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December 13, 2013

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Peter Baldacci, Penobscot
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Bob Devlin, Kennebec County

Sen. Pat Flood, Legislature

Rep. Aaron Frey, Legislature

John Lebel, Androscoggin
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Hon. Stanley Gerzofsky
Hon. Mark Dion
Members of the Joint Standing Committee on Criminal Justice and Public
Safety
126th Legislature

Re: Report of the Commission to Study the State Board of Corrections and the
Unified County Corrections System

Dear Sen. Gerzofsky, Rep. Dion and members of the Committee:

In accordance with the mandate of the Joint Resolution establishing the
Commission, as amended by the Legislative Council concerning the reporting
date, we are pleased to submit for your consideration our report and
recommendations for reform of the system of governance of the State Board of
Corrections and Unified County Corrections System.

It is our conclusion that the current system is not working as envisioned
by the Legislature when it created the current system in 2008, despite
enormous effort by many Maine citizen volunteers and corrections specialists.

We believe that changes in the scope of the authority, staffing
responsibilities, enforcement powers of the BOC, budget process and capital
planning could lead to greater understanding by the Legislature of the needs of
the correctional system, greater economies of scale in its operations, and
greater capacity to achieve its statutory goals.

Envisioning the county corrections system as more than a confederacy
of temporary alliances, but as a planned, coordinated system, with a more
equitable distribution of the cost burdens, would be in the best interest of the
people of Maine.

We will make every effort to be available at the convenience of the
Committee to respond to any questions you may have.

In closing, I want to acknowledge with genuine appreciation the
collegial work of the members of the Commission, who gave so generously of
their time and expertise, and of the many able staff who helped make this
report possible, especially William Whitten, Assistant County Manager,
Elizabeth Trice, Special Projects Coordinator, and Amy Fickett, Public
Relations Assistant of the Cumberland County Government.

Yours truly,

David T. Flanagan



**One Maine,
One System -**



Report of the Commission to Study the State Board of Corrections and the
Unified County Corrections System to the 126th Maine Legislature

One Maine, One System -

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I. Introduction

In 2008, Maine entered a new chapter in its organization of the county jail system. In essence, the state agreed to freeze the local property tax, and assume responsibility for financing any additional operational and some capital costs out of the General Fund, in consideration for the counties submitting to the oversight of a newly created Board of Corrections which would approve budgets, set goals, and champion economies of scale.

Now, five years later, the new system has displayed such serious shortcomings that the Legislature has initiated a special study of what's working and what's not, and directed this Commission to make recommendations for further reform by December 4, 2013. The following report and draft legislation is provided in fulfillment of that mandate.

II. Executive Summary

The Board of Corrections and the Unified County Corrections System were created by the Legislature in response to growing demands for inmate beds, proposed major capital spending to meet the need and concerns about the efficiency of the autonomous county system and the burden on local property taxpayers.

The Legislature adopted a hybrid solution to these challenges, "Capping county taxes in exchange for making unused space available to house inmates from elsewhere in the system,"¹ under the oversight of both the DOC and a new entity, the BOC. The BOC was invested with a mandate to promote efficiency, reduce recidivism and several other goals. But it was not equipped with sufficient authority or means to achieve those goals.

Recognizing the need for change, the 126th Legislature created a Commission to study the system and report back in advance of the second session.

The Commission identified 10 major problems:

1. An unrealistic funding process;
2. Lack of authority for the BOC
3. Too much time spent by the BOC on budget approval;
4. Goals and objectives neither defined nor met;
5. No jail standardization;
6. Innovative and high quality programs and incentives sacrificed;
7. Too many jails "not obeying the rules";
8. The current funding crisis;
9. Excessive pre-trial populations, coordination with the judicial system; and

¹ "Fund Report - Maine State Board of Corrections" RHR Smith & Co, CPAs, Accounting & Consulting Services Contract #CT95E20125-3230, June 11, 2012, pg. 9. Hereafter cited as "Smith."

10. Mental health needs inadequately addressed.

It then analyzed the root causes that contributed to the creation of these problems, namely:

1. Lack of a vision that the jails are part of a statewide criminal justice system which should be for the common benefit and protection, and the fair distribution of the common burden, of all the people of Maine;
2. Lack of ownership of the hybrid organization by the Legislature and Administration;
3. Lack of incentives and disincentives for system collaboration among the counties;
4. Incomplete executive leadership;
5. Lack of common accounting standards;
6. Lack of will and authority of the BOC to make and enforce critical decision; and,
7. Lack of a mechanism for systematic planning and funding capital expenses.

The Commission then considered four basic structural models for getting at the problems identified and their causes.

Briefly, those models were:

1. A return to autonomous county management and incremental property tax funding for future budget increases;
2. Creation of a new regional jail authority model with groups of 4 counties each following the Two Bridges Regional Jail Authority model;
3. A complete state take-over; and
4. Modification of the current BOC model, to give the Board real authority over budgets, contracts, standards and new construction.

Though each model had some appeal, the Commission settled on the modification of the current BOC as the most practical. Based on these conclusions, the Commission recommends the following changes to the current statute:

1. Vision:
Revise 34-A MRSA § 1801(2) to expressly state the BOC is empowered to adopt and require compliance with procedures, policies and regulations to promote statewide actions to plan, finance and execute a unified county correctional system.
2. BOC Representation:
By a majority vote, to retain the current membership composition of the BOC.
3. Provide enforcement incentives to assure compliance with BOC policies:
Amend 34-A § 1803 by adding a new subsection (12) to give the BOC explicit authority to:
 - a. Provide discretionary funding for innovative projects;
 - b. In the event a county does not comply with a lawful directive of the BOC, withhold funds otherwise allocated to that county until, in the judgment of the BOC, it comes into compliance; and

- c. In the event of a major breach in its directives, recommend to the DOC that it assume direct control of a facility pursuant to 34-A § 3009, in which case the county would be responsible for the costs incurred by the DOC.
4. Executive Leadership:
Amend 34-A MRSA § 1803-A to make explicit the duties and expectations for managing the business of the BOC by the Executive Director and the Financial Analyst, freeing the Board members to concentrate on issues of broad policy.
5. Common Accounting Standards:
Amend 34-A MRSA § 1803(5)(E) to give the BOC authority to establish common accounting standards consistent with State procedure concerning corrections related county budgets and to establish and enforce standard performance matrix and reporting formats for operational and capital investment issues as well. Rename the “Investment Fund” the “State Operations Support Fund” to clear up confusion regarding the use of these amounts.
6. BOC Authority:
Amend 34-A MRSA § 1803 to confer greater authority or the BOC to:
 - a. set standards
 - b. enter into contracts
 - c. offer back office services
 - d. assign inmates
 - e. encourage regional cooperation
 - f. monitor performance, and
 - g. collect and distribute funds, in order to promote economies of scale, efficiencies in operations, orderly expenditures of available funds and other related purposes.
7. Capital Investment:
Amend 34-A MRSA 1803(4) to provide that the BOC shall affirmatively establish a program for requiring 10 year major capital improvement plans from each of the counties, and prioritize projects for funding. These projects would then be funded by the creation of a transitional legislative provision to fund “Inverse Debt” in an amount equal to 10% per year of the estimated total CIP cost over the upcoming 10 year period for all capital projects of more than \$250,000. This new fund could then be called the “Major Capital Projects Sinking Fund”

For major capital needs, funding should be underwritten by a combination of State Appropriations and county bond issues in a way that ensures no county is required to make a property tax effort greater than the average for all counties. For projects of less than \$100,000 the county should be able to call upon its own reserves, and 30-A MRSA § 924(2) should be amended to allow fund balances to be maintained by the county based on 20% of corrections expenditures, as recommended by RHR Smith.²

It is the view of the Commission that county surplus funds should be available for use in a capital improvement program and placed in a capital improvement fund for a program

² Smith, p 15

approved by the BOC. Surplus funds may also be dedicated to a county's unfunded liability to the amount identified in the county budget, with the approval of the BOC.

8. Supplementary Legislation:

In addition to the foregoing measures to address the root causes of the BOC's problems, the Commission further recommends changes to achieve the goals of the BOC

Legislation as follows:

- a. Amend 34-A MRSA § 1803(3)(A) to improve pretrial management of cases by
 - i. mandating pretrial diversion and bail services statewide;
 - ii. developing and utilizing a standard minimum risk questionnaire to facilitate the use of bail in appropriate cases; and
 - iii. mandatory provision of video links with reliable interconnections in each jail for use for arraignments and other appropriate proceedings and trading usage by judges and DAs of such facilities.
9. It now appears that the budget is likely to be approximately \$2.8 million short for FY 2014 given certain assumptions. This Legislation should address that shortfall and ensure a realistic amount for FY 2015³ and begin funding the sinking fund for future capital consideration by a supplemental appropriation bill for consideration at the 2nd session of the 126th Legislature.

III. Mandate of the Commission

The 126th Legislature enacted the creation of a Joint Study Order Establishing a Commission to Study the State Board of Corrections and the Unified County Corrections System by LR 2171, which reads as follows:

126th Maine Legislature, LR 2171

Joint Study Order Establishing the Commission To Study the State Board of Corrections and the Unified County Corrections System

ORDERED, the Senate concurring, that, notwithstanding Joint Rule 353, the Blue Ribbon Commission To Study the State Board of Corrections and the Unified County Corrections System, referred to in this order as "the commission," is established as follows:

1. Membership. The commission consists of the following members:

A. Three county commissioners, one of whom is appointed by the President of the Senate and 2 of whom are appointed by the Speaker of the House of Representatives from a list of 5 county commissioners submitted by the Maine County Commissioners Association;

B. Three county administrators, 2 of whom are appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives from a list of 5 county administrators submitted by the Maine Association of County Administrators and Managers;

C. Two jail administrators, one of whom is appointed by the President of the Senate

³ See Appendix K

and one of whom is appointed by the Speaker of the House of Representatives from a list of 4 jail administrators submitted by the Maine Jail Administrators Association;

D. Two sheriffs, one of whom is appointed by the President of the Senate and one of whom is appointed by the Speaker of the House of Representatives from a list of 4 sheriffs submitted by the Maine Sheriffs Association; and

E. A member of the public, appointed jointly by the President of the Senate and the Speaker of the House of Representatives.

The President of the Senate and the Speaker of the House of Representatives shall invite the Commissioner of Corrections, or the commissioner's designee, and the chair of the State Board of Corrections to participate as members.

2. Chair. The public member appointed pursuant to subsection 1, paragraph F serves as chair of the commission.

3. Appointments; convening. All appointments must be made no later than 30 days following the passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. When the appointment of all members has been completed, the chair shall call and convene the first meeting of the commission. If 30 days or more after passage of this order a majority of but not all appointments have been made, the chair may request authority and the Legislative Council may grant authority for the commission to meet and conduct its business.

4. Duties. The commission shall:

A. Review the current structure of the county jail corrections system, including but not limited to its source of revenues, the predictability of costs and revenues and strengths and weaknesses of the current system, in order to determine methods for long-term sustainability of funding, best practices and necessary processes;

B. Review and propose revisions, if necessary, to the mission and authority of the State Board of Corrections; and

C. Clarify the structure and authority of the unified system of corrections and the State Board of Corrections and develop recommendations to strengthen centralization of the system and control and coordination of operations.

5. Staff assistance. The Legislative Council may seek the provision of staffing services from a non-legislative entity, including the Maine County Commissioners Association. The Legislative Council may not incur any costs for staffing services provided pursuant to this subsection.

6. Outside funding. The commission shall seek funding contributions to fully fund the costs of the study. All funding is subject to approval by the Legislative Council in accordance with its policies. If sufficient contributions to fund the study have not been received within 30 days after the passage of this order, no meetings are authorized and no expenses of any kind may be incurred or reimbursed.

7. Report. No later than December 4, 2013, the commission shall submit a report that includes its findings and recommendations, including suggested legislation, to the Joint Standing Committee on Criminal Justice and Public Safety.

IV. Commission Membership

After extensive consultation, 15 members were appointed to the Commission by the Speaker, Mark Eves, and the Senate President, Justin Alford. The public member, David Flanagan, a retired executive and attorney, served as chair. The commission has been staffed by Bill Whitten, Deputy County Manager, Elizabeth Trice, Grants & Special Projects Coordinator, and Amy Fickett, Public Relations Coordinator, all loaned from Cumberland County.

David Flanagan	Chair	Public Member
Capt. Marsha Alexander	Jail Administrator	Kennebec County
Bob Devlin	County Manager	Kennebec County
John Lebel	Jail Administrator	Androscoggin County
Greg Zinser	County Manager	York County
James Cloutier	County Commissioner	Cumberland County
Joel Merry	Sheriff	Sagadahoc County, Sheriff's Assn.
Joseph Ponte	DOC Commissioner	Department of Corrections
Lawrence (Max) Dawson	County Commissioner	Sagadahoc County
Mark Westrum	BOC Designee	Two Bridges Regional Jail, Chair of BOC, President of MJAA
Maurice (Mo) Ouellette	Sheriff	York County, VP of Sheriff's Association
Peter Baldacci	County Commissioner	Penobscot County
Peter Crichton	County Manager	Cumberland County
Rep. Aaron Frey	Representative	Legislator, from Bangor, Approps. Com.
Sen. Pat Flood	Senator	Legislator, Winthrop, Approps. Com.

V. Commission Process

In order to deal with such a complex issue in such a short space of time, the Commission organized its work as follows:

1. Six plenary meetings were conducted between September 20 and December 6, 2013, which were noticed and open to the public, with a broadcasting link for interested parties who were unable to get to Augusta for the meetings.⁴
2. At the first meeting the Chair outlined a process to be followed: (i) defining the problem; (ii) identifying the issues; (iii) creating a vision; (iv) conducting fair, fact-based hearings; (v) evaluating the root causes of the problems; (vi) reviewing the pros and cons of alternative governance models; and (vii) identifying opportunities for savings and efficiencies.
3. Invitations were sent to all groups believed to have an interest in the subject matter of the Commission, requesting their participation and testimony.
4. A public hearing to take testimony was conducted on October 4, 2013.
5. Interviews were conducted with policy makers and experts with relevant information, including Rod Miller, CRS Inc.; Sheriff Michael L. Chapman of Loudoun County, Virginia; Governor LePage and his legal counsel, Chief Justice Leigh Saufley and Chief Judge Charles Laverdiere, members of the Legislature and Elizabeth Simoni of Maine Pretrial Services.
6. The Commission identified ten issues of particular concern and divided into five subcommittees to discuss them in depth.
7. Those subcommittees then developed potential approaches, to the problems identified with each subcommittee dealing with two of the ten problems, and then, acting as a committee of the whole, which then polled itself on the preferred solutions.
8. The staff developed an extensive online file of past reports evaluating the system, and other relevant documents, for the members' reference.
9. The Commission developed and discussed four general approaches to dealing with the issues and potential solutions: 1) return to complete management and all incremental funding by the individual counties; 2) development of a comprehensive regional jail system through four new regional authorities 3) a complete state takeover of all county corrections responsibilities; ; and 4) strengthening the current hybrid state/county approach by changing the BOC composition and granting it real authority.
10. The commission asked the Legislative Council for an extension of the deadline for its work from December 4 to December 15, 2013, which was granted, and it has completed this final report.

VI. History of County Jails in Maine, 1653-1970

Just 33 years after the Pilgrims first set foot on Plymouth Rock in 1620, our Puritan ancestors saw fit to authorize a prison for the Province of Maine.

⁴The agendas of the six meetings are attached as Appendix B.

After some delay, a building for this purpose was erected at Meetinghouse Creek in the Village of York in 1656. The present Gaol was built in 1719 with timbers salvaged from the original structure. With the influx of settlers into Maine in the mid-18th century, the building was enlarged to provide more space for the housing of prisoners, as well as improving accommodations for the gaoler's family. The humanitarian drive to better prison conditions for debtors following the American Revolution resulted in the addition of a large debtor's cell in the 1790s, giving the building its present shape.

Until 1760 the Gaol was a prison for the entire Province of Maine. It served as a county jail from 1760 until 1820. For the next forty years it continued to be used for the incarceration of local wrongdoers.⁵ It remains in existence today as a museum.

An additional jail was built as each new county was incorporated, as Maine continued the system created by Massachusetts after 1820, with the counties' major role "to administer justice, rather than provide general services or enforce local policies."⁶

But some evolution did occur. Originally the jails or lockups were entirely a local responsibility. "Here thieves, arsonists, debtors (by far the majority), murderers and all other criminals in the county be held until their punishment was decided, or (until 1820) they could be dealt with at Massachusetts facilities.⁷ But county jails "became increasingly inadequate to house the State's criminal population and the need for a state prison became apparent. The Thomaston facility opened in 1824 with a small staff of guards under Chief Warden Daniel Rose."⁸

So nearly 200 years ago Maine started down the road of managing two separate jail systems, one county and one State. Overall, during the 19th and 20th centuries little changed in public policy toward the operation of the county jail system. Elected sheriffs reigned over the pretrial detention and correctional system in each county. Small counties with low populations built and maintained small jails. The reality of Maine's geography prevented any idea of consolidation during the era of horse and buggy.

VII. History of County Jails in Maine 1970-2008

Only Sagadahoc County eventually avoided building a modern facility, instead boarding its inmates at neighboring jails. Then during the building boom from 1990 to 2008 Lincoln and Sagadahoc formed a regional jail authority and built the Two Bridges Regional Jail, 30-A MRSA §1801, et. seq.

⁵ www.oldyork.org/buildings/gaol.html 12/2/13

⁶ Maine had nine counties by 1820 and added seven more thereafter. "Maine Politics and Government" Kenneth Palmer et al, University of Nebraska Press 1992, p 173.

⁷ "Maine: the Pine Tree State from Prehistory to the Present" Richard Judd et al, University of Maine Press 1995, p 230.

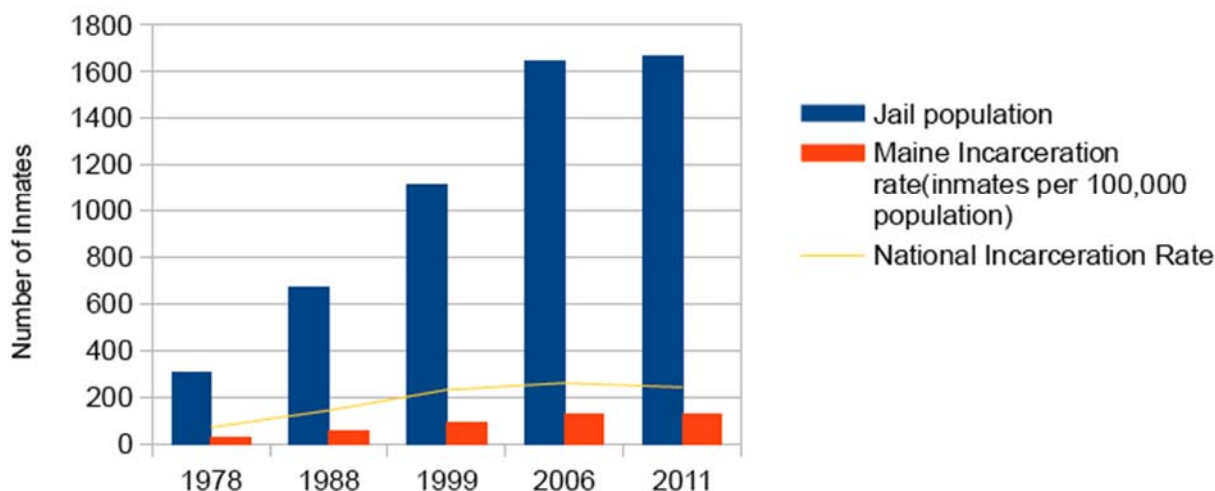
⁸ Ibid., p 200.

Over the last several decades, other large modern facilities were constructed in Cumberland, York, and Somerset. Medium size jails were built in Penobscot, Kennebec, and Androscoggin. Smaller facilities were constructed in rural counties across the state.

A rash of new construction was stimulated by a sharp increase in the number of people caught up in the criminal justice system in this period, and by the age and condition of some older jails.⁹

Maine Jail Population and Jail Incarceration Rate by Year

From BJS Census of Jails 1978-2006, NIC 2011



The Department of Corrections, having regulatory oversight¹⁰, required the newer facilities to be built to a twenty-year projected capacity, creating a large surplus of empty beds. This surplus of bed space was created in anticipation of an increased crime rate. In actuality, the criminal

⁹“A 1978 statewide jail study conducted by the Maine Sheriff’s Association revealed substandard conditions in most Maine Jails. At that time the average age of a jail bed was 80 years. Facilities that were 152 years old were still in service.” “Technical Assistance Report for the Maine Board of Corrections,” Rod Miller and Rebecca Ney, National Institute of Corrections vs Dept. of Justice, June 28, 2011, p. 28. Hereafter cited as “NIC Report.”

¹⁰The Department of Corrections sets standards for jails, conducts inspections, and is empowered to enforce compliance. “If a county or municipality fails to correct deficiencies and offers no plan of correction, or if the plan of correction offered to the department is determined inadequate by the commissioner, the commissioner shall determine an appropriate action to restrict or modify the operations of the facility, consistent with the nature of the uncorrected deficiencies, which action may include ordering an entire facility closed until the deficiencies have been corrected.” Emergency powers are also allowed if the noncompliance is determined to endanger the safety of the staff, inmates or visitors Title 34-A MRSA § 1208.

caseload decreased from over 70,000 cases per year in 2009 to 57,000 cases per year in 2013.¹¹

These thirty-million dollar facilities (Somerset, Cumberland and Two Bridges) were entirely funded through the county property tax and often sold to the voters with the claim that the empty beds would be filled by counties with overcrowded jails needing bed space. The “county adopted boarding rate” was set at a premium price and inmates soon became a commodity where counties with empty beds bid against each other for a body to fill the bed. The prices ranged from \$80 to \$150/day.

During this period, the jail budget represented approximately 50% of the county assessment each year. The counties were proposing \$110 million in capital projects to increase jail capacity and alleviate a perceived system-wide overcrowding issue. Major capital projects were proposed in Kennebec, Cumberland and Waldo counties.¹² A study conducted by the Baldacci Administration found that capacity existed within the system and jail expenditures were growing at an average of 9% over the previous five years. Much of this growth was attributed to new debt due to jail construction.¹³

VIII. History of County Jails in Maine 2008-2013

By 2008 the county jail system was costing property taxpayers in Maine \$62,000,000 annually. The Maine Jail and Community Corrections System Report predicted in 2008 the county system could have a capacity of 2,382 inmates, with the expected opening of the Somerset jail in 2009, a 29% increase over 2007, when the county jails were housing approximately 1,689 inmates.

In addition, the State of Maine Department of Corrections was housing 2,060 adult prisoners at an annual cost of \$79.3 million. The state system was overcrowded and the Legislature turned down the proposal to house prisoners out of state. Still facing an overcrowding problem, the state’s eyes turned to the empty beds in the county system.

In response to this cost and capacity escalation, the Baldacci Administration proposed a direct state takeover of the county jail system, with jail administration and financing to become a responsibility of the State DOC.

¹¹ Jail population increased from 1,113 to 1,642 from 1999 to 2006, BJS Census of Jail Facilities 2006 <http://www.bjs.gov/content/pub/pdf/cjf06.pdf>. See Appendix D for charts of “Maine State Caseload 5-year Trends” 2009-2013.

¹² In 2003 Waldo County lost a referendum to replace its jail, and in 2008 Cumberland County lost a referendum to expand its medical pod. See Appendix F for a complete list of capital projects proposed in 2007/2008

¹³ CAAC Study 2006

After that proposal to absorb the county system failed, the State, counties and Maine Municipal Association entered into negotiations to unify the system. The result of those protracted negotiations¹⁴ was that:

- A. The Maine Board of Corrections (BOC) was created 34-A MRSA 1801, et seq.;
- B. The State would gain access to county beds at a marginal rate. The marginal rate reflected the incremental cost of adding an inmate in a facility without requiring additional staff, ranging from \$24-\$45/day depending on county, and that rate was set by the BOC.
- C. The property tax assessment on county corrections would be capped at the 2008 dollar level, 30-A MRSA §701(2-A).
- D. Counties would be responsible for any debt incurred before 2008, 30-A MRSA § 701(2-B).
- E. The Legislature would appropriate funds to meet the increasing cost of county jail operations through the General Fund, based on a growth rate set by the BOC, 34-A MRSA § 1805.
- F. The Legislature would appropriate and fund a Capital Improvement Plan based “inversely” on the difference between the debt at 2008 and the amount of debt paid by the counties annually each year forward, 34-A MRSA § 1803(5)(E).

As a result of the 2008 reforms:

1. The state got the needed beds at a marginal rate, which did not include any accounting for future capacity costs;
2. The municipalities got the property tax capped;
3. Overcrowding was eliminated in the county system as surplus beds were made available at the marginal rate;
4. The counties received State General Fund contributions to support the jails;¹⁵
5. Three county jails were converted to 72 hour holding facilities;¹⁶
6. The “inverse debt” obligation to fund new capital construction was assumed, but then not funded, by the State;
7. County inmates were no longer treated as a commodity to be assigned to other facilities on a bid basis.

The Board of Corrections and members of the Corrections Working Group dedicated long days and thousands of hours to tackle the daunting task of creating a unified system.

- Training seminars were offered on how the system should work.
- Financial reporting systems were created.
- Programs to coordinate transportation (transportation hubs) were created and large efficiencies were realized regarding moving county inmates around the state.

¹⁴ LD 2080, “An Act to Better Coordinate and Reduce the Cost of the Delivery of State and County Correctional Services,” was signed by the Governor on April 18, 2008 and became PL 2009, Chapter 653.

¹⁵ See Appendix J

¹⁶ Oxford, Franklin, and Waldo

At first the counties cooperated, many reluctantly, to provide budgets and plans to get the system moving. But, passage of the budgets became an endless task, with repeated submissions and onerous scrubbing of individual county budgets.

It became apparent early on that deferred maintenance and capital improvements, as well as wage increases, had become a priority now that the state was funding incremental costs. There were no consequences for deficit spending or lack of capital planning.

Still, most county officials felt the system could and should work to find efficiencies and cooperation where possible. The operational budgets were tight but in most cases adequately funded. Some counties ran surpluses that were put towards capital improvements. Additional investment fund monies were allocated to Aroostook County to make up for a deficit at the end of its fiscal years. Some counties managed their budgets carefully and created small surpluses to fund capital improvements and innovative programming.

However, the perception that the Legislature had reneged on its promise to fund the operational budget and the reality that the Legislature never funded the inverse debt, the defacto capital sinking fund, has kept the Board and counties in a carousel of endless budget proposals and capital needs requests.

A form of battle fatigue set in with the counties.

The original statute was amended to add additional county members to the board.¹⁷ The Board and Working Group were repopulated with new blood, but the issues hadn't changed, and the working group became gridlocked with minor issues and made little progress towards addressing the critical issues. The Subcommittees of the working group stopped functioning. The budget focus group, consisting of several county finance directors, county administrators and state finance officials was disbanded and replaced by three BOC members.

The system was floundering:

- Money from the investment fund was diverted from the operations budgets to help counties pave parking lots, fix roofs and address deferred maintenance with no overall capital planning. Innovative programs to address recidivism had their funding cut.
- Deficit spending continued and some wage increases far outpaced the norm for other Maine public sector workers.
- Revenues for federal boarding were being used to pay debt instead of supporting the operational budget and the BOC faced a legal challenge over this use of funding.¹⁸
- Jails with empty beds stopped accepting inmates from overcrowded facilities, compounding the problem and forcing 72 hour hold counties to drive extra miles to find a bed.

¹⁷ County representation moved from two to four. MRSA 34-A § 1802(1).

¹⁸ Somerset County v. State Board of Corrections, Somerset county Dkt No. AP-13-004(2013)

The plan to create a system designed to find efficiencies, enhance programs to reduce recidivism and prevent overcrowding has been lost amongst turf battles over budget dollars and a sense of loss of local control and the lack of funding by the Legislature. Further, the Appropriations Committee did not get timely information, and as a result, funding requests fell behind the necessary schedule.

The state flat funded FY14 and FY15 appropriation to the county system¹⁹ causing cuts to staffing and programs as a result of the systems' inability to make clear and convincing justifications in a timely manner within the state budget process.

Since FY10 county jail expenditures have grown on average 2.4%, primarily in the areas of wages and benefits (3.4% or \$6.6 million); commodities and contracts (.8% increase, or \$.7 million); while experiencing a reduction of 7.2% (-\$.4 million) in capital spending.

As authorized by 34-A MRSA § 1202(5), the DOC is currently providing staff support for the BOC, including Scott Ferguson from the DOC for financial management, while Attorney General Janet Mills is providing legal counsel for the Board.

The DOC is further assisting the counties by providing housing for some county inmates to avoid local overcrowding, though there is at least one recent case in which a pretrial detainee in Franklin County was sent to the Men's Correctional Center in Windham and sought bail on the grounds that pretrial detention in a distant state facility was a violation of his rights. The presiding judge has dismissed the claim, but similar cases are likely to arise.²⁰

IX. What the BOC System Has Achieved

Primarily through the hard work of numerous individuals, the BOC system has made some progress over the preceding independent county system:

1. Saving the DOC and the State \$2.9m in the first year of operation by making jail beds available to State inmates at cost.²¹
2. The capital construction boom has stopped, with the \$100M program contemplated in 2008 now a dead letter.²²
3. The rapidly increasing burden on local property taxpayers was stopped in its tracks.
4. Some savings have been realized by converting the Oxford, Franklin and Waldo county jails to 72-hour lock ups.²³

¹⁹ The Legislature appropriated FY 2010: \$9,1369,506; FY 2011: \$9,058,217; FY 2012: \$12,650,035; FY 2013: 12,039,128; FY 2014: \$12,202,857; FY 2015: \$12,202,857.

²⁰ Parker v State, Franklin County Superior Court. See "Attorney seeks release of suspect forced to await trial in distant prison," Kaitlin Schroeder, Maine Sunday Telegram, Nov. 3, 2013, p B2

²¹ NIC Report, p 6

²² The BOC took credit for this cancellation, though Miller & Ney disagreed, arguing instead the new construction was merely delayed. Ibid. p 34

²³ Ibid. p 33

5. More savings have been achieved by development of a cooperative transportation system for moving prisoners around, particularly in Northern and Eastern Maine.
6. The practice of setting boarding prices by bidding for inmates ended.

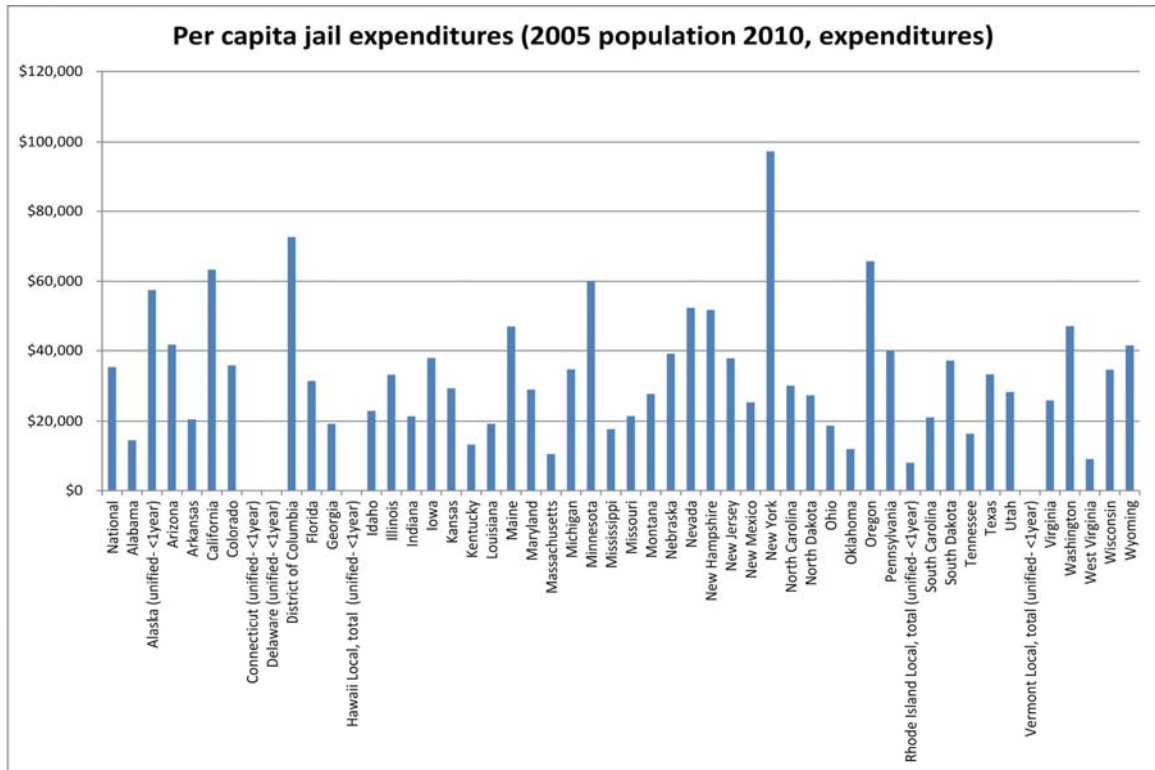
X. What the BOC System was intended to achieve, but has not:

The objectives of the BOC were set out in the legislation creating it as follows:

The first section of the legislation, Title 34-A §1801(1), states that “The State Board of Corrections is an autonomous body whose purpose is to develop and implement a coordinated correctional system that demonstrates sound fiscal management, achieves efficiencies, reduces recidivism and ensures the safety and security of correctional staff, inmates, visitors, volunteers and surrounding communities.” The statute also directs the Board to develop goals including benchmarks for performance in the following areas: A. Recidivism reduction; B. Pretrial diversion; and C. Rate of incarceration, 34-A MRSA § 1801(2).

The actual achievements of the BOC have fallen short of the goals. For example:

1. Costs continued to increase²⁴ since 2008, so that Maine has a per capita cost for county inmates of \$59.94, the tenth highest among the states.



²⁴ In the first biennium of the BOC overall costs rose at a rate of 3.5%, but in its second biennium, that rate decreased to 2.45%, and for FY14-15, the actual rate is believed to be 5.5%.

2. There has been no coordinated capital planning, and limited appropriation for capital construction, contrary to the “inverse debt” funding promise in 2008.
3. The BOC has been limited in new funding from the Legislature, and appropriations have risen from a starting point of approximately \$5.7 Million for FY2008 to approximately \$13 Million for FY13, with the operations deficits for those 5 years made up by savings from the conversion of three county jails to 72-hour lock ups.
4. The fiscal shortfall has reached the point that it is anticipated that at the current rate of spending, the county jails will require a supplemental appropriation of around \$2.8 million for 2014, excluding Somerset, based on current assumptions, or else will run out of money sometime in the fourth quarter of FY14.²⁵
5. The BOC has been unable to fulfill several of the statutory mandates included in the 2008 legislation which were intended to improve management efficiency and reduce both recidivism and the rate of incarceration, and increase pretrial diversions.²⁶
6. For the most part, the BOC has been mired in a decision making impasse for a long time, unable to reach decisions on critical matters concerning county jail budgets and only recently was able to allocate some \$5.6 million for programs to reduce recidivism.²⁷

XI. Why the BOC has failed

Despite tremendous efforts by many Maine people in government at all levels and volunteers serving their civic duty, and the tireless leadership from BOC Chairs Neale Duffett and Col. Mark Westrum, the BOC has failed to achieve the initial expectations of the Legislature in creating this novel, hybrid system.

It has failed to:

1. Achieve cost reductions through collective contracting for goods and services;
2. Secure budget discipline at the county level or full state funding for its budget requests;
3. Address its mandate concerning reductions in recidivism and pretrial services;
4. Achieve standardization regarding staffing and equipment;
5. Develop a unified plan for capital investment; or
6. Win the trust and confidence of the Legislature.

²⁵ See Appendix I

²⁶ The NIC Report contains a table at pp. 8-11 detailing the 47 statutory mandates requiring action by the BOC, a copy of which is attached. Of those 47, in 2011 the NIC determined that fully 15 were not complete, 19 were “partially complete,” and only 11 were actually completed (the rest were basically “unknown”). A review in connection with this report indicated that 15, including crucially, developing “goals to guide the development and evaluate the effectiveness” of the new system and “develop a plan for ‘managing costs’” have not been completed. Since 2011, no additional mandates appear to have been completed, or even undertaken. See these tables in Appendix A.

²⁷ “Jails will get more funds for reducing recidivism,” Craig Crosby, Portland Press Herald, Nov. 25, 2013, p C1

The BOC legislation has failed to adequately address 10 specific and serious problems identified by the Commission including:

1. An unrealistic funding process;
2. Lack of authority for the BOC
3. Too much time spent by the BOC on budget approval;
4. Goals and objectives neither defined nor met;
5. No jail standardization;
6. Innovative and high quality programs and incentives sacrificed;
7. Too many jails “not obeying the rules”;
8. The current funding crisis;
9. Excessive pre-trial populations, cooperation with the judicial system; and
10. Mental health needs inadequately addressed.

What are the root causes of these results?

1. Lack of a vision that the jails are part of a Statewide criminal justice system which should be for the common benefit and protection, and the equal distribution of the common burden, of all the people of Maine.

As the framers of the US Constitution argued, the safety of society is among the transcendent objects of government, and justice is its purpose.²⁸

As noted above, criminal justice started out in the Massachusetts Bay Colony as a county responsibility, as the dictates of colonial transportation and communications demanded.

Since then Maine has successfully modified other institutions in its criminal justice system, as the courts now operate on a statewide basis, with its judges now funded through the state General Fund, though the counties retain a role in owning and maintaining courthouses.

Likewise, the District Attorney system has been updated, with multi-county districts and state funding for the salaries of the District Attorneys and their assistants, 30-A MRSA § 255(2).

The result of the continued fragmented jail system has been a lack of reasonably equal opportunities for pre-trial services for diversion programs, regardless of location, and a significant disparity in the tax burden among the various counties,²⁹ as well as inability to achieve potential economies of scale and other efficiencies.

This lack of vision for a single statewide criminal justice system has contributed to the problems identified by the Commission.

²⁸ The Federalist Papers No. 43 and 51 (Madison).

²⁹ See Appendix H

2. BOC representation and lack of ownership of this hybrid organization by the Legislature and Administration.

As the NIC report explains, “There are no counterparts to the Board’s structure in other states...the difficulties encountered in Maine in the last four years explain why no other state has tried a similar approach. We believe that no one will be looking to Maine as a model.”³⁰

The BOC does not have an independent source of funding. It is entirely dependent on the counties through the property tax, and the Legislature through the General Fund.

But the Board now consists of nine members, of whom four are county officials, and only two representative of the interests and concerns of the Administration. Additionally one is a municipal official, while two represent the general public, one of whom should be a mental health specialist, 34-A MRSA § 1802(1).

In 34-A MRSA § 1801 the Legislature declared the BOC to be an “autonomous body.” But it does not operate in a vacuum, and is dependent on the Counties, and increasingly, the State, for appropriations. There is no escaping the reality its budget priorities must compete with all others vying for State funds.

There is a risk that the absence of adequate representation reflecting the priorities of the payor, leads to a loss of understanding of the needs of the county corrections system by the Legislature and a lack of confidence in the decisions the Board is making.

A dominant representation by county officials also contributes to a lack of incentive to scrutinize county jail operations and to make hard decisions. These realities have contributed to State appropriations less than the BOC has requested and a total lack of State investment in the capital investment sinking fund.

This lack of ‘ownership’ has contributed to several of the problems identified by the Commission.

On the other hand, extensive county representation does provide much needed experience and expertise concerning the county jail system, which is valuable in the BOC’s deliberations. The Legislature will have to resolve the tension between these two competing considerations.

3. Lack of incentives and disincentives for systematic collaboration by the counties.

While individual counties readily reach informal, ad hoc mutual aid agreements, there is no culture or tradition of consistent collaboration to achieve the standardization necessary to realize long term economies of scale.

³⁰ NIC Report, p 36

Every county, understandably, seeks to maximize its own benefit, rather than optimize results system wide. Understandable, because there are few incentives in the form of retaining savings, eligibility for programs or avoiding sanctions. The result is a confederacy of autonomous governmental units acting in their own best interests, rather than a union looking to achieve common standards and making the best use of resources for the whole state.

This lack of incentives and disincentives for systematic collaboration by the counties has contributed to many of the problems identified by the Commission.

4. Lack of executive leadership.

The BOC is a part-time job for nominal consideration for its members, yet has consumed an enormous amount of their time and attention.³¹

It has suffered from the lack of a consistent, full-time, professional, empowered executive and a finance director who can organize agendas, prioritize issues, scrutinize budgets and collect information, so that the Board members themselves can concentrate on broad policy issues. Fortunately, an executive director and financial analyst have both been hired this fall.

This shortcoming has resulted in at least two major problems that have crippled the system:

1. The board members themselves have ended up consuming all available time on reviewing the minutia of the individual county budgets, repeatedly sending versions back for revision, but not assembling a single overall budget within realistic parameters.
2. Because all the time and effort of the BOC has been expended on budget review, the Board has been unable to take action on the many other mandates established by the legislature as outlined in Appendix A.

Thus, the lack of an empowered executive has contributed to the problems identified by the Commission.

5. Lack of common accounting standards.

The lack of uniformity in how the counties account for expenditures, and of standardization for metrics, makes it very difficult to measure performance or even compare correlations-related spending among the various counties.³²

A good example of this problem was provided in the RHR Smith report: “Since costs are not categorized consistently, it may be time consuming to identify and quantify potential savings.

³¹ 5 MRSA §1200A-G, sub-§ 6-C

³² “There have been instances of inconsistency, resulting from the Counties’ lack of clear understanding of their responsibilities and of the BOC’s expectations regarding budgeting, allocations, cash flow needs, fund balance and contingency funding. This makes it difficult to compare data between time periods on countries for meaningful analysis,” Smith, p 4.

Using information technology for example, IT costs may be included in capital, wages and/or contracts, making them difficult to isolate or measure.”³³

In turn, lack of metrics makes it extremely difficult analyzing where economies of scale and efficiencies of performance may be achieved.

It may be that the BOC has the implied authority to require such accounting and reporting standardization, under 34-A MRSA § 1801(1), 1803(1)(A) and 1803(5)(D), and 30-A MRSA § 710(1), but if so, it has failed to effectively exercise such authority.

The lack of such standards has contributed to several of the problems identified by the Commission.

6. Lack of will and authority at the BOC to make and enforce critical decisions.

The system suffers from the failure of the BOC to present budgets to the Legislature that drive down the requests of the various counties to a realistic overall figure, instead acquiescing in the incremental demands of the counties.

Likewise, the Board has been unwilling to enforce decisions against uncooperative counties that fail to conform with its policies and rules, for example the refusal of Somerset County to accept prisoners from other counties.

This problem was summed up in the NIC report: “One of the issues most often cited by those interviewed is the perception the BOC does not exercise its leadership and decision-making authority to [move toward a version of One Maine, One System].”³⁴

Many interviewees put it succinctly: “There are too many meetings that don’t accomplish anything.”³⁵

The lack of will by the BOC to make and enforce decisions has contributed to the problems identified by the Commission.

7. Lack of a mechanism for planning and funding capital expenditures.

There is no centralized record of how much has been spent on capital projects since the BOC was created.

³³ Smith, p 7. Likewise, the BOC lacks reliable non-financial metrics as well. “The BOC has not developed a plan for measuring its progress beyond costs benefits. Some, like pretrial services, do attempt to quantify their outcomes, but generally the notion of a performance management plan does not yet exist.” NIC Report, p 17.

³⁴ NIC Report, p 16.

³⁵ NIC Report, p 14.

Likewise, there is no CRAS module for uniform accounting for capital expenditures.

Further, there is no mechanism for compiling aggregated data as to the needs for capital investment to maintain or replace facilities, let alone for prioritizing needs.

Instead, there is a passive certificate of need review process under which the BOC is to rule on the merits of such proposals or individual counties may care to make. 34-A MRSA § 1803 (4).

Or, in the alternative, counties can ask for ad hoc funding for capital projects out of the Investment Fund, which is primarily intended as the vehicle to fund General Fund contributions to the county corrections operations but, confusingly, also can be used to pay for capital projects. 34-A MRSA § 1806(2).

In practice, such requests are made without reference to an overall plan or consistent with any articulated criteria.

Without any comprehensive plan, any criteria for funding projects, any priorities, any guess as to the total amount which may be needed from year to year, or even any consistent mechanism, it is hardly surprising that the Legislature has never funded the Inverse Debt account intended to fund county corrections capital projects. 34-A MRSA § 1803 (5) (E).

Yet, the physical infrastructure inexorably ages and, according to the 2013 BJA study, decays.³⁶

The lack of such a mechanism for planning and funding has contributed substantially to the failure to do the necessary planning and investing.

In closing this analysis, we need to state that these problems are not the products of failings on the part of individuals. Many good Maine people have worked hard these last five years to try to make this hybrid system work. The problems are not individuals, but flawed institutions, complicated legal arrangements and inadequate mechanisms for achieving progress.

They are problems that can be solved.

XII. The concerns of the Legislature

In its communication to the Criminal Justice Committee of June 3, the Appropriations Committee noted that the jails were acting like a decentralized confederation, and that several problems had arisen as a result, including:

1. Constant adjustments to the budget;
2. Inability to coordinate and control operations among the counties;
3. Inability by the BOC to enforce its decisions;

³⁶ Miller 2013 Bureau of Justice Administration, USDOJ study, p 3.

4. Counties opting out of the system with impunity;
5. Uncertainty as to the amount of revenues available because of the unilateral actions of some counties; and
6. Inequity in the sharing of the burden of capital construction debt.

In sum, the Committee expressed a lack of confidence in the ability of the BOC to manage its finances and create the unified system originally envisioned.³⁷

XIII. Statement of the Problem

The identification of the issues related to the shortcomings of the current system led the Commission to adopt the following statement of the problem:

Maine has adopted a system of governance of its county jails and lockups that fragments decision-making with respect to (1) raising revenues; (2) managing budgets; and (3) achieving operational efficiency, which has resulted in uncertainty, absence of accountability, deteriorating incentives for efficiency and now a funding crisis.

The mandate of this Commission, of course, was not just to identify the problems, or to analyze their root causes, but to go further and come up with recommendations for solutions.

XIV. Alternative Models for Restructuring and Reform

We have described a formidable set of problems, and analyzed what we believe are their fundamental root causes.

The Commission evaluated four potential approaches to addressing these issues:

1. Return to the pre-2008 system of individual county responsibility.
This approach has the virtues of reasonably clear accountability for a single political decision-maker, the County Commissioners, although there is some ambiguity in the relative accountability of the Commissioners and the Sheriffs³⁸, and a reintegration of decision-maker and taxing authority.

But any possibility of state-wide efficiencies and economies of scale would be greatly diminished, and we believe it would be impossible to break the freeze on local property tax increases.

So we do not recommend this approach.

³⁷ For the full text of the letter, see Appendix C.

³⁸ 30-A MRSA § 1501 provides that the Sheriff has custody and charge of the jail...and the appointment of the jail (administrator). But in 30-A MRSA § 709, the County Commissioners are responsible for setting the annual budget to the BOC.

2. Create four regional jail authorities.

This proposal called for dividing Maine into four mandatory regional authorities modeled along the lines of the Two Bridges Regional Jail Authority, with multiple counties cooperating to achieve regional efficiencies and economies of scale, programs, shared accommodations, training, etc.

But the Commission was concerned such an approach would also serve to create more sub-state bureaucracies without addressing the causes of the deadlocks that have characterized the current system.

Still, there can be a constructive role for voluntary collaboration among various counties on different issues, and our recommended approach recognizes and encourages such arrangements, where they do not conflict with the exercise of authority by the BOC or the DOC.

3. A DOC takeover of the county jail system.

Again, this approach would have the virtue of reuniting decision-making with taxing authority, and take advantage of a unified command and control system that could provide consistency in policy and administration statewide, with a greater opportunity to realize economies of scale.

On the other hand, a single statewide system would be unable to adjust to local pay scales and thus might incur additional, unnecessary costs.

More importantly, such unification would overturn 350 years of political culture and tradition in Maine, requiring a redefinition of the roles of county officials and employees, and perhaps of the county government system itself.

We are not prepared to recommend this step, but future Legislatures may find such restructuring necessary if the approach we do recommend fails to successfully resolve the issues facing the current system.

4. Restructure the current BOC system.

Considering the numerous, serious problems of the current system, it is reasonable to question whether it can achieve its goals with only a few, pivotal statutory changes.

We believe that with the right leadership structure, proper incentives and disincentives for system participants, and legal authority to require standardization in key areas, the original goals of controlling costs, achieving statewide consistency and minimizing additional infrastructure can be achieved.

We recommend this set of reforms because achieving Maine's objectives in the least disruptive way, preserving as much of our traditional system as we can, seems the most prudent course of action.

Those few, pivotal reforms are as follows.

XV. Recommendations

The Commission formulates its recommendations in the form of responses to the root causes of the problems identified, as follows:

1. VISION

a. Root Cause

The BOC has lacked a unifying vision to support its various activities and the energy to set a direction and make progress.

b. Solution

The State and the counties should commit themselves by law to a set of common purposes to be established by the Legislature, including:

- (i) protection of public safety statewide;
- (ii) assurance of equal treatment in the criminal justice system statewide;
- (iii) movement towards equality in the tax effort devoted to county

corrections statewide;

(iv) actions to achieve efficiencies, economies of scale, and full utilization of facilities statewide;

(v) a reduction in recidivism

(vi) collaboration with and coordination of programs and services with the DOC.

Such a solution would be consistent with recommendation A-15 of the NIC USDOJ report of 2011 which advocated “the Board should seek legislation to redefine the scope of [its] purpose and authority.”³⁹

c. Relationship of solution to problems identified

The adoption of a vision of a unified, statewide system relates to the 10 problems identified by the Commission.

d. Statutory changes needed

34-A MRSA § 1801(2) already empowers the BOC to adopt goals and objectives. The BOC has also adopted some useful “Guiding Principles,”⁴⁰ which have provided some parameters for action, but express neither a vision nor a set of goals, both of which are needed to energize the system.

Therefore, § 1801(2) should be amended to express the statewide goals and mission of the BOC.

³⁹ NIC Report, p 18

⁴⁰ “The Guiding Principles” are set out in Appendix G.

2. BOC REPRESENTATION

a. Root Cause

Currently the BOC's membership consists of four representatives of various county interests, two Administration, one municipal and two public members, following amendment of the statute in 2011.⁴¹

The amendment was added to assure a high level of county corrections expertise within the BOC, but it came at the cost of further isolating the BOC from the State government, which provides an ever increasing share of the costs, and promotes a culture of mutual forbearance among the counties, which in turn has contributed to an impasse in decision making.

b. Solution

It might have been helpful to the BOC in successfully carrying out its mission if the (i) Legislative and Executive branches have confidence in its membership, (ii) the Board operate with a manageable size and odd number of members, (iii) that the interests of the taxpayers be represented, as well as (iv) retaining the perspective and expertise of the counties.

Such a recommendation would have been consistent with the findings of NIC, USDOJ that "the Board should evaluate its membership annually and determine if changes should be made in its composition and/or the composition of its committees."⁴²

It might be argued that membership should be made in accordance with the proportional revenue contributions to the support of the jails. But since the State is putting in 100% of the marginal cost, it also could be argued that they should have the decisive voice in how its contribution is spent. In any event, a majority of the Commission members decided that the benefits of retaining the current representation of the counties outweighed other considerations.

c. Relationship of solution to problems identified

Changing composition of the membership of the Board to reflect State and taxpayer interests relates to the 10 problems identified by the Commission.

d. Statutory changes needed

34-A MRSA § 1802 it was proposed this be amended to provide for a manageably sized council representative of the funders of the system, its operators and the public. It is reasonable to stay with nine members, nominated by the Governor and confirmed by the Legislature, but with a new composition, as follows:

- i. One County Commissioner;
- ii. One Sheriff;
- iii. One County Manager/ Administrator;
- iv. The Commissioner of Corrections, or his designee;
- v. The Commissioner of DAFS, or his designee; and

⁴¹ PL 2011, Ch. 374 §9 The current membership is shown on the table in Appendix E

⁴² NIC Report, p. 18

vi. Four members of the public, with relevant experience or appropriate professional credentials. But again, the decision was made to recommend staying with the current membership composition.

In any event, beyond professional qualifications, what the BOC urgently needs are members who have a commitment to a Statewide vision, to promoting efficiency, and to decisive leadership.

3. LACK OF ENFORCEMENT POWER

a. Root Cause

The BOC has acted as if it is unable to enforce its authority, and has only offered incentives to encourage innovation infrequently.

b. Solution

The BOC will accomplish little without the power to enforce its judgments. In this context both financial and operational sanctions are indispensable, including:

(i) The power to award discretionary funding to support innovative or efficient programs

(ii) To incentivize counties to operate as efficiently as possible, it should be able to retain the current year savings it achieves through good corrections management without an offset of the State or County appropriations otherwise due. The county can use such savings for reinvestment within the jail facility, including funding otherwise unfunded liabilities up to amounts approved by its auditors.

(iii) The disposition of federal and State boarding revenues cuts both ways. If all the revenue accrues to the host county, it is incentivized to maximize such revenue, given the higher boarding rates paid by the federal government, which reduces financial burden on that county.

On the other hand, such a revenue maximization strategy can hurt other counties if the federal prisoner maximizing county sends its own inmates to other counties at a lower rate, or forces other overcrowded counties to transport its inmates a greater distance to another less crowded facility.

A majority of the Commission concluded that all such revenue should accrue to the benefit of the host county, and not be used to offset State or County appropriations otherwise due.

Whichever way the Legislature decides, the law should be amended to provide a clear rule on the division of boarding revenue to forestall future, unproductive disputes at the BOC.

(iv) The power to withhold payments otherwise due to counties who:

- refuse to accept prisoners assigned;
- fail to comply with accounting and budgeting protocols;
- fail to curtail spending when directed to do so;
- improperly refund monies to counties;
- fail to operate in accordance with standards set by the BOC or DOC;

- fail to offer programs and services as required by the BOC or DOC

(v) In the event of serious or systematic failure to comply with regulations, standards or policies of the BOC, they have the authority to request the DOC to assume operational control of a correctional facility in the non-compliant county, with appropriate funding adjustments.

c. Relationship of solution to problems identified

While the BOC is charged with many responsibilities, providing adequate authority to enforce its decisions will address several of the 10 problems identified by the Commission.

d. Statutory changes needed

34-A MRSA § 1806 should be amended to add a new subsection giving the BOC explicit authority to withhold funds otherwise due or declare a county ineligible to receive some or all funds during periods when it is in non-compliance with the directives, policies or rules of the BOC, or, in serious cases, recommend assumption of control of a facility by the DOC.

4. LACK OF EXECUTIVE LEADERSHIP

a. Root Cause

The BOC has been in existence for six years. During that period it has employed four executive directors. Besides lack of continuity, the Board has not defined the role of Director in a way that has empowered its staff with leadership responsibility.

As a result, the Commission itself has taken on much of the staff role, getting lost in detail, rather than setting broad priorities and advocacy effectively for its principles, protocols and budgets.

AS RHR Smith and Co. recommended in their review of BOC operations, "Analyzing and reconciling financial information before meetings can help free up the BOC to focus on its stated mission. Many of [its] initiatives...will require the time and ability to engage in strategic planning, cost benefits analysis, and building partnerships."⁴³

b. Solution

In its recent report, RHR Smith, observed "there are no internal policies that clearly define goals, roles and responsibilities for the BOC Executive Director..."⁴⁴

The role, responsibilities and pay grade of the Executive Director should be defined in BOC regulations.

There should be a clear understanding that the BOC is responsible for setting policy and enforcing decisions, while the Director is responsible for the staff work, data collection and analysis of the Commission and carrying out the policies of the Board.

⁴³ Smith, p 9

⁴⁴ Smith, p 7

The addition of a financial director to the organization should also prove helpful in the immediate future.

It is critical the BOC staff develops strong working relationships with both the counties and the DOC.

c. Relationship of solution to problems identified

Strengthening the role of the Executive Director relates to the 10 problems identified by the Commission.

d. Statutory changes needed

34-A MRSA § 1803-A should be amended to explicitly define the roles and pay grades of the Director, Financial Analyst and Fiscal Agent, since the BOC has not done so.

Moreover, the BOC should be able to call on the expertise and resources of the DOC to minimize the growth of a new bureaucracy.

5. LACK OF COMMON ACCOUNTING STANDARDS

a. Root Cause

In the original 2008 legislation, the BOC was empowered to require a common budget reporting system, 30-A MRSA § 710(1).

However, this authority has proven too inconsistent, and in a detailed and critical report in June 2013, the authors concluded “There have been instances of inconsistency, resulting from the counties’ lack of clear understanding of their responsibilities, and the BOC’s expectations, regarding budgeting, allocation, cash flow needs, fund balance and contingency funding, thus making it difficult to compare data between time periods or counties for meaningful analysis.”⁴⁵

b. Solution

As RHR Smith noted, “The ability to capture, analyze and interpret financial information that is reliable, credible and accurate is essential to the BOC’s process. This information can be used to make routine decisions, project future expenditures, and communicate current and future needs of the Investment Fund to counties, the general public, and the Legislature with confidence.”⁴⁶

Thus, requiring a common chart of accounts and consistency of coding expenses, and adopting consistent fiscal policies and auditing policies must be at the heart of any reform to make the BOC effective. Likewise, both technical assistance to the counties and compliance mechanisms will be necessary to bring the process to life.

c. Relationship of solution to problems identified

Requiring consistent financial and performance data related to the 10 problems identified by the Commission.

d. Statutory changes needed

⁴⁵ Smith, p 4

⁴⁶ Smith, p 9

34-A MRSA § 1803 should be amended to give the BOC the authority to establish and enforce a single chart of accounts for county corrections-related expenditures for all financial management purposes. Additionally, to require budget submissions by the counties in a manner consistent with and timed to integrate with the State budgeting and auditing processes.

6. LACK OF WILL OR AUTHORITY TO ENFORCE ITS DECISIONS

a. Root Cause

While the BOC reports extraordinary frustration at its inability to fulfill its mission or execute its policies, there is a legitimate question as to what is holding it back other than an attitude of deference towards individual counties.

For example:

(i) Somerset County is refusing to accept prisoners from other counties because it thinks the boarding rate is unfair. But the BOC has taken no action to compel Somerset to fulfill its statutory duty, allowing the county to take the initiative with its own lawsuit concerning funding.

(ii) Meanwhile, Franklin County is forced to send prisoners to State post-conviction facilities in Windham instead of to Skowhegan 25 miles away.

(iii) Waldo County is, by its own admission, refunding \$233,000 to its taxpayers, rather than meeting its obligations to the overall state system, thus increasing the amount the BOC must seek from the General Fund.

(iv) The BOC has been unable to decide whether to ask the Legislature to fund either its “actual” or a maximal budget for FY14, and has not yet approved any budget for FY15, thus jeopardizing its opportunity to secure needed funding.

(v) Some counties are not providing the financial data necessary to formulate an accurate budget, but the BOC has been unable to correct this problem; and

(vi) Washington and Hancock Counties, for instance, are enduring significant facility deterioration without any assistance from the BOC.

These are illustrations of current problems in decision-making at the BOC, rather than an exhaustive list.

b. Solution

The solutions to the paralysis in decision-making are:

(i) increase the authority of the BOC to mandate policies and actions of Statewide significance, including the ability to enter into contracts binding on all the counties to achieve economies of scale;

(ii) ensure the BOC has a set of incentives and sanctions sufficient to enforce its decisions.

c. Relationship of solution to problems identified

Reforming the authority of the BOC is absolutely essential to making the organization useful for achieving standardization, economies of scale and efficiencies any time soon, and will help resolve several of the ten major issues.

d. Statutory changes needed

(i) Rulemaking: The BOC should have the authority to set policies and adopt routine technical rules to promote consistent management of operations, encourage innovative programs and services and undertake long term planning for capital needs.

The Commission also proposes that the Criminal Justice Committee authorize any major new substantive rules to facilitate the aforementioned activities and additionally to empower the BOC with the authority to implement and enforce compliance with its decisions.

(ii) Standards: To promote efficiency and fairness, the BOC should have the authority to set and enforce standards concerning:

- Management Information Systems and their interconnections;
- Security equipment;
- Inmate classification;
- Pretrial services;
- Assignment of inmates among the county jails;
- Staffing qualifications and ratios; and
- Bed space determination/ classification.

(iii) Contracting: Amend 34-A MRSA §1803(1)(f) to maximize the potential savings that might be realized from contracting for goods and services that can be used by multiple counties, the BOC should have the authority to contract on behalf of any or all of the counties unilaterally, to either piggy-backing on State DOC contracts or acting on its own for:

- Medical and mental health services;
- Pharmaceuticals;
- Food and food services;
- Appliances and equipment;
- Telecommunications equipment and computer hardware and software;
- Insurance policies; and
- Other goods and services it may identify by policy from time to time.

(iv) Back Office Services: The BOC should have the authority to provide support services needed by any county correctional systems, on a contractual basis with the consent of an interested county for:

- Hiring and human resources;
- Civil rights;
- Risk management and insurance;
- Training;
- Financial management, budgeting and procurement;
- Management information systems; and
- Other services it may identify from time to time.

(v) Assignment of Inmates: The BOC should have the authority to establish and maintain a coordinated system for pre-trial detainees and others housed in the county jails as follows:

- The BOC shall establish rules under which it may demand any county facility to accept any inmate from any other county facility, the State or the Federal government.
- The BOC shall set standards for the software necessary to facilitate transportation of inmates among facilities so as to create a truly Statewide system of assignments.

(vi) Regional Authorities: The various counties are encouraged to enter into mutual, voluntary agreements to procure and provide goods and services and mutual aid of any kind, and in fact, is strongly encouraged by the Commission, on such terms and conditions as they may from time to time agree, so long as such agreements are limited to subjects and to the extent to which the DOC or BOC have not exercised such authority.

(vii) Monitoring Performance: The BOC should have the authority to monitor the operational, programmatic and financial performance of the county jails and to establish appropriate metrics for comparison of the counties among themselves and with other appropriate jurisdictions, and require timely reporting in a consistent format, with appropriate penalties for non-compliance.

XVI. Additional Recommendations

In addition to the foregoing recommendations intended to address the root causes of the problems which have made the current system largely unsuccessful, there are administrative measures which we believe would make the current system more workable, as follows:

Budget Reform

a. **Adopt a growth formula to standardize and guide budget planning.**

Create and adopt a biennial budget growth formula for budget planning purposes that projects approved future growth in operational costs, and a second for capital costs. The operational formula would be based on the LD 1 cap as applied currently to the county payments. 30-A MRSA § 706(A)(1).

A formula for replacing the current “actual costs of corrections” standard (34-A MRSA § 1803(5) (E)) with an objective measure consistent with the discipline elsewhere in government for operations expenditure budgeting would reduce uncertainty and eliminate creation of unrealistic budget proposals which cost considerable time and effort.

b. **The County Corrections budget process should track and be synchronized with the State process.**

Budget instructions based on the Growth Formula should be sent from DAFS to the BOC. The BOC should transmit the same to the Counties, based on a BOC approved allocation formula.

The County Commissioners, after consultation with the Sheriffs, Jail Administrators and other relevant officials should submit a two part budget in a DAFS-approved format to the BOC. Part 1 would continue current operations. Part 2 would propose any additional programs, services or other initiatives a County wishes to propose.

After review, revisions and approval, under 34-A MRSA §1803(1)(A), the BOC would approve any Part 1 request of a County, which is below the Growth Formula cap.

The BOC would review and vote on any Part 2 requests by any County, in its submission to DAFS. The BOC will be required to rule in a timely manner on such requests to stay within the State budget process timeline.

In the event the Governor reduces or eliminates any BOC requests from his budget, the BOC shall have the right to report its original request directly to the Legislature.

In the event the Legislature appropriates less than the full Part 1 amount requested, the BOC shall allocate the deficiency among the Counties to minimize the impact on county corrections operations overall.

c. Benefits

The Legislature is currently unaware of the full extent of county corrections systems needs. Moreover, the BOC consumes extraordinary amounts of time examining the detail of Part 1. This separation of on-going LD 1 capped funding from consideration of new and additional spending in excess of the cap should reduce the amount of time the BOC uses up on budget issues.

d. Statutory Changes Needed

Amend 34-A § 1803(5) (E) by replacing “actual costs” with an amount not in excess of the cap generally applicable to County expenditures contained in 30-A MRSA § 706(A). In addition, the BOC may request additional appropriations, clearly identified for new or expanded programs or under the emergency circumstances described in 34-A MRSA § 1803(5)(D).

XVII. Capital Planning and Finance

1. Current Situation

Since the BOC was established, no new county correctional facility has been constructed.

However, the Legislature clearly contemplated that the BOC would play a role in the closure of older or unneeded facilities, and changes in the missions of existing facilities. 34-A MRSA §1803(2)(A) and (C).

Likewise, the BOC was given the authority to review and either approve or reject plans for new facilities using a “certificate of need” process, 34-A MRSA §1803(4).

Pursuant to these responsibilities, the BOC developed a “Draft Policy Statement” entitled “One Maine One System” to govern capital improvement planning for county correctional facilities in June, 2009.⁴⁷

It was considered by the BOC at its November and December, 2011 meetings, but not adopted as presented.

It would have required a 10 year capital improvement plan (CIP) for each county, though priorities could be adjusted during that period. It called for the counties to use up their “fund balances” at the end of a FY first, and then apply to the BOC for additional funds needed.

⁴⁷ “One Maine, One System - A Plan for a Unified State Correctional System for Maine,” created by Maine DOC, June 2009, Appendix L

Capital funding is also supposed to be made available through the “Inverse Debt” fund, 34-A MRSA §1803(5)(E), but in fact no funds have actually been appropriated for this purpose. It is hardly surprising the Legislature would not assign this cause high priority in the absence of a comprehensive Statewide capital plan demonstrating needs, and setting priorities.

In particular, there have been no further changes or mission closures or new construction since the first days of the BOC.

Still, in the past 10 years, there has been further deterioration and decay in the physical plants at several jails, and minor capital investments by individual counties acting on their own.⁴⁸

The RHR Smith accounting review also faulted the planning process, observing “the BOC lacks policies for dealing with counties’ capital and noncapital contingencies. This makes demand on the Investment Fund hopelessly unpredictable.”⁴⁹

Besides the absence of long term planning and a mechanism for prioritizing capital projects, there are further important problems in the financing of projects.

For short-term projects, the problem is that the ability to finance them depends on the amount a county happens to have in its surplus in a given year, regardless of how its needs compare in urgency to other counties.

Nonetheless, as a practical matter, the Commission recommends that the Counties be authorized to utilize surplus funds to create their own capital improvement accounts and accounts to cover unfunded liabilities up to levels approved by their auditors, which shall not offset State or County appropriations otherwise due.

For long-term, major projects, the cost must be borne by county taxpayers, regardless of the relative tax effort needed. Thus, a poor county might defer a greatly needed project, while a wealthier county can afford a less compelling project.

The costs of the present system are well illustrated by the plight of Somerset County, which voted for a \$29.2m facility to be paid for by a county bond issue, which has resulted in a per capita cost of \$20.62.

In considering the best mechanism to fund capital needs, the Commission believes, the BOC should develop a long term plan to alter the property tax burden for the counties to equalize citizen contributions to county jail operations and existing and future capital debt service expense, including through application of state funds appropriated for that purpose, by accounting for an appropriate proportion of non-property tax revenues for jail operations, such as prisoner boarding and per diem revenues from state and federal sources, and by other means to equalize property tax burdens.

2. Options for Capital Investment in the Future

There are four aspects to capital investment in county correctional facilities:

A. Planning;

⁴⁸ BJA Report, p 3

⁴⁹ Smith, p 5

- B. Financing;
- C. Ownership; and
- D. Location.

For each of these factors the responsibility could be placed with the county, the State or the BOC.

Many permutations have been adopted in Maine for other capital projects by other government agencies.

Historically, of course, jails were planned, paid for and owned by the counties.

But, as the State establishes standards and the BOC legislation contemplates a unified system, such autonomy seems inconsistent with the purposes of the law.

A second model is that of regional jail authorities like the Two Bridges Facility in Wiscasset, with regional planning, finances and ownership, but the experience of TBJA has been fraught with conflict and litigation.

A third is using the State DOC for all four. This would raise problems with the management and use of a state facility by different organizations.

A fourth alternative would be something akin to the system Maine uses for funding new school construction.

In the case of the schools, local districts do the planning in accordance with State standards, the Board of Education prioritizes projects against established criteria, and financing is shared by the State, through the GPA funds, and the local district by a bond issue.

The advantages of this model applied to development of a unified county corrections system include:

- (a) consistent standards for planning;
- (b) prioritization of projects on a statewide basis;
- (c) sharing the costs between the local organizations and the state, taking into account ability to pay;
- (d) ownership by the entity that will be managing, staffing and using the facility;
- and
- (e) proper determination of need and location for any new jail construction.

The day will come when a jail must be replaced because of age and condition. In the meantime, there will be a continued need for capital upgrades and preventative maintenance and equipment replacement. Yet we do not have a handle on the size or pace of needs, or its relationship to the "inverse debt." Maine urgently needs to adopt a rational, planned capital expenditures budget. An approach based on the current K-12 school construction system may be an appropriate template.

XVIII. Conclusion

The Appropriations Committee in its June 3, 2013 letter characterized the current system as a “confederation.”

That is a bad thing - confederations don’t tend to last very long or work very effectively.

As Alexander Hamilton observed in advocating for replacing the Articles of Confederation Government of the American States with a union under a new constitution, organizations without the power to raise revenue or enforce their decisions are devoid of energy and destined to fail.⁵⁰

The Committee expressed concern that the BOC lacked operational control or enforcement capacity or the ability to ensure receipt of its revenues.

The analysis and recommendations in the report are intended to remedy those problems, and create the unified system originally envisioned, with the least disruption possible to the traditional institutions in Maine government.

We have tried to achieve that balance by recommending legislation to provide for:

1. A greater vision of a single system achieving economies of scale, prioritized capital planning, operational efficiencies, universally accessible pretrial services and a reasonably equitable distribution of the tax burden;
2. Financial and operational incentives and sanctions to promote compliance with the regulations, policies and disincentives of the BOC;
3. Explicitly defined responsibilities for the BOC executive leadership, to free up the Commission members to focus on broad public policies;
4. Adoption and enforcement of common accounting standards and performance reporting metrics;
5. Conferring on the authority to the BOC to enter into contracts on behalf of the counties, provide back office services, coordinate prisoner assignments and evaluate appropriation requests to the Legislature, among other things;
6. Create a mechanism for planning and funding capital expenditures on an orderly, transparent, system-wide basis; and
7. More effectively address some administrative issues, including management of bail services and budget formulation.
8. Understanding that the budget is likely to be approximately \$2.8 million short for FY 2014 given certain assumptions. This Legislation should address that shortfall and ensure a realistic amount for FY 2015⁵¹ and begin funding the sinking fund for future capital consideration by a supplemental appropriation bill for consideration at the 2nd session of the 126th Legislature.

⁵⁰ “Government implies the power to make laws. It is essential to the idea of a law, it be attended with a sanction. In other words, a penalty for disobedience. If there are no penalties annexed to disobedience, the resolution...which pretends to be law will in fact, amount to nothing more than advice or recommendations.” Alexander Hamilton, The Federalist Papers, No. 15

⁵¹ See Appendix K

We hope this combination of measures will give the BOC energy, decisiveness and accountability to the Legislature.

It is the best way we know to preserve the operational authority of the old system, while achieving the Statewide fairness and efficiency current circumstances demand.

But in the end, we must replace the current unworkable confederacy with a truly unified system.

May 31, 2012

REPORT CARD: Status of Implementation of Board of Corrections Statutes

Codes for Status:
 N = Not completed
 P = Partial completion
 C = Completed
 U = Unknown

Abbreviations:
 BOC Maine Board of Corrections
 DOC Maine Department of Corrections
 AC Appropriations Committee, Legislature
 CJC Criminal Justice Committee, Legislature

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>34-A §1801. STATE BOARD OF CORRECTIONS</p> <p>1. Purpose of the board. The purpose of the board is to develop and <i>implement a coordinated correctional system</i> that demonstrates</p> <ul style="list-style-type: none"> • sound fiscal management 	<p>P</p>	<p>Coordination between counties is eroding.</p> <p>Coordination between counties and state has not been accomplished.</p> <p>DOC involvement has declined since the first year and is minimal at this time.</p>	<p>BOC and all stakeholders should review statute in full. Many do not seem to have an accurate working understanding of it (including BOC members).</p>
<ul style="list-style-type: none"> • achieves efficiencies 	<p>P</p>	<p>Significant effort has gone into <i>county</i> budgeting practices. No apparent BOC involvement with DOC fiscal practices.</p> <p>Implementation of BARS and CRAS management information reporting systems for jail beds, population and budgets.</p>	<p>Preliminary recommendations from RHR (auditors) address many facets of BOC fiscal practices. These should be carefully considered by the Board.</p>
<ul style="list-style-type: none"> • achieves efficiencies 	<p>P</p>	<p>Efficiencies realized in terms of:</p> <ul style="list-style-type: none"> • Jail inmate transport hub at Penobscot County to coordinate inmate transfers has reduced inter-county transfer costs. • Video arraignment and conferencing capacity within ten counties to offset court and transportation costs. • <u>Estimated</u> \$6 million in jail bed day savings as a result of implementing pretrial release screening and services, including the 	<p>Develop regional or statewide contracts for commodities, services and programs, when the contracts offer overall cost savings without reducing quality or timeliness.</p> <p>Adopt a methodology for estimating cost savings that may be attributed to various programs and services. Ensure consistent application of the methodology by the counties and contractors.</p> <p>Need Policy and Procedures drafted,</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
<ul style="list-style-type: none"> reduces recidivism 		<p>development of a Maine Pretrial Screening Tool, MPRAI.</p> <ul style="list-style-type: none"> \$3 million in savings to the DOC from housing offenders locally, not of out of state. 	<p>reviewed and implemented.</p>
<ul style="list-style-type: none"> and ensures the safety and security of correctional staff, inmates, visitors, volunteers and surrounding communities. 	P	<p>Implementation of a Reentry Center at the Waldo Correctional Facility serving DOC prisoners.</p> <p>Implementation of in-jail programs such as the K-CARA program, Veterans unit.</p> <p>Recidivism not being assessed or measured under BOC auspices.</p>	<p>Revisit earlier studies/reports (CACC and others. Identify "model" evidence-based practices that include a re-entry assessment at every facility, CBT programs in jails, and more.</p> <p>Develop evaluative measures and implement procedures to secure accurate data.</p>
<p>2. State goals. The board shall develop goals to guide the development of and evaluate the effectiveness of a coordinated correctional system.</p>	U	<p>Not being assessed or measured.</p>	<p>Develop process and outcome measures.</p> <p>Monitor at least quarterly and use findings to revise strategies, and during budgeting process.</p>
<p>The board shall present its goals for review and approval by the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters.</p>	N	<p>Evaluation of effectiveness of system not accomplished to date.</p>	<p>Set up operational monitoring system that will measure effectiveness of the coordinated system.</p>
<p>The goals must include benchmarks for performance in the following areas:</p> <p>A. Recidivism reduction;</p>	C	<p>Annual reports have been reviewed for years 2009, 2010 and 2011. Not all reports presented legislative proposals.</p>	<p>Present annual goals and priorities to the legislature tied to budget and performance.</p>
<p>The goals must include benchmarks for performance in the following areas:</p> <p>A. Recidivism reduction;</p>	N	<p>Implementation of a Reentry Center at the Waldo Correctional Facility;</p> <p>No benchmarks created by Board, but MCRRC has been revising original benchmarks.</p>	<p>.</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
B. Pretrial diversion; and	N	No benchmarks.	
C. Rate of incarceration.	N	No benchmarks.	
<p>34-A §1803. In addition to other duties and powers set out in this Title, the board is charged with the following responsibilities and duties. 1. Manage the cost of corrections. The board shall develop a plan to achieve systemic cost savings and cost avoidance throughout the coordinated correctional system with the goal of operating efficient correctional services.</p>	N	No plan.	
<p>Additionally, the board shall:</p>	C	Annual budget review and adoption is being completed.	
A. Review, amend if necessary and adopt the correctional services expenditures in each county budget under Title 30-A, section 710;			
B. Develop reinvestment strategies within the coordinated correctional system to improve services and reduce recidivism;	N	No strategies articulated.	
C. Establish boarding rates for the coordinated correctional system, except boarding rates for federal inmates;	P	"Nominal" rates set annually and by jail. Not set for DOC.	
D. Review department biennial and supplemental budget proposals affecting adult correctional and adult probation services and submit recommendations regarding these budget proposals to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and the joint standing committee of the Legislature having jurisdiction	N	No reviews have been conducted. Recommendations not submitted to joint standing committees.	

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>over appropriations and financial affairs;</p>			
<p>E. Develop parameters for facility population, including but not limited to gender; classification; legal status, including pretrial or sentenced; and special needs; and</p>	<p>N</p>	<p>BOC has not determined such parameters for jails, nor for DOC facilities. Jails and DOC facilities continue to make independent decisions regarding capacity and types of inmates.</p>	<p>Imperative to assign functional capacities to each jail, and to review annually. Jails should be considered full when functional capacity has been achieved, crowded when over. Current practices create serious safety and security risks.</p>
<p>F. Enter into contracts on behalf of and with the consent of the county commissioners and sheriffs in the case of county jails, and with the consent of the board of directors of the regional jail authority in the case of a regional jail, for goods and services when such contracts will: (1) Lower the cost of providing correctional services; (2) Improve delivery of correctional services; or (3) Otherwise help to achieve the goals of the board pursuant to section 1801.</p>	<p>N</p>	<p>No contracts executed to date.</p>	<p>[previously entered] Develop regional or statewide contracts for commodities, services and programs, when the contracts offer overall cost savings without reducing quality or timeliness.</p>
<p>2. Determine correctional facility use and purpose. The board shall: A. Determine individual correctional facility and county jail use, including the location of specialty units, which may include medical, mental health, women's and substance abuse units, other specialty units and housing of pretrial and sentenced populations;</p>	<p>P</p>	<p>BOC initially determined status of three jails (Franklin, Oxford, Waldo), reducing their operations the 72-hour lockups. Created "flagship" jails but beds in those jails often not offered to other counties due to cost and low board rate. BOC does not currently determine jail or DOC facility use.</p>	<p>Develop a master plan for statewide jail use. Not the same as a strategic plan. A strategic plan describes how to implement the master plan. Exercise this authority to implement provisions of the plan in each jail facility. Review plan annual and adjust practices as needed.</p>
<p>B. Review staffing levels at each correctional facility and county jail to ensure that safe conditions exist for staff, inmates and others; and</p>	<p>N</p>	<p>BOC has not reviewed staffing levels at jails, does not have that information in hand. BOC has not reviewed staffing at correctional</p>	<p>See <i>staffing recs at end of table.</i></p>

Statutory Mandate	Status	Notes/Comments	Suggestions
		facilities.	
C. Review the use of all correctional facilities and county jails. The board may downsize or close facilities or reassign services.	P	BOC initially downsized jails, has made no further decisions. Jails continue to determine own status individually. BOC has never attempted to review DOC facilities nor determine use/status.	Establish rules and guidelines for closing or downsizing. Particularly in light of recent conversations to close down Franklin and Oxford..
The board shall adopt rules governing the process and standards for closing or downsizing a correctional facility or a county jail, including criteria to be evaluated and stakeholders to be consulted. Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.	N	No rules have been developed, even though downsizing of three jails has occurred.	Develop programming for sentenced jail offenders including gender responsive programming for women, expand K-CARA if possible, basic CBT programming for medium and high risk offenders. Expand pretrial services statewide; establish standards consistent with ABA standards and "Measuring What Works" Make a deliberate plan for reentry practices beyond Waldo facility Work with DOC to establish graduated sanctions for violations/revocations. DOC has recently implemented graduated sanctions in field. This has been a primary mission for Commish.
3. Adopt treatment standards and policies. The board shall:		The Board hired a full time employee for a period of time who served as a statewide coordinator of pretrial services. This position ended when grant funded ran out. Pretrial services exist in some counties through Maine Pretrial Services or VOA, however, no standards for consistent use statewide	
A. Adopt standards for consistent systemwide pretrial, revocation and reentry practices;	P		

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>B. Adopt standards for the treatment of inmates with mental illness within correctional facilities and county jails, and in consultation with the State Forensic Service, adopt policies for facilitating the performance of court-ordered mental health evaluations within correctional facilities and county jails when appropriate; and</p>	N	<p>No progress.</p>	<p>Develop a plan to address mental health issues in jail (see my brief discussion about mentally ill in Maine jails)</p>
<p>C. Coordinate transportation of inmates in the coordinated correctional system.</p>	P	<p>Some coordination has been sponsored for jails (Hubs) but no efforts for correctional system. Some MDOC facilities have utilized the Hub System but use is not routine and not used by all facilities (e.g. MSP).</p>	
<p>4. Certificate of need. The board shall review and may approve any future public or private construction projects. The board shall establish a certificate of need process used for the review and approval of any future public or private capital correctional construction projects. A public or private correctional construction project may not be undertaken unless the board issues a certificate of need in support of that project. The board shall adopt rules governing the procedures relating to the certificate of need process and financing alternatives. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.</p>	P	<p>Some preliminary drafts were developed but these have not been finalized and adopted.</p>	
<p>5. Administrative duties. The board shall: A. Identify opportunities for and approve cost-saving agreements and efficiencies, including, but not limited to, purchasing or contract agreements, shared staff and staff training, transportation and</p>	P	<p>Focus groups have identified some efficiencies for jails, but nothing has been taken to the joint standing committee. No efforts regarding DOC.</p>	

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>technology initiatives. Any opportunities identified by the board must be included and discussed in the board's reports to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters as required under subsection 10;</p>			
<p>B. Consult with the State Sentencing and Corrections Practices Coordinating Council established in Title 5, section 12004-I, subsection 74-E and other groups, make recommendations related to sentencing and sentencing-related practices by other state and local government entities to the State Sentencing and Corrections Practices Coordinating Council for its consideration and utilize research and reports, including those issued by the Corrections Alternatives Advisory Committee, which was established by Public Law 2005, chapter 386, Part J, section 1 and amended by Public Law 2005, chapter 667</p>	<p>U</p>	<p>Unknown if this has been attempted.</p>	<p>Review CAAC report, ID priorities and an implementation plan.</p>
<p>C. Assist correctional facilities and county jails when appropriate to establish, achieve and maintain professional correctional accreditation standards;</p>	<p>N</p>	<p>No assistance has been provided to jails or DOC.</p>	
<p>D. Administer the County Jail Prisoner Support and Community Corrections Fund established in section 1806 and the State Board of Corrections Investment Fund program established in section 1805. The board may allocate available funds from the State Board of Corrections Investment Fund program to meet any emergency expenses or for maintenance in emergency conditions of any</p>	<p>P</p>	<p>BOC has administered funds for jails, not for DOC.</p>	

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>correctional facility or county jail. The board may make allocations for these purposes only upon written request of the commissioner or a county;</p>			
<p>E. Prepare and submit to the Governor a budget for the State Board of Corrections Investment Fund program established in section 1805 biennially that clearly identifies the financial contribution required by the State to support the actual costs of corrections in addition to the capped property tax contribution under Title 30-A, section 701, subsection 2-A.</p>	<p>P</p>	<p>BOC has not been involved with DOC budgets or budget requests, with the exception of the review, without action, of the DOC 2009 budget. BOC has not consistently submitted a jail budget request that would achieve full compliance with the statute.</p>	<p>Each facility should submit an Actual budget to determine true costs of running system (incl. new CBA agreements, cost of inflation, etc.). Budget Focus Group or Executive Committee would analyze and report "real picture" to Board.</p>
<p>The board shall also propose in its budget an appropriation to the State Board of Corrections Investment Fund program of an amount equal to the difference between the 2007-08 fiscal year's county jail debt and the amount of that year's debt payment; and</p>	<p>P</p>	<p>BOC has submitted request but this has not been fully funded by the Legislature in recent years.</p>	
<p>F. Promote and support the use of evidence-based practices.</p>	<p>N</p>		<p>Use CCA money, and other funds that may be secured through grants, to promote EBP pilot projects and programs.</p>
<p>6. Receive and review recommendations. The board shall receive and review recommendations submitted by the commissioner, the counties, the corrections working group established in section 1804 or other interested parties concerning development of downsizing plans and reinvestment strategies, uniform practices for pretrial, inmate classification, revocation and reentry services, and other recommendations with respect to the delivery of state and county corrections services. The board</p>	<p>P</p>	<p>BOC has received and reviewed requests regarding jails. BOC has not received requests regarding DOC/corrections. BOC has not consistently consulted with the stakeholders identified in the statute.</p>	<p>BOC should ID priorities within which counties can submit plans BOC should establish quarterly or semi-annual meetings with interested parties and/or judiciary.</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>correctional facility or county jail. The board may make allocations for these purposes only upon written request of the commissioner or a county;</p>			
<p>E. Prepare and submit to the Governor a budget for the State Board of Corrections Investment Fund program established in section 1805 biennially that clearly identifies the financial contribution required by the State to support the actual costs of corrections in addition to the capped property tax contribution under Title 30-A, section 701, subsection 2-A.</p>	P	<p>BOC has not been involved with DOC budgets or budget requests, with the exception of the review, without action, of the DOC 2009 budget. BOC has not consistently submitted a jail budget request that would achieve full compliance with the statute.</p>	<p>Each facility should submit an Actual budget to determine true costs of running system (incl. new CBA agreements, cost of inflation, etc.). Budget Focus Group or Executive Committee would analyze and report "real picture" to Board.</p>
<p>The board shall also propose in its budget an appropriation to the State Board of Corrections Investment Fund program of an amount equal to the difference between the 2007-08 fiscal year's county jail debt and the amount of that year's debt payment; and</p>	P	<p>BOC has submitted request but this has not been fully funded by the Legislature in recent years.</p>	
<p>F. Promote and support the use of evidence-based practices.</p>	N		<p>Use CCA money, and other funds that may be secured through grants, to promote EBP pilot projects and programs.</p>
<p>6. Receive and review recommendations. The board shall receive and review recommendations submitted by the commissioner, the counties, the corrections working group established in section 1804 or other interested parties concerning development of downsizing plans and reinvestment strategies, uniform practices for pretrial, inmate classification, revocation and reentry services, and other recommendations with respect to the delivery of state and county corrections services. The board</p>	P	<p>BOC has received and reviewed requests regarding jails. BOC has not received requests regarding DOC/corrections. BOC has not consistently consulted with the stakeholders identified in the statute.</p>	<p>BOC should ID priorities within which counties can submit plans BOC should establish quarterly or semi-annual meetings with interested parties and/or judiciary.</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>11. Committee review. The joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters shall conduct an initial review by April 1, 2009 and annually by January 15th thereafter to analyze the effectiveness of the board in fulfilling its purposes, including but not limited to a review of the board's identification of opportunities for and agreements regarding cost savings and efficiencies in purchasing, training, transportation and technology. The committee has authority to report out legislation upon completing its review each year.</p>	C	<p>Assume the joint standing committee has conducted annual reviews.</p>	
<p>34-A §1804. CORRECTIONS WORKING GROUP The commissioner, the president of a statewide county commissioners association and the president of a statewide sheriffs association shall develop a memorandum of understanding for approval by the board that establishes an informal corrections working group consisting of representatives of the department, sheriffs and county commissioners.</p>	C	<p>MOU has been developed.</p>	
<p>The corrections working group shall meet as needed and as requested by either one or both chairs to engage in information sharing and to discuss and resolve any issues or problems experienced in daily operation of the coordinated correctional system, including the placement of inmates. The group shall advise and assist the board in the ongoing improvement of the coordinated correctional system. In carrying out this function, the working group may consult with experts and stakeholders, including but not limited</p>	C	<p>CWG has been very active in recent years with frequent meetings and reports to the BOC.</p>	<p>Structure and authority of CWG is unusual. Overlapping membership with BOC but not an executive committee. Restructuring should be considered. The CWG should meet on an as needed basis based on task(s).</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>to prosecutors, defense attorneys, judges, victim advocates, providers and advocates for persons with mental illness and other interested parties. If an issue arises that cannot be responded to by the working group, the board shall meet to review the issue. The working group shall report to the board</p>			
<p>34-A §1805. STATE BOARD OF CORRECTIONS INVESTMENT FUND PROGRAM</p> <p>1. Program established. The State Board of Corrections Investment Fund program, referred to in this section as "the program," includes General Fund accounts and Other Special Revenue Funds accounts for the purposes specified in this section.</p> <p>2. Expenditures of program. Except as otherwise provided in this section, funding of the program may be expended only to compensate county governments and the department for costs approved by the board and the Legislature.</p> <p>3. Sources of funding. The State Controller shall credit to the Other Special Revenue Funds accounts of the program: [see footnote]¹</p> <p>4. Unencumbered balances. Any unencumbered balance in General Fund accounts or Other Special Revenue Funds accounts remaining at the end of</p>	<p>P</p>	<p>Fund has been created. Compensation has not been provided to the department (DOC).</p>	

¹ A. Any net county assessment revenue pursuant to Title 30-A, section 701, subsection 2-A in excess of county jail appropriations in counties where jails or correctional services have been closed or downsized; B. Any net county assessment revenue in excess of county jail expenditures in counties where changes in jail operations pursuant to board directives under section 1803 have reduced jail expenses. Any net revenue in excess of county or regional jail expenditures resulting from efficiencies generated by the independent actions of a county or regional jail remains with the county's or regional jail authority's correctional services fund balance; D. Money from any other source, whether public or private, designated into or credited to the Other Special Revenue Funds accounts of the program; and E. Interest earned or other investment income on balances in the Other Special Revenue Funds accounts of the program.

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>any fiscal year does not lapse but is carried forward to be expended for the purposes specified in this section and may not be made available for any other purpose.</p>			
<p>5. Report by chair of the State Board of Corrections. The chair of the board shall report at least annually on or before the 2nd Friday in December to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs and the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The report must summarize the activity in any funds or accounts directly related to this section.</p>	C	Assume required reports have been completed.	
<p>34-A §1806. COMMUNITY CORRECTIONS FUNDS DISTRIBUTED BY BOARD</p> <p>2. Establishment of County Jail Prisoner Support and Community Corrections Fund. The County Jail Prisoner Support and Community Corrections Fund is established for the purpose of providing state funding for a portion of the counties' costs of the support of prisoners detained in or sentenced to county jails and for establishing and maintaining community corrections.</p> <p>3. Distribution. Beginning July 1, 2009 and annually thereafter, the board shall distribute the County Jail Prisoner Support and Community Corrections Fund to counties based on the percent distribution of actual funds reimbursed to counties pursuant to former section 1210 in fiscal year 1996-97....[see breakdown]</p>	C		<p>Percentage distribution should be updated. Two Bridges Regional Jail was not in existence when funds were divided. CCA funds should not be used to underwrite basic operations, but rather should be used to fund, and encourage development of, programs and services that meet the intent of sections XXXX [EBP, Recidivism, etc.]</p>

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>4. Authority to deviate from percent distribution. Notwithstanding subsection 3, the board may alter the percent distribution to a county based on a substantial change in the nature or extent of correctional services provided by that county.</p>	N	<p>Authority to deviate has not been exercised.</p>	
<p>5. Change in state funding of county jails. If a county experiences at least a 10% increase in the total annual jail operating budget or if a county issues a bond for the construction of a new jail or renovation of an existing jail, the county may file with the board a request for an increase in the amount of state funds the county receives for the support of prisoners. [see footnote] ²</p>	U	<p>Unknown if this statutory provision has been exercised by any county. County reports on community corrections programming (the 20%) go directly to MDOC not BOC. DOC fiscal agent makes determination if programming meets requirements.</p>	<p>If BOC is not in agreement about the intent and meaning of this section, official clarification should be sought.</p>
<p>6. Community corrections program account. Each county treasurer shall place 20% of the funds received from the board pursuant to this section into a separate community corrections program account. [see footnote for more.] ³</p>	C	<p>Assume compliance is maintained with the provisions of this section.</p>	
<p>7. Surcharge imposed. In addition to the 14%</p>	C	<p>Assume provisions of this section have been</p>	

² A county must file a request for an increase in the amount of state funds the county receives for the support of prisoners by February 15th for an increase experienced in the prior fiscal year. The board shall review the request and, if the county demonstrates to the board a need for the increase, the board shall distribute the approved amount to the county from the surcharges collected under subsection 7. All funds distributed under this subsection must be used only for the purpose of funding counties' costs of the support of prisoners detained in or sentenced to county jails and for establishing and maintaining community corrections. The board shall forward the request and supporting documents to the joint standing committee of the Legislature having jurisdiction over corrections and criminal justice matters of a county's requested increase and any distributions made to counties under this subsection

³ A county may use funds placed in this account only for community corrections. Before distributing to a county that county's entire distribution from the County Jail Prisoner Support and Community Corrections Fund, the board shall require that county to submit appropriate documentation verifying that the county expended 20% of its prior distribution for the purpose of community corrections. If a county fails to submit appropriate documentation verifying that the county expended 20% of its prior distribution for the purpose of community corrections, the board shall distribute to that county only 80% of its distribution from the County Jail Prisoner Support and Community Corrections Fund. The board shall distribute the 20% not distributed to that county to all other counties that submit appropriate documentation verifying compliance with the 20% expenditure requirement for the purpose of community corrections. The board shall distribute these funds to those qualifying counties in an amount equal to each county's percent distribution pursuant to subsection 3.

Statutory Mandate	Status	Notes/Comments	Suggestions
<p>surcharge 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. [see footnote] ⁴</p>		<p>implemented and compliance has been maintained.</p>	

⁴ All funds collected pursuant to this subsection are nonlapsing and must be deposited monthly in the State Board of Corrections Investment Fund program that is administered by the board. All funds collected pursuant to this subsection must be distributed to counties that have experienced at least a 10% increase in their total annual jail operating budget or to counties that have issued bonds for the construction of a new jail or renovation of an existing jail and that meet all other requirements under subsection 5. Funds distributed to counties pursuant to this subsection must be used for the sole purpose of funding costs of the support of prisoners detained or sentenced to county jails and for establishing and maintaining community corrections.

Appendix B: Task Force Agendas

AGENDA - JAIL TASK FORCE

9/20/13 - MEETING ONE

1. Welcome and Introductions - Chair Flanagan
2. Review of Authorizing Legislation - Chair Flanagan
3. How We Got Here - Bob Devlin
4. Report on Financial Status of BOC - Scott Ferguson
5. Identify Issues Need to be Addressed - Chair Flanagan
6. Formulation of Statement of Problems & Identification of Objectives - Chair Flanagan
(based on survey distributed)
7. What Documents will be Needed
8. Other Stakeholders to Include
9. Ground Rules for Committee
10. Meeting Schedule and Topics
11. Other
12. Adjourn

AGENDA - JAIL TASK FORCE

10/4/13 - MEETING TWO

The Commission will hold a public hearing beginning at nine AM, until not later than 11 AM Friday, October 4 in room 301A, also known as the Board of Corrections Board Room of the Marquardt Building in Augusta. The public is invited to testify with respect to revisions to the statutes relating to the County Jail System, the Board of Corrections and the state unified system. 16 copies of testimony are requested the morning of the hearing. Time will be allocated equitably to assure all parties have an opportunity to be heard. Following the hearing, the Commission will continue the meeting to discuss sub- committee progress to date and review hearing presentations. All are welcome.

AGENDA - JAIL TASK FORCE

10/25/13 - MEETING THREE

1. Call to Order
2. Approval of Minutes from October 4 meeting
3. Presentation of Committee Reports
4. Discussion of Reports
5. Next Steps
6. Adjourn

AGENDA - JAIL TASK FORCE

11/01/13 - MEETING FOUR

1. Call to Order
2. Introductions & Review of Meeting Expectations (Chair)
3. Review of Options
 - a. Return to County Control and Responsibility (Chair)
 - b. Adopt a State Unified System (Whitten)
 - c. Amend BOC/Create Regional Authorities (Crichton)
 - d. Amend BOC/ Increased County Role & Responsibility (Baldacci)
4. Comments of Rod Miller re BJA Report (Miller via phone)
5. Discussion of pros and cons of options presented
6. Straw vote on principles to incorporate in legislation
7. Discussion of outline of the Commission Report
8. Discussion of next steps and timetable
9. Adjourn

AGENDA - JAIL TASK FORCE

11/15/13 - MEETING FIVE

1. Call to Order
2. Welcome and Introductions
3. Approval of Minutes from October 4 meeting
4. Brief Analysis of Member Survey
5. Concepts in the Report
6. Discussions
7. Straw Draft of Proposed Legislation
8. Adjourn

AGENDA- JAIL TASK FORCE

12/6/13 - MEETING SIX

1. Call to Order
2. Welcome and Introductions
3. Approval of Minutes from November 15 meeting
4. Discussion of Draft Report
5. Approve Proposed Solutions
6. Adjourn



MAINE STATE LEGISLATURE
Joint Standing Committee on Appropriations & Financial Affairs
Augusta, Maine 04333

June 3, 2013

TO: Sen. Stan Gerzofsky, Senate Chair
Rep. Mark Dion, House Chair
Joint Standing Committee on Criminal Justice and Public Safety

FROM: Dawn Hill, Senate Chair
Margaret R. Rotundo, House Chair
Joint Standing Committee on Appropriations & Financial Affairs

Dear Senator Gerzofsky and Rep. Dion,

The Appropriations Committee is pleased to hear and to be invited to make recommendations issues for consideration in your proposal for a task force to study the operations of the current corrections system in Maine, and the Board of Corrections in particular. Following the incorporation of independent county jails into a coordinated correctional system under the jurisdiction of the Board of Corrections, the Appropriations Committee has been concerned with the operation of this confederation of county correctional facilities.

There have been several General Fund budget adjustments to the budget of the Corrections Department that never seem to be adequate. In addition from the perspective of all Appropriations Committee members, there are several issues that must be resolved as follows:

- **Lack of control.** The current correctional system that includes prisons and jails under the jurisdiction of the Board of Corrections appears more like a decentralized system that lacks enforcement authority and the authority to effectively control and coordinate operations.
- **Penalties.** There needs to be enforcement authority vested in the Board of Corrections. For county jail administrators who refuse to cooperate with the Board and pursue their own direction, there needs to be penalties for disregarding Board policies and acting independently.
- **Opting out.** Board of Corrections members have pointed out that some county jails have taken actions and appear to believe that they can opt out of the system. There are examples of county jail administrators that have not forwarded revenues to the Board and/or refuse to take state prisoners.

As a result of these revelations, we would like to know the full amount of money that is owed by the county jails to the Board of Corrections. We would also like to know the statutory provisions that allow county jails to opt out of the consolidated corrections system.

- **Unreliable revenues.** Operating revenues are not predictable or reliable. Some county jails withhold funds from the Board of Corrections, and some county jails provide wage increases and incur liabilities greater than the Board of Corrections recommends. On a number of occasions, the Appropriations

Committee has been required to appropriate additional funds to the Board of Corrections in supplemental budgets.

- **Debt Service.** Some county jails entered the confederation with significant debt service costs, while others had significantly less debt service liabilities. This issue seems to be a significant source of contention among the counties.

Failure to resolve these issues make it improbable that we will be able to address shortfalls of the Board of Corrections in coming years.

Thank you for requesting our input for your consideration. We hope this information is useful. Please contact us if you have any questions or concerns regarding our understanding of the corrections and the corrections system in Maine.

Appendix D “Maine State Caseload 5-year Trends”

MAINE STATE COURT CASE FILINGS 5 Year Trend, con't

AC-1

TRIAL COURTS

CRIMINAL CASES FILED	FY'09	FY'10	FY'11	FY'12	FY'13
DISTRICT CT. Criminal (1)	47,761	36,760	32,255	31,190	30,293
DISTRICT CT. PROBATION VIO'S	806	702	577	390	390
DISTRICT COURT CRIMINAL TOTAL	48,567	37,462	32,832	31,580	30,683
SUPERIOR CT. Criminal (1)	12,111	10,004	9,290	8,976	8,830
SUPERIOR CT. PROBATION VIO'S	3,382	3,156	2,787	2,603	2,211
SUPERIOR COURT CRIMINAL TOTAL	15,493	13,160	12,077	11,579	11,041
Cumberland Unified Criminal Docket (2)	6,569	9,173	8,586	8,556	8,858
Franklin Unified Criminal Docket (2)	-	-	-	-	390
Somerset Unified Criminal Docket (2)	-	-	-	-	568
Penobscot Unified Criminal Docket (2)	-	2,370	4,748	5,074	4,926
Piscataquis Unified Criminal Docket (2)	-	-	-	-	152
UCD Probation Revocations	29	233	491	669	713
UNIFIED CRIMINAL DOCKETS TOTAL	6,598	11,776	13,825	14,299	15,607
TOTAL CRIMINAL	70,658	62,398	58,734	57,458	57,331
% change from previous year	-6.5%	-11.7%	-5.9%	-2.2%	-0.2%

(1) Figures for both District and Superior Court Criminal include cases that were originally filed in District Court and then transferred to Superior Court.

(2) Unified Criminal Dockets eliminate duplicative case processing and the need for transfer from one level of trial court (District) to another (Superior). Case processing for Unified Criminal Dockets began as follows: Cumberland (1/2/09), Franklin (3/18/13), Somerset (3/27/13), Penobscot (1/4/10), and Piscataquis (4/1/13)

http://www.courts.state.me.us/reports_pubs/reports/5yr%20Court%20Stats%20for%20Internet/All%20Courts%20Caseload%20FY'09_FY'13.pdf

Appendix E: BOC Membership, November 2013

Carleton Barnes, Jr.	Manager	Wesserunsett Consulting, LLC	Calais
Douglas Beaulieu	County Administrator	Aroostook County	Caribou
Randall Liberty	Sheriff	Kennebec County	Augusta
Amy Fowler	County Commissioner	Waldo County	Palermo
Mary Louise McEwen	Superintendent	Riverview Psychiatric Center	Augusta
Susan Morissette	Consultant		Winslow
Joseph Ponte	Commissioner	Maine Department of Corrections	Augusta
Stuart Smith	Selectman	Town of Edgecomb	Edgecomb
Mark Westrum, chair	Correctional Administrator	Two Bridges Regional Jail	Wiscasset
Vacant	Executive Director	State Board of Corrections	Augusta
Jane Tower	Executive Associate	Maine Department of Corrections	Augusta

Appendix F: Proposed Capital Projects in 2007-2008

Proposed Capital Projects, 2007-2008	Borrowing	Approx. Interest	Total P&I
Cumberland (10 years at 5%)			
Medical Area Expansion	1,100,000 10 yrs. @ 5%	300,065	1,400,065
Kennebec			
Comm. Corr. Res. Ctr. 30K sq. ft. (80, 90 to 125 beds)	6,000,000 20 yrs. @ 5%	3503363	9,503,363
Incremental Operational Cost	90 Beds		
Oxford			
Kitchen/Floor Renovation and Equipment	50,000 5 yrs. @ 5%	6614	56,614
Incremental Operational Cost	12 Beds		
Knox			
Direct Supervision Addition (80 Beds)	10,100,000 20 yrs. @ 5%	5897327	15,997,327
Incremental Operational Cost	60 Beds		
Penobscot			
OPT 1 - 225 Bed Addition	26,000,000 20 yrs. @ 5%	15181238	41,181,238
Incremental Operational Cost	225 Beds		
OPT 2 - 440 Beds Direct Supervision Facility	46,000,000 20 yrs. @ 5%	26859114	72,859,114
Incremental Operational Cost	440 Beds		
Waldo			
\$17M Bond Retirement	17,000,000 20 yrs. @ 5%	9926194	26,926,194
Incremental Operational Cost	60 Beds		
Androscoggin			
Conversion of 3rd Floor Classroom (12 beds)- Min. Security	5,000		5,000
Kennebec			
Renovation of existing housing unit(20-25 beds)	10,000		10,000
Grand Total - Penobscot Opt 1	60,265,000	34,814,801	95,079,801
Grand Total - Penobscot Opt 2	80,265,000	46,492,677	126,757,677

Appendix G: Board of Corrections Purpose, Goals & Guiding Principles

PURPOSE AND GOALS

1. Purpose of the board. The purpose of the board is to develop and implement a unified correctional system that demonstrates sound fiscal management, achieves efficiencies, reduces recidivism and ensures the safety and security of correctional staff, inmates, visitors, volunteers and surrounding communities.
2. State goals. The board shall develop goals to guide the development of and evaluate the effectiveness of a unified correctional system. The board shall present its goals for review and approval by the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters. The goals must include benchmarks for performance in the following areas:
 - o Recidivism reduction;
 - o Pretrial diversion; and
 - o Rate of incarceration.

Responsibilities and duties

1. Manage the cost of corrections.
2. Determine correctional facility use and purpose.
3. Adopt treatment standards and policies.
4. Certificate of need.
5. Administrative duties.
6. Receive and review recommendations.

Downloaded from <http://www.maine.gov/corrections/BOC/purpose.htm> on 9/22/13

GUIDING PRINCIPLES

A Unified State and County Corrections System that:

- Reduces risk through the use of the Evidence Based Practices and encourages sentencing in accordance with risk;
- Creates an integrated, regional system build on the strengths of the existing state and county facilities and services and is based on differentiated missions;
- Is a stewardship approach that manages and maintains the existing assets and resources for the maximum benefit and invests strategically to accomplish system goals;
- Allows innovation, but is collaboratively based and recognizes that decisions about change and its management are shared;
- Creates incentives for us all to work together and promotes cohesion;
- Is consistent with the compromise enacted in Public Law 653;
- Incorporates the recommendations of the Corrections Alternatives Advisory Committee and the two plans developed by the state and the counties;
- Meets the system's needs for risk management and security housing;
- Works in concert with other policy makers including the Legislature, the Judiciary and the Sentencing Council, and;
- Involves and includes local stakeholders including prosecutors, local law enforcement, and others.

Appendix H: Jail Costs Per Capita by County

Per Capita Cost by Overall County Population					
County	FY10	FY11	FY12	FY13	FY14 Budget
ANDROSCOGGIN	45.25	50.46	52.33	52.53	53.97
AROOSTOOK	42.79	43.71	44.98	48.86	49.81
CUMBERLAND	56.98	58.44	62.40	62.43	64.34
FRANKLIN	43.16	37.22	32.09	32.83	51.47
HANCOCK	37.84	40.33	40.32	43.31	41.94
KENNEBEC	47.25	51.10	56.14	54.67	60.56
KNOX	88.78	89.74	93.64	93.13	96.33
OXFORD	24.73	21.81	21.47	20.74	25.21
PENOBSCOT	44.36	46.75	48.23	49.59	52.31
PISCATAQUIS	67.95	75.77	81.41	80.53	91.50
TBRJ	89.81	95.82	91.66	100.91	113.95
TBRJ w/LINCOLN & SAGADAHOC	101.48	107.15	103.41	112.94	126.57
SOMERSET	113.45	120.71	123.99	124.30	130.17
WALDO/ ME COASTAL REG. REENTRY	49.57	50.68	51.85	54.25	57.72
WASHINGTON	66.81	72.35	73.23	74.71	77.13
YORK	48.47	50.74	52.99	51.34	51.01
Average	50.09	52.25	54.54	54.76	57.37

Alex Kimball 2013

**APPENDIX I
THREE DEFICIT FUNDING SCENARIOS**

What percent of 3rd and 4th Quarter IF payments will the counties need?	<input type="text" value="100%"/>
Does the BOC receive mission change revenues? Y or N	<input type="text" value="y"/>
Does Somerset receive 2nd half 2013 Payment? Y or N	<input type="text" value="n"/>
Does Somerset receive 2014 Payment? Y or N	<input type="text" value="n"/>
Does Franklin become full service jail? Y or N	<input type="text" value="n"/>

Revenues	Full Year	Amount Remaining
Starting cash balance	n/a	\$ 4,098,340
Investment Fund Revenues	\$ 6,536,295	\$ -
CCA	\$ 5,646,562	\$ -
Court Fines, Surcharges, Per Diem's	\$ 786,259	\$ 525,950
Major Mission Change	\$ 1,029,751	\$ 1,029,751
Franklin Mission Change		\$ 180,248
Prior Year Carryforward	\$ 328,600	\$ -
Total Revenues	\$ 14,327,467	\$ 5,834,289
Expenses		
Investment Fund Payments	\$ 12,886,356	\$ 7,367,263
Somerset 2nd half 2013		\$ -
Somerset 2014 (IF & CCA)		\$ -
CCA	\$ 5,398,112	\$ 1,129,312
Board & Personnel	\$ 164,032	\$ 186,291
Total Expenses	\$ 18,448,500	\$ 8,682,866
Net Deficit	\$ (4,121,033)	\$ (2,848,577)

What percent of 3rd and 4th Quarter IF payments will the counties need?

80%

Does the BOC receive mission change revenues? Y or N

y

Does Somerset receive 2nd half 2013 Payment? Y or N

n

Does Somerset receive 2014 Payment? Y or N

n

Does Franklin become full service jail? Y or N

n

Revenues	Full Year	Amount Remaining
Starting cash balance	n/a	\$ 4,098,340
Investment Fund Revenues	\$ 6,536,295	\$ -
CCA	\$ 5,646,562	\$ -
Court Fines, Surcharges, Per Diem's	\$ 786,259	\$ 525,950
Major Mission Change	\$ 1,029,751	\$ 1,029,751
Franklin Mission Change		\$ 180,248
Prior Year Carryforward	\$ 328,600	\$ -
Total Revenues	\$ 14,327,467	\$ 5,834,289
Expenses		
Investment Fund Payments	\$ 12,886,356	\$ 5,893,810
Somerset 2nd half 2013		\$ -
Somerset 2014 (IF & CCA)		\$ -
CCA	\$ 5,398,112	\$ 1,129,312
Board & Personnel	\$ 164,032	\$ 186,291
Total Expenses	\$ 18,448,500	\$ 7,209,413
Net Deficit	\$ (4,121,033)	\$ (1,375,124)

What percent of 3rd and 4th Quarter IF payments will the counties need?

100%

Does the BOC receive mission change revenues? Y or N

y

Does Somerset receive 2nd half 2013 Payment? Y or N

y

Does Somerset receive 2014 Payment? Y or N

y

Does Franklin become full service jail? Y or N

n

Revenues	Full Year	Amount Remaining
Starting cash balance	n/a	\$ 4,098,340
Investment Fund Revenues	\$ 6,536,295	\$ -
CCA	\$ 5,646,562	\$ -
Court Fines, Surcharges, Per Diem's	\$ 786,259	\$ 525,950
Major Mission Change	\$ 1,029,751	\$ 1,029,751
Franklin Mission Change		\$ 180,248
Prior Year Carryforward	\$ 328,600	\$ -
Total Revenues	\$ 14,327,467	\$ 5,834,289
Expenses		
Investment Fund Payments	\$ 12,886,356	\$ 7,367,263
Somerset 2nd half 2013		\$ 560,884
Somerset 2014 (IF & CCA)		\$ 1,370,216
CCA	\$ 5,398,112	\$ 1,129,312
Board & Personnel	\$ 164,032	\$ 186,291
Total Expenses	\$ 18,448,500	\$ 10,613,966
Net Deficit	\$ (4,121,033)	\$ (4,779,677)

**APPENDIX J
OVERVIEW OF JAIL FUNDING SOURCES**

Funds and Purpose

Overview of Jail funding Sources

Type of Fund	Source	Purpose	Amount
Community Corrections	State Allocation	Community Corrections Programs	\$ 5,646,562.00
Inverse Debt	None	Capital Needs	\$ -
Investment Fund	State Allocation	Jail Operating Expenses	\$ 12,886,355.00
Federal Inmates	US Marshalls	Reimbursement for housing federal inmates	\$ 3,630,601.00
County	Property Taxes	Jail Operating Expenses	\$ 61,808,927.00
Other	Misc	Mostly reimbursements for inmates from other agencies	\$ 196,934.00
Total Revenues			\$ 84,169,379.00

**APPENDIX K
FY 15 DEFICIT CALCULATOR**

FY 15 Deficit Calculator

What percent of IF payments will the counties need?	<input type="text" value="100%"/>
Does Somerset receive FY 15 IF Payments? (Y or N)	<input type="text" value="Y"/>
What is the Statewide average LD 1 Cap?	<input type="text" value="3.6%"/>
What is the most recent 1-Year CPI?	<input type="text" value="1.0%"/>

Revenues	FY 14 Projected	FY 15 Budgets	FY 15 LD 1 Max	FY 15 CPI
Investment Fund Revenues	\$ 6,536,295	\$ 6,536,295	\$ 6,536,295	\$ 6,536,295
CCA	\$ 5,646,562	\$ 5,646,562	\$ 5,646,562	\$ 5,646,562
Court Fines, Surcharges, Per Diem's	\$ 786,259	\$ 786,259	\$ 786,259	\$ 786,259
Major Mission Change	\$ 1,029,751	\$ 1,029,751	\$ 1,029,751	\$ 1,029,751
Franklin Mission Change	\$ 678,026	\$ 678,026	\$ 678,026	\$ 678,026
Prior Year Carryforward	\$ 328,600	\$ -	\$ -	\$ -
Total Revenues	\$ 15,005,493	\$ 14,676,893	\$ 14,676,893	\$ 14,676,893
Expenses				
Investment Fund Payments	\$ 11,764,589	\$ 15,523,759	\$ 14,325,366	\$ 12,475,915
Somerset County Payments		\$ 1,121,767	\$ 1,365,033	\$ 1,189,341
CCA	\$ 5,398,112	\$ 5,398,112	\$ 5,398,112	\$ 5,398,112
Board & Personnel	\$ 164,032	\$ 200,000	\$ 200,000	\$ 200,000
Total Expenses	\$ 17,326,733	\$ 22,243,638	\$ 21,288,511	\$ 19,263,368
Net Deficit	\$ (2,321,240)	\$ (7,566,745)	\$ (6,611,618)	\$ (4,586,475)

DRAFT
POLICY STATEMENT
“ONE MAINE ONE SYSTEM”

June 2009

CAPITAL IMPROVEMENT PLANNING

FOR

COUNTY CORRECTIONAL FACILITIES IN MAINE

Purpose

The Capital Improvement Program (CIP) provides a basis for prioritizing and implementing the short and long range plans for property improvement projects. The CIP is intended to be a planning, scheduling and priority setting process for the county correctional facility over a ten year period. Planning for future maintenance and infrastructure improvements offers predictability during the budget process.

All requests will be evaluated and assessed to achieve a schedule that will first address critical safety issues, efficiencies, and prevent infrastructure deterioration. The county executive department will work with the county correctional facility to plan, schedule and prioritize the facilities' capital projects. The annual CIP recommendations will be presented to the county commissioners for their approval and forwarded to the Board of Corrections for presentation and final approval on an annual basis.

After the budget is approved CIP funds will be maintained as dedicated fund accounts within the jail's financial statements by the county treasurer's office.

It is important to note that the CIP is a recommended plan. Priorities may and will change as critical safety, ADA, technology, and infrastructure needs arise. Capital funds may be realigned by the county commissioners and the Board of Corrections to reflect the most urgent capital needs each year and unexpended funds from a completed project may be re-allocated to another planned project. ?

Expected Benefits

- Large expenditures can be anticipated in advance rather than being put off until the need becomes critical or an emergency.
- Project coordination may reduce costs through combining projects to increase competitive pricing.
- Projects can be assessed based on their need for employee and public safety, occupational health, vital document preservation, infrastructure improvement, ADA.
- Critical infrastructure projects should be planned to extend the life span of existing facilities.

CAPITAL REPLACEMENT PLANNING

All counties and regional jail authorities shall have a ten-year capital improvement plan that focuses on maintaining the physical plant and upgrading systems in order to ensure the safety and security of the facility.

Counties and regional authorities should identify mechanical systems, structural areas and technologies with predictable life spans and prepare estimates for the cost of a scheduled replacement.

Counties and regional authorities should prepare estimates for the on-going cost of rotational replacement for those items with a predictable lifespan i.e. HVAC components, roofs, boilers, computers, software, radios, and vehicles. Counties and regional authorities should avoid circumstances where entire collections require replacement at once. Counties and regional authorities must coordinate the purchases of collections to realize savings through group purchasing.

One of the goals of capital purchasing in the unified correctional system shall be the compatibility of systems as they are upgraded.

Planned capital improvement spending is intended to anticipate the need for the replacement of systems and collections necessary for the safe and efficient operation of the correctional facility. Planning for these replacements should avoid most instances where system failure requires an unexpected or unplanned replacement.

The county commissioners shall adopt a recommended capital plan to be forwarded to the Board of Corrections for approval.

FUNDING

Counties and regional authorities with fund balances at the end of the corrections fiscal year must first apply those funds to a capital improvement program with identified projects that have cost estimates and schedules in place.

Capital funds from the corrections fund balance must only be used for direct corrections related expenses. These funds must be accounted for separately in the corrections capital improvement account. Funds may not be transferred from this account for non-correctional activities. Funds from this account may be used for systems jointly serving correctional and non-correctional functions but only in proportion to the corrections related use of that improvement i.e. shared heating systems, shared software.

Counties without sufficient funds in their capital improvement program may submit a funding proposal to the Board of Corrections to meet unanticipated emergency needs.

FUND BALANCE

For correctional services planning:

Fund balances accrued through savings achieved through a Board of Corrections initiative must be forwarded to the Board of Corrections investment fund.

Fund balances accrued through savings achieved through a county initiative or action shall remain with the county's corrections fund balance.

Designated Fund Balance (Capital Projects) : Designated Fund Balance are those (capital projects) funds reserved a specific purpose. For example, for scheduled projects needed to maintain the mechanical systems, structural integrity, collections and technology upgrades of the correctional facility.

These capital reserves are that portion of the fund balance segregated for a specific future use.

Undesignated Fund Balance: Undesignated Fund Balance are those funds unexpended at the end of the fiscal year and any revenues in excess of estimates.

What is Capital and How should it be Treated?
Considerations for Managing Capital in Maine County Jails
(Excerpts from the State Capital Guidelines -- 30.20)

How to value capital assets

Capital assets should be valued at cost, plus all ancillary charges necessary to place the asset in its intended location and condition for use.

Determine the value of capital assets in the following manner:

- Purchased Assets - Use historical costs including all non-refundable purchase taxes (e.g., sales taxes), plus all appropriate ancillary costs less any trade discounts or rebates. If the historical cost cannot be determined, use a reasonable estimated cost.
- Furniture, fixtures, or other equipment not an integral part of a building are not considered capital improvements and should be classified as equipment. The cost for this asset type reflects the actual or estimated cost of the asset.
- Include the cost of extended maintenance/warranty contracts in the asset valuation if the contract is purchased at the same time (or soon thereafter) as the capital asset. Depreciate these contracts over the useful life of the asset. Do not capitalize payments for contracts not purchased at the same time as the capital asset.

Self-Constructed Assets, excluding internally developed computer software

- Capitalize all direct costs associated with the construction and agency management costs associated with a construction project. Agency project management costs may be capitalized in one of two ways:
 1. Use actual project management costs directly associated with the project; or
 2. Apply a percentage of total budgeted project costs. The application rate may or may not be designed to recover total agency project management costs. Exclude indirect costs unless they are increased by the construction.

Ancillary Costs

- Normally, ancillary costs should be included in the cost of a capital asset. However, minor ancillary costs, not measurable at the time a capital asset is recorded are not required to be capitalized but may be capitalized if the information becomes readily available.
- Ancillary costs include such items as:
 - For land and Infrastructure:
 - Legal and title fees;
 - Professional fees of engineers, attorneys, appraisers, financial advisors, etc.;
 - Surveying fees;
 - Appraisal and negotiation fees;
 - Damage payments;
 - Site preparation costs; and
 - Costs related to demolition of unwanted structures.
 - For buildings and improvements other than buildings:
 - Professional fees of architects, engineers, attorneys, appraisers, financial advisors, etc.;
 - Damage payments;
 - Costs of fixtures permanently attached to a building or structure;
 - Insurance premiums, interest (refer to Subsection 30.20.10.a), and related costs incurred during construction; and
 - Any other costs necessary to place a building or structure into its intended location and condition for use.
 - For furnishings, equipment, collections, and other capital assets:
 - Transportation charges;
 - Sales tax;

- Installation costs;
 - Extended maintenance/warranty contracts (refer to Subsection 30.20.10.a); and
 - Any other normal or necessary costs required to place the asset in its intended location and condition for use.

- When to capitalize assets:
 - Assets shall be capitalized according to the following thresholds:
 - All other capital assets with a unit cost (including ancillary costs) of \$5,000 or greater, or collections with a total cost of \$5,000 or greater, unless otherwise noted.
 - Although small and attractive assets do not meet the capitalization policy above, they are considered controllable property for purposes of marking and identifying.
 - Each agency should perform a risk assessment (both financial and operational) on the agency's assets to identify those assets that are particularly at risk or vulnerable to loss. Assets so identified, that fall below the capital threshold, are considered small and attractive assets. Each agency should develop written internal policies for controlling small and attractive assets.
 - The agency should implement specific measures to control small and attractive assets in order to minimize identified risks. Periodically, the agency should perform a follow-up risk assessment to determine if the additional controls implemented are effective in managing the identified risks.
 - Small and attractive assets would include:
 - Communications Equipment, Public Safety: Audio and Video;
 - Optical Devices, Binoculars, Telescopes, Infrared Viewers, and Rangefinders;
 - Cameras and Photographic Projection Equipment;
 - Microcomputer Systems, Laptop and Notebook Computers;
 - Other IT Accessorial Equipment and Components (Scanners, Data Displays, etc.);
 - Office Equipment;
 - Record Players, Radios, Television Sets, Tape Recorders, VCRs, and Video Cameras.

- Extraordinary repairs, betterments, or improvements
 - Capitalize outlays that increase future benefits for an existing capital asset beyond its previously assessed standard of performance
 - Increased future benefits typically include:
 - An extension in the estimated useful life of the asset.
 - An increase in the capacity or efficiency of an existing capital asset.
 - A substantial improvement in the quality of output or a reduction in previously assessed operating costs.

- Replacements
 - For buildings, improvements other than buildings, and equipment, capitalize the cost of outlays that replace a part of another capital asset when the cost of the replacement is \$5,000

- Renovations -- Capitalization Threshold for Renovations

- A renovation enhances an already existing asset to a condition beyond that which results from normal maintenance repairs, and/or increases the useful life of the asset. Replacing a roof, or installing a better electrical system in a building, are examples of renovations.
- Capital leases
 - A capital lease is a lease with contractual terms that transfer substantially all the benefits and risks inherent in the ownership of property to the agency. A lease must meet one or more of the following four criteria to qualify as a capital lease:
 1. Ownership of the leased property is transferred to the agency by the end of the lease term; or\
 2. The lease contains a bargain purchase option
- Depreciation
 - Depreciation normally begins when an asset is purchased or completed, and accepted. However, if an asset is not placed into service immediately, depreciation should begin when the asset begins to lose value. Either option should be applied consistently and should be reasonable in the circumstance.
 - Depreciation may be calculated using either the straight-line or composite method.
 - To calculate depreciation using the straight-line method:

$$\text{Annual Depreciation} = \frac{\text{Cost} - \text{Salvage Value}}{\text{Asset Useful Life}}$$
- Useful Life for Capital Assets
 - Agencies should use the following recommended guide for assigning a useful life to an asset. However, different lives may be used if an agency has a compelling reason and the life assigned to an asset can be justified by historical experience.
 - 2-5 year property — includes computers and peripheral equipment, and computer software designed to cause a computer to perform a desired function;
 - 5 year property — includes office machinery, automobiles, light and heavy general purpose trucks;
 - 7 year property — includes office furniture and fixtures, agricultural machinery and equipment;
 - 10 year property — includes building improvements such as a new roof, plumbing and electrical renovations, vessels and water transportation equipment;
 - 15 year property — includes land improvements
 - 30-50 year property — includes residential and nonresidential real property such as buildings
 - A more comprehensive list can be found in IRS Publication 946, "How to Depreciate Property."