 30-A, section 701; and
12 the adoption and implementation of new rules specifying mandatory best practices and
13 mandatory standards, policies and procedures under section 1208-B.

14 **Sec. A-4. 34-A MRSA §1210-F** is enacted to read:

15 **§1210-F. County Corrections Professional Standards Council**

16 The County Corrections Professional Standards Council, established in Title 5, section
17 12004-G, subsection 6-D and referred to in this section as "the council," is established to
18 determine the makeup of programs and services required pursuant to section 1208-B,
19 subsection 3, to develop rules for these requirements; to develop rules for reporting to the
20 department the information required in section 1210-E, subsection 6; and to consider the
21 need for legislation regarding required programs, services and reporting and to recommend
22 such legislation to the joint standing committee of the Legislature having jurisdiction over
23 criminal justice matters.

24 **1. Membership.** The council consists of 7 members appointed as follows: 2 members
25 appointed by a statewide association of county commissioners; 2 members appointed by a
26 statewide association of sheriffs; 2 members appointed by the commissioner, one of whom
27 must represent the Department of Administrative and Financial Services; and one member
28 appointed by a statewide association representing municipalities.

29 **2. Terms.** Council members serve for 2-year terms and until their successors have
30 been appointed. Vacancies must be filled in the same manner as the original appointment.

31 **3. Chair.** The chair, who must represent county commissioners or sheriffs, must be
32 selected by a majority vote of the council to serve a 2-year term.

33 **4. Standards regarding failure to report.** The council shall adopt rules specifying
34 standards regarding failure to report data as required beginning July 1, 2022 by section
35 1210-E, subsection 6, and shall adopt rules specifying standards for failure to report data
36 as required and for delaying payments to jails based on failure to report. Rules adopted
37 pursuant to this subsection may not take effect before July 1, 2022.

38 **5. Rulemaking.** The council shall adopt rules in accordance with section 1210-E,
39 subsection 7 and section 1208-B, subsection 3. Rules adopted pursuant to this subsection
40 are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules
41 adopted pursuant to this subsection may not take effect before July 1, 2022.

42 **Sec. A-5. Effective date.** Those sections of this Part that repeal the Maine Revised
43 Statutes, Title 34-A, section 1210-D and that enact Title 34-A, section 1210-E take effect
44 July 1, 2022.

1 **PART B**

2 **Sec. B-1. 30-A MRSA §701, sub-§2-C**, as repealed and replaced by PL 2017, c.
3 475, Pt. A, §50, is amended to read:

4 **2-C. Tax assessment for correctional services beginning July 1, 2015.** Beginning
5 July 1, ~~2015~~ 2021, the counties shall annually collect ~~no less than \$62,172,371~~ the base
6 assessment limit of \$74,267,107 from municipalities for the provision of correctional
7 services in accordance with this subsection. ~~The~~ In subsequent years, the counties may
8 collect an amount that is more or less than the base assessment limit established in this
9 subsection, except that if the amount is increased the additional amount each year may not
10 exceed the original base assessment limit as adjusted by 4% or the growth limitation factor,
11 as established in section 706-A, subsection 3, including any adjustments for extraordinary
12 circumstances allowed under section 706-A, subsection 5 or 4%, whichever is less. If a
13 county collects in a year an amount that is more or less than the base assessment limit
14 established for that county pursuant to this subsection, the base assessment limit in the
15 succeeding year is the amount collected in the prior year, excluding any adjustments for
16 extraordinary circumstances allowed under section 706-A, subsection 5. For the purposes
17 of this subsection, "correctional services" includes management services, personal services,
18 contractual services, commodity purchases, capital expenditures and all other costs, or
19 portions thereof, necessary to maintain and operate correctional services. "Correctional
20 services" does not include county jail debt unless there is a surplus in the account that pays
21 for correctional services at the end of the state fiscal year.

22 The assessment to municipalities within each county may not ~~be less than~~ exceed the base
23 assessment limit, which is:

- 24 A. A sum of ~~\$4,287,340~~ \$4,975,110 in Androscoggin County;
- 25 B. A sum of ~~\$2,316,666~~ \$3,312,333 in Aroostook County;
- 26 C. A sum of ~~\$11,575,602~~ \$14,197,182 in Cumberland County;
- 27 D. A sum of ~~\$1,621,201~~ \$2,400,000 in Franklin County;
- 28 E. A sum of ~~\$1,670,136~~ \$1,965,610 in Hancock County;
- 29 F. A sum of ~~\$5,588,343~~ \$6,478,421 in Kennebec County;
- 30 G. A sum of ~~\$3,188,700~~ \$4,646,484 in Knox County;
- 31 H. A sum of ~~\$2,657,105~~ \$3,046,145 in Lincoln County;
- 32 I. A sum of ~~\$1,228,757~~ \$2,400,000 in Oxford County;
- 33 J. A sum of ~~\$5,919,118~~ \$7,375,000 in Penobscot County;
- 34 K. A sum of ~~\$878,940~~ \$1,170,158 in Piscataquis County;
- 35 L. A sum of ~~\$2,657,105~~ \$2,922,605 in Sagadahoc County;
- 36 M. A sum of \$5,363,665 in Somerset County;
- 37 N. A sum of ~~\$2,832,353~~ \$3,212,779 in Waldo County;
- 38 O. A sum of ~~\$2,000,525~~ \$2,080,546 in Washington County; and
- 39 P. A sum of ~~\$8,386,815~~ \$8,721,069 in York County.

1 rules adopted by the County Corrections Professional Standards Council as established in
2 section 1210-F:

3 A. Each jail shall participate in coordination of inmate transportation;

4 B. Each jail shall provide substance use disorder treatment and recovery services,
5 including at a minimum providing a licensed clinician or licensed professional
6 organization available to assist inmates;

7 C. Each jail shall provide medication-assisted treatment for substance use disorder to
8 the extent that funding is provided by the General Fund;

9 D. Each jail shall provide mental health treatment, including at a minimum providing
10 a licensed clinician or licensed professional organization available to assist inmates;
11 and

12 E. Each jail shall provide community programs and services, through July 1, 2022
13 pursuant to section 1210-D, subsections 2 and 2-A, and, beginning July 1, 2022,
14 pursuant to section 1210-E, subsection 3, including at a minimum pretrial or
15 conditional release, alternative sentencing or housing programs and electronic
16 monitoring.

17 **PART D**

18 **Sec. D-1. 17-A MRSA §1757, sub-§1, ¶C**, as enacted by PL 2019, c. 113, Pt. A,
19 §2, is amended to read:

20 C. The surcharge for the County Jail Operations Fund authorized under Title 34-A,
21 section ~~1210-D~~ 1210-E, subsection 5 8.

22 **Sec. D-2. 30-A MRSA §1557-B, sub-§3**, as enacted by PL 2015, c. 335, §16, is
23 amended to read:

24 **3. Reimbursement.** Reimbursement for the support of a prisoner who is transferred
25 by a sending jail to a receiving jail or the Department of Corrections is subject to the
26 provisions of this subsection.

27 A. During a state fiscal year in which ~~at least \$12,202,104~~ the funding required by
28 Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail
29 Operations Fund and disbursements have been made equal to that amount to the
30 counties as required by Title 34-A, section ~~1210-D~~ 1210-E, subsection 5, the receiving
31 jail or the department may not charge the sending jail a per diem rate for the transferred
32 prisoner.

33 B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by
34 Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail
35 Operations Fund or disbursements have not been made equal to that amount to the
36 counties as required by Title 34-A, section ~~1210-D~~ 1210-E, subsection 5, the following
37 provisions apply:

38 (1) The receiving jail may charge the sending jail a per diem rate for the transferred
39 prisoner;

40 (2) The rate charged by the receiving jail must equal the per diem per prisoner
41 amount calculated by the department in making the disbursement to the counties
42 under Title 34-A, section ~~1210-D~~ 1210-E, subsection 4 9; and

1 (3) The department may charge the sending jail an amount that has been negotiated
2 between the department and the jail that does not exceed \$108 per diem per
3 prisoner.

4 C. The sending jail shall reimburse the receiving jail or the department for any costs
5 incurred in the provision of extraordinary medical or surgical treatment for conditions
6 of the prisoner that existed prior to transfer.

7 D. Payment amounts provided for in this subsection may be adjusted or dispensed with
8 upon terms mutually agreeable to the sheriff of the sending jail and the sheriff of the
9 receiving jail or the department.

10 **Sec. D-3. 34-A MRSA §1208-B, sub-§1, ¶B**, as corrected by RR 2019, c. 2, Pt.
11 A, §32, is amended to read:

12 B. In administering and distributing funding to the jails pursuant to section ~~1210-D~~
13 1210-E, subsection 4 5, the commissioner shall:

14 (1) Require reporting of data that indicates average daily population of prisoners,
15 that excludes federal prisoners, that indicates sending and receiving jails for
16 transferred prisoners and that is useful in calculating the distributions to the
17 counties pursuant to section ~~1210-D~~ 1210-E, subsection 4 9; and

18 (2) Consider the performance of each jail in meeting the standards established
19 pursuant to this section. The commissioner shall work with the jails to assist them
20 in achieving compliance with the standards. The commissioner shall enforce the
21 standards by imposition of monetary penalties upon a county for noncompliance
22 by the county jail or regional jail. A monetary penalty imposed under this
23 subsection may not in any fiscal year exceed the County Jail Operations Fund
24 distribution payable to a county for a fiscal year pursuant to section ~~1210-D~~
25 1210-E, subsection 4 5.

26 **Sec. D-4. 34-A MRSA §1402, sub-§12**, as enacted by PL 2015, c. 335, §24, is
27 amended to read:

28 **12. County and regional jails.** The commissioner shall receive, administer and
29 distribute to the county and regional jails funding provided through the General Fund,
30 Other Special Revenue Funds and any federal and grant funds in accordance with section
31 ~~1210-D~~ 1210-E and Title 30-A, section 1659-A. The department shall make distributions
32 as required by section ~~1210-D~~ 1210-E, subsection 5 to each jail on a ~~quarterly~~ annual
33 basis and as may be adjusted pursuant to section 1208-B, subsection 1, paragraph B.

34 **Sec. D-5. 34-A MRSA §1402, sub-§13**, as enacted by PL 2015, c. 335, §24, is
35 amended to read:

36 **13. Report on jails.** Beginning ~~January 15, 2016~~ July 1, 2022 and annually thereafter,
37 the department, in collaboration with a statewide association of sheriffs and a statewide
38 association of county commissioners, shall submit a report to the joint standing committee
39 of the Legislature having jurisdiction over criminal justice and public safety matters on the
40 mandatory standards, policies and procedures for jails adopted pursuant to section 1208-B
41 and the status of funding for the jails from the County Jail Operations Fund established in
42 section ~~1210-D~~ 1210-E, subsection 2, county taxes and other sources. The department and
43 representatives of the associations shall conduct a review of the funding provided to county

1 jails pursuant to subsection 12 and section ~~4210-D~~ 1210-E, subsection 5 and the
2 distribution formula established by the department pursuant to section ~~4210-D~~ 1210-E,
3 subsection 4 9. If the department and the associations find that changes are needed to the
4 distribution method or procedures or the level of General Fund support, the department
5 shall report that finding to the joint standing committee of the Legislature having
6 jurisdiction over criminal justice and public safety matters and shall recommend changes
7 in the formula determined pursuant to section ~~4210-D~~ 1210-E, subsection 4 9 and the level
8 of General Fund support. After reviewing the report, the joint standing committee is
9 authorized to submit legislation to address issues raised by the report and to improve the
10 funding and operation of the jails.

11 **Sec. D-6. 34-A MRSA §3063-C, sub-§3,** as enacted by PL 2015, c. 335, §28, is
12 amended to read:

13 **3. Reimbursement.** By agreement between the commissioner and the sheriff of the
14 receiving jail pursuant to this section, the department shall pay directly to the jail
15 reimbursement in accordance with this subsection.

16 A. During a state fiscal year in which ~~at least \$12,202,104~~ the funding required by
17 Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail
18 Operations Fund and disbursements have been made equal to the amount ~~appropriated~~
19 due to the counties as required by section ~~4210-D~~ 1210-E, the receiving jail may charge
20 the department for the transferred prisoner a rate to be negotiated between the sheriff
21 of the jail and the department that is no higher than \$25 per diem per prisoner.

22 B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by
23 Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail
24 Operations Fund or disbursements have not been made equal to ~~that~~ the amount due to
25 the counties as required by section ~~4210-D~~ 1210-E, the receiving jail may charge the
26 department for the transferred prisoner a rate to be negotiated between the sheriff of
27 the county jail and the department that is no higher than \$108 per diem per prisoner.

28 C. The department shall reimburse the receiving jail for any costs incurred in the
29 provision of extraordinary medical or surgical treatment for conditions of the prisoner
30 that existed prior to transfer.

31 D. Payment amounts provided for in this section may be adjusted or dispensed with
32 upon terms mutually agreeable to the commissioner and the sheriff of the receiving jail.

33 **Sec. D-7. Effective date.** This Part takes effect July 1, 2022.

34 **Emergency clause.** In view of the emergency cited in the preamble, this legislation
35 takes effect when approved, except as otherwise indicated.

36 SUMMARY

37 This bill stabilizes the state funding of county jails by establishing funding levels
38 calculated with reference to either the total jail operating costs or \$50 per day per state-
39 sanctioned prisoner, whichever is greater. The bill requires that at least 25% of state
40 funding be used for community corrections. The bill requires standardized reporting by the
41 jails regarding jail revenues, expenses and populations. The bill establishes the County
42 Corrections Professional Standards Council to adopt rules to determine the makeup of

1 required programs and services, for required reporting and for standards and penalties for
2 failure to report as required by rule.

3 The bill provides a mechanism for adjusting the base tax assessment for correctional
4 services for each county. The bill provides rule-making requirements for the coordination
5 of inmate transportation, substance use disorder treatment, medication-assisted treatment
6 and recovery services, mental health treatment and community programs and services,
7 including but not limited to pretrial or conditional release, alternative sentencing or housing
8 programs and electronic monitoring.

9 The bill requires annual reporting to the joint standing committee of the Legislature
10 having jurisdiction over criminal justice and public safety matters by the Maine County
11 Commissioners' Association and the Maine Sheriffs' Association regarding the operation
12 of the county jails.

13 The bill in Part D corrects cross-references in the statutes that refer to provisions being
14 repealed.