



County Corrections Professional Standards Council

October 13, 2022, virtual meeting

Attendance:

Commissioner Steve Gorden, MCCA
Sheriff Dale P. Lancaster, MSA
Commissioner Norm Fournier, MCCA
Sheriff Scott Nichols, MSA
Ryan Andersen, MDOC
Rebecca Graham, MMA
Staff: Mary-Anne LaMarre, MSA

Commissioner Gorden opened the meeting at 11:00 AM.

The Council dissected and discussed statute language highlighted below:

An Act To Stabilize State Funding for County Corrections

L.D. 1654

Date:

(Filing No. H-)

CRIMINAL JUSTICE AND PUBLIC SAFETY

Reproduced and distributed under the direction of the Clerk of the House.

**STATE OF MAINE
HOUSE OF REPRESENTATIVES
130TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1225, L.D. 1654, “An Act To Stabilize State Funding for County Corrections”

Amend the bill by striking out everything after the enacting clause and inserting the following:

'PART A

Sec. A-1. 5 MRSA §12004-G, sub-§6-D is enacted to read:

6-D.

<u>Corrections</u>	<u>County Corrections Professional Standards Council</u>	<u>Expenses Only</u>	<u>34-A MRSA §1210-F</u>
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Sec. A-2. 34-A MRSA §1210-D, as amended by PL 2015, c. 436, §§11 and 12, is repealed.

Sec. A-3. 34-A MRSA §1210-E is enacted to read:

§1210-E. County Jail Operations Fund

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "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, temporary release programs from a facility for the detention or confinement of persons convicted of crimes and programs and services as required by section 1208-B, subsection 4, paragraph D.

B. "County Corrections Professional Standards Council" or "council" means the council established pursuant to Title 5, section 12004-G, subsection 6-D.

C. "Fund" means the County Jail Operations Fund established pursuant to subsection 2.

D. "Jail" means a county or regional jail for which the department is required to establish standards pursuant to section 1208, 1208-A or 1208-B.

2. County Jail Operations Fund. The County Jail Operations Fund is established to provide funding for county jails and the regional jail. State funding must be appropriated annually for the fund in the amount of \$20,342,104 plus any additional amount the Legislature may appropriate. 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 3 and 4 and in accordance with the distribution formula set forth in subsection 9.

3. Community corrections; pretrial release program. At least 25% of all funding provided under this section must be used by the county jails and regional jail for establishing, providing and maintaining community corrections and programs and services required by section 1208-B, subsection 4, paragraph D. Jail programs and services must include a program, directly or through a contract with an organization, to supervise defendants subject to pretrial release conditions 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.

4. Prisoner support. The fund must be used to provide a portion of the counties' costs of the support of prisoners detained or sentenced to jail.

5. Quarterly payments to counties. The department shall distribute funding payable to the counties for operation of the jails quarterly if the jails have reported on a timely basis as required by subsection 6 and rules adopted pursuant to subsection 7. Failure to report as required may result in delayed payment of funds required to be paid by this section.

6. Required reporting. The county jails and the regional jail shall report to the department any data required by the council pursuant to section 1208-B, subsection 4, paragraph E, on the schedule and in the format required by the council. Failure of a jail to report as required may result in delayed quarterly payments to the counties as provided in subsection 5 and as set forth by rule.

7. Rulemaking. The council shall adopt rules to implement the financial accounting, reporting and data collection systems and requirements necessary for implementing this section, including any data required to be collected pursuant to section 1208-B, subsection 5. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

8. Surcharge. In addition to the 14% and 5% surcharges collected pursuant to Title 4, section 1057, an additional 1% surcharge must be added to every fine, forfeiture or penalty imposed by any court in this State, which, for the purposes of collection and collection procedures, is considered a part of the fine, forfeiture or penalty. All funds collected pursuant to this subsection are nonlapsing and must be deposited monthly in the fund.

9. Formula; distribution. The council shall establish a formula for the quarterly distribution described in subsection 5. The department shall distribute quarterly to each county from the fund the amount due to that county as determined according to the formula. The formula must be based on the most recent fiscal year for which data is available for the county and must:

- A. Take into consideration total statewide county jail prisoner days for all jails;
- B. Take into consideration and assign to a jail the number of county jail prisoner days attributable to each prisoner who was charged with committing a crime in that county or who was committed to the custody of or detained by the sheriff of that county; and
- C. Determine the proportion of statewide county jail prisoner days attributable to each county.

10. Annual reporting to legislative committee. By October 1st annually, the department in collaboration with a statewide association of county commissioners and a statewide association of sheriffs shall report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters regarding the following issues: county jail and regional jail funding through the General Fund, pursuant to Title 30-A, section 701 and from any other revenue sources; funding and operation of community corrections and programs and services required by section 1208-B, subsection

4, paragraph D and this section; distribution of funding to the county jails and regional jail; jail reporting of revenues, expenses and populations as required by this section; the experiences of the counties in setting their tax assessments for correctional services under Title 30-A, section 701; and the adoption and implementation of rules specifying best practices, including mandatory standards, policies and procedures, under section 1208-B.

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

§1210-F. County Corrections Professional Standards Council

The County Corrections Professional Standards Council, established in Title 5, section 12004-G, subsection 6-D and referred to in this section as "the council," is established to evaluate and advise the commissioner with regard to the composition of programs and services required pursuant to section 1208-B, subsection 4; to develop rules for reporting to the department the information required in section 1208-B, subsection 5 and, beginning July 1, 2023, as required in section 1210-E, subsection 6; to develop budget recommendations for the department related to the County Jail Operations Fund established in section 1210-E, the recommendations for which must be submitted to the commissioner and the Governor as part of the State's biennial budget process; to make supplemental county jail funding recommendations to the department related to the fund as may be needed from time to time to address shortfalls, emergencies or other needs; and to consider the need for legislation regarding required programs, services and reporting and to submit such legislation to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters.

1. Membership. The council consists of 7 members appointed by the commissioner as follows:

- A. Two members selected from a list of nominations submitted by a statewide association of county commissioners;
- B. Two members selected from a list of nominations submitted by a statewide association of sheriffs;
- C. One member selected from a list of nominations submitted by a statewide association representing municipalities; and
- D. Two members appointed at the commissioner's discretion.

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

3. First meeting; chair. When all appointments have been made pursuant to subsection 1, the commissioner shall call the first meeting of the council. By a majority vote, the council shall select a chair from the members appointed under subsection 1, paragraphs A and B to serve a 2-year term.

4. Standards regarding failure to report. The council shall adopt rules specifying standards regarding reporting data as required by section 1210-E, subsection 6 to take effect beginning July 1, 2023 and shall adopt rules specifying standards for delaying payments to jails based on failure to report.

5. Rulemaking. The council shall adopt rules in accordance with this section, section 1210-E, subsection 7 and section 1208-B, subsection 5. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules adopted pursuant to this subsection may not take effect before July 1, 2023.

Sec. A-5. Effective date. Those sections of this Part that repeal the Maine Revised Statutes, Title 34-A, section 1210-D and that enact Title 34-A, section 1210-E take effect July 1, 2023.

PART B

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

2-C. Tax assessment for correctional services beginning July 1, 2015. Beginning July 1, ~~2015~~ 2022, the counties shall annually collect ~~no less than \$62,172,374~~ the base assessment limit of \$82,110,358 from municipalities for the provision of correctional services in accordance with this subsection. ~~The~~ In subsequent years, the counties may collect an amount that is more or less than the base assessment limit established in this subsection, except that if the amount is increased above the base assessment limit established in this subsection, the additional amount each year may not exceed the base assessment limit as adjusted by 4% or the growth limitation factor, as established in section 706-A, subsection 3 or 4%, including any adjustments for extraordinary circumstances allowed under section 706-A, subsection 5, whichever is less greater. A county may not increase its base assessment limit under this subsection if the county has not reported the revenues, expenses and populations information required by section 1210-E, subsection 6. If a county collects in a year an amount that is more or less than the base assessment limit established for that county pursuant to this subsection, the base assessment limit in the succeeding year is the amount collected in the prior year, excluding any adjustments for extraordinary circumstances allowed under section 706-A, subsection 5. For the purposes of this subsection, "correctional services" includes management services, personal services, contractual services, commodity purchases, capital expenditures and all other costs, or portions thereof, necessary to maintain and operate correctional services. "Correctional services" does not include county jail debt unless there is a surplus in the account that pays for correctional services at the end of the state fiscal year.

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

- A. A sum of ~~\$4,287,340~~ \$5,300,000 in Androscoggin County;
- B. A sum of ~~\$2,316,666~~ \$3,249,000 in Aroostook County;
- C. A sum of ~~\$11,575,602~~ \$15,355,672 in Cumberland County;
- D. A sum of ~~\$1,621,204~~ \$2,400,000 in Franklin County;
- E. A sum of ~~\$1,670,136~~ \$2,126,002 in Hancock County;
- F. A sum of ~~\$5,588,343~~ \$8,222,098 in Kennebec County;
- G. A sum of ~~\$3,188,700~~ \$4,793,893 in Knox County;

- H. A sum of ~~\$2,657,105~~ \$3,141,105 in Lincoln County;
- I. A sum of ~~\$1,228,757~~ \$2,400,000 in Oxford County;
- J. A sum of ~~\$5,919,118~~ \$10,315,042 in Penobscot County;
- K. A sum of ~~\$878,940~~ \$1,486,750 in Piscataquis County;
- L. A sum of ~~\$2,657,105~~ \$2,967,105 in Sagadahoc County;
- M. A sum of ~~\$5,363,665~~ \$5,900,000 in Somerset County;
- N. A sum of ~~\$2,832,353~~ \$3,038,999 in Waldo County;
- O. A sum of ~~\$2,000,525~~ \$2,120,557 in Washington County; and
- P. A sum of ~~\$8,386,815~~ \$9,294,135 in York County.

Sec. B-2. 30-A MRSA §701, sub-§2-D is enacted to read:

2-D. Requirement of legislative approval to adjust base assessment for correctional services. A county may adjust its base assessment limit under subsection 2-C, paragraphs A to P only with the approval of the Legislature. Beginning July 1, 2026, once every 4 years a county may submit for approval by the Legislature a request to adjust the base assessment limit for that county. To begin the process for legislative approval, the county shall submit the information required by this subsection to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The joint standing committee may introduce a bill to grant approval of the adjustment of the base assessment limit for the county and to amend the base assessment limit set in subsection 2-C. The information that must be submitted includes the following:

- A. The tax assessments for the current year and each of the 2 prior years;
- B. The amount of the requested increase;
- C. Justification for the requested increase, including, but not limited to, all cost drivers, alternative cost reductions considered by the county and cost factors that limit savings, such as employment contracts, medical and insurance costs, capital expenditures and changes to incarceration standards;
- D. Copies of results of independent financial audits for the current year and each of the 2 prior years;
- E. A record of the vote of the county budget committee on the request for approval of the increase in the base assessment limit, including, if the vote was not unanimous, a record of why a member of the budget committee voted against making the request;
- F. A record of the vote of the county commissioners on the request for approval of the increase in the base assessment limit, including, if the vote was not unanimous, a record of why a county commissioner voted against making the request; and
- G. Certification of approval of the request by the county commissioners.

Sec. B-3. Appropriation for fiscal year 2022-23. For fiscal year 2022-23, the Legislature shall appropriate at least \$20,342,104 in General Fund funding to the County Jail Operations Fund established in the Maine Revised Statutes, Title 34-A, section 1210-D.

PART C

Sec. C-1. 34-A MRSA §1208-B, sub-§4 is enacted to read:

4. Requirements; rulemaking by commissioner. The jails shall operate in accordance with best practices applicable to facilities of their type and size, including the mandatory standards, policies and procedures established by rules adopted by the commissioner under subsection 1, and with the following requirements as set forth in rules adopted by the commissioner. **In adopting rules under this subsection, the commissioner shall consider the advisory input of the County Corrections Professional Standards Council established pursuant to Title 5, section 12004-G, subsection 6-D.**

A. Each jail shall participate in coordination of inmate transportation. Coordination of transportation may be provided by the jail at which the inmate resides, by another jail or correctional facility or by a person or entity working under a contract with the jail at which the inmate resides.

B. Each jail shall provide access to substance use disorder screening, assessment, medication, treatment, recovery and reentry services, including at a minimum:

(1) Screening on intake using evidence-based tools to assess the risk of overdose or withdrawal and the person's history of substance use disorder and to determine initial treatment options;

(2) Medically managed withdrawal treatment consistent with evidence-based medical standards;

(3) All forms of medication for addiction treatment, including at least one of each formulation of each United States Food and Drug Administration-approved medication-assisted treatments for substance use disorder, including alcohol use disorder and opioid use disorder, to ensure that each person receives the particular formulation found to be the most effective at treating and meeting the person's individual needs. Medication under this subparagraph must be offered for the duration of the person's incarceration;

(4) Behavioral treatment options, such as group and individual counseling, and clinical support;

(5) Peer support services;

(6) Reentry planning and transitional support such as coordination with community-based treatment and case management service providers and recovery organizations to ensure reentry and continuity of care after release, including appointments for services made prior to release; and

(7) Assistance in obtaining health insurance prior to release.

Substance use disorder services required by this paragraph may be provided at the jail at which the person resides or at another jail or correctional facility or by a service provider or entity working under a contract with the jail at which the person resides.

C. Each jail shall provide mental health treatment, including at a minimum providing a licensed clinician or licensed professional organization that will be available to assist an inmate who is a person receiving mental health treatment. Mental health treatment required by this paragraph may be provided at the jail at which the person resides or at another jail or correctional facility or by a service provider or entity working under a contract with the jail at which the person resides.

D. Each jail shall provide community programs and services as required by this subchapter, including at a minimum pretrial or conditional release, alternative sentencing or housing programs and electronic monitoring.

E. Each jail shall provide initial and ongoing training and technical assistance for facility staff and health care practitioners on screening, assessment, medication and treatment protocols for substance use disorder.

Sec. C-2. 34-A MRSA §1208-B, sub-§5 is enacted to read:

5. Requirements; rulemaking by the council. The jails shall operate in accordance with rules adopted pursuant to this subsection. The County Corrections Professional Standards Council, established pursuant to Title 5, section 12004-G, subsection 6-D, shall adopt rules governing the collection and reporting of data by jails as necessary to implement this section. The rules may consider the cost impacts of policy decisions by jails and the State, best practices for the operation of jails, the cost-effective delivery of services by jails, program participation, categories of inmates and reasons for detention or incarceration. In adopting data collection rules, the council shall at minimum require jails to report the following data:

A. The revenues and expenses associated with operating the jail;

B. The population of persons detained or committed to the custody of the sheriff. The rules must require population reporting on a daily basis and must provide data to the department on actual daily population of persons who are detained or incarcerated and persons on all forms of community release. Population data must be reported in the format required by the rule; and

C. The funds used for programs and services as required by section 1208-B, subsection 4, paragraph B.

The council shall establish the rules, definitions and reporting requirements for a centralized data system for county jails.

Sec. C-3. Rules and standards. Pending adoption of rules or standards as authorized in section 1 of this Part, jails shall continue to follow standards duly adopted under the Maine Revised Statutes, Title 34-A, section 1208-B except as may be expressly set forth in this Act.

PART D

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

C. The surcharge for the County Jail Operations Fund authorized under Title 34-A, section ~~4240-D~~ 1210-E, subsection ~~5~~ 8.

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

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

A. During a state fiscal year in which ~~at least \$12,202,104~~ the funding required by Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund and disbursements have been made equal to that amount to the counties as required by Title 34-A, section ~~4240-D~~ 1210-E, subsection 5, the receiving jail or the department may not charge the sending jail a per diem rate for the transferred prisoner.

B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund or disbursements have not been made equal to that amount to the counties as required by Title 34-A, section ~~4240-D~~ 1210-E, subsection 5, the following provisions apply:

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

(2) The rate charged by the receiving jail must equal the ~~per diem per prisoner~~ amount calculated by the department in making the disbursement to the counties under Title 34-A, section ~~4240-D, subsection 4~~ 1210-E, subsection 9; and

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

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

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

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

B. In administering and distributing funding to the jails pursuant to section ~~4240-D, subsection 4~~ 1210-E, subsection 5, **the commissioner shall:**

(1) Require reporting of data that indicates average daily population of prisoners, that excludes federal prisoners, that indicates sending and receiving jails for

transferred prisoners and that is useful in calculating the distributions to the counties pursuant to section ~~4210-D, subsection 4~~ 1210-E, subsection 9; and

(2) Consider the performance of each jail in meeting the standards established pursuant to this section. The commissioner shall work with the jails to assist them in achieving compliance with the standards. The commissioner shall enforce the standards by imposition of monetary penalties upon a county for noncompliance by the county jail or regional jail. A monetary penalty imposed under this ~~subsection~~ subparagraph may not in any fiscal year exceed the County Jail Operations Fund distribution payable to a county for a fiscal year pursuant to section ~~4210-D, subsection 4~~ 1210-E, subsection 5.

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

12. County and regional jails. ~~The commissioner shall~~ receive, administer and distribute to the county and regional jails funding provided through the General Fund, Other Special Revenue Funds and any federal and grant funds in accordance with section ~~4210-D~~ 1210-E and Title 30-A, section 1659-A. The department shall make distributions as required by section ~~4210-D~~ 1210-E, subsection 5 to each jail on a quarterly basis and as may be adjusted pursuant to section 1208-B, subsection 1, paragraph B.

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

13. Report on jails. ~~Beginning January 15, 2016~~ October 1, 2023 and annually thereafter, the department, in collaboration with a statewide association of sheriffs and a statewide association of county commissioners, shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the mandatory standards, policies and procedures for jails adopted pursuant to section 1208-B and the status of funding for the jails from the County Jail Operations Fund established in section ~~4210-D~~ 1210-E, subsection 2, county taxes and other sources. The department and representatives of the associations shall conduct a review of the funding provided to county and regional jails pursuant to subsection 12 and section ~~4210-D~~ 1210-E, subsection 5 and the distribution formula established ~~by the department~~ pursuant to section ~~4210-D, subsection 4~~ 1210-E, subsection 9. If the department and the associations find that changes are needed to the distribution method or procedures or the level of General Fund support, the department shall report that finding to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and shall recommend changes in the formula determined pursuant to section ~~4210-D, subsection 4~~ 1210-E, subsection 9 and the level of General Fund support. After reviewing the report, the joint standing committee is authorized to submit legislation to address issues raised by the report and to improve the funding and operation of the jails.

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

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

A. During a state fiscal year in which ~~at least \$12,202,104~~ the funding required by section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund and disbursements have been made equal to the amount ~~appropriated due~~ to the counties as required by section ~~4240-D~~ 1210-E, the receiving jail may charge the department for the transferred prisoner a rate to be negotiated between the sheriff of the jail and the department that is no higher than \$25 per diem per prisoner.

B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund or disbursements have not been made equal to ~~that~~ the amount due to the counties as required by section ~~4240-D~~ 1210-E, the receiving jail may charge the department for the transferred prisoner a rate to be negotiated between the sheriff of the county jail and the department that is no higher than \$108 per diem per prisoner.

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

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

Sec. D-7. Effective date. This Part takes effect July 1, 2023.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment replaces the bill. The amendment establishes a modified system for determining state financial support for county jails, including the provision of a statutory rate of support in the amount of \$20,342,104 plus any additional amount as may be approved by the Legislature. The amendment establishes the County Corrections Professional Standards Council, which is composed of 7 members, that will advise the Commissioner of Corrections regarding jail standards and the establishment of data collection and financial accounting rules related to state funding of county jails and jail operations and make recommendations to the commissioner regarding state support for county jails as part of the state budget process. The amendment requires counties to regularly report data to the State, and counties may have quarterly payments from the State withheld until any required reports are provided. The amendment updates the base local assessment that each county may expend on county jails. That assessment amount may be increased by the Legislature or through the local assessment increase process available to counties. The amendment provides that a county may not increase its base assessment level for county jails until it is current with regard to any required financial and data reporting.

FISCAL NOTE REQUIRED

(See attached)

The Council collectively asked that one of the bill's authors, Sheriff Todd Brackett, attend our next meeting in hopes of clarifying the mission of the Council.

Meeting adjourned at 12:30.

Next meeting date is November 10, 2022.

DRAFT