

DRAFT: November 24, 2021

Drafter: JO

Date: September 27, 2021

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Proposed Committee Amendment for LD 1654
An Act To Stabilize State Funding for County Corrections
Proposed by Representative Warren

Amend the bill in section A-3, A-4 and A-5 to read as follows:

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

§1210-E. County Jail Operations Fund

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

A. "Community corrections" means the delivery of correctional services for adults in the least restrictive manner that ensures the public safety by the county or for the county under contract with a public or private entity. "Community corrections" includes, but is not limited to, preventive or diversionary correctional programs, pretrial release or conditional release programs, alternative sentencing or housing programs, electronic monitoring, residential treatment and halfway house programs, community correctional centers, temporary release programs from a facility for the detention or confinement of persons convicted of crimes and programs and services as required by section 1208-B, subsection 3.

B. "County Corrections Professional Standards Council" or "council" means the council established pursuant to section 1210-F.

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

C-1. "Jail operating costs" means the annual expenses of operating the county jails and regional jail, including annual debt service costs.

D. "State-sanctioned prisoner" means a person committed to the custody of the sheriff and held in a county jail or regional jail because the person:

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

Commented [JC1]: We need to decide whether to pursue this.

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

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

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

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

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

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

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

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

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

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

3. Community corrections; pretrial release program. At least 25% of all funding provided under this section must be used by the county jails and regional jail for establishing, providing and

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maintaining community corrections and programs and services required by section 1208-B, subsection 3. Jail programs and services must include a program, directly or through contract with an organization, to supervise defendants subject to pretrial release conditions imposed pursuant to Title 15, section 1026, subsection 3, paragraph A, subparagraph (1) and such requirements as may be established by rule or order of the Supreme Judicial Court.

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

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

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

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

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

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

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

8. Surcharge. In addition to the 14% 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. All funds collected pursuant to this subsection are nonlapsing and must be deposited monthly in the fund.

9. Formula; distribution. The council shall establish by rule a formula for the distribution of funds from the fund to the counties for jail operations. The department shall distribute annually to

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each county from the fund the amount due to that county calculated pursuant to subsection 2 ~~at a rate of either \$50 per day per state-sanctioned prisoner or 20% of the county's total operating costs for the prior fiscal year~~ as determined according to the following formula. The formula must be based on the most recent fiscal year for which data is available for the county and must:

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

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

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

§1210-F. County Corrections Professional Standards Council

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

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

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

Commented [JC2]: The formula is established under Subsection 2. There is no need to repeat the options listed in Subsection 2, which creates ambiguity.

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

4. Standards regarding failure to report. The council shall adopt rules specifying standards regarding failure to report data as required beginning July 1, ~~2022~~ 2023 by section 1210-E, subsection 6, and shall adopt rules specifying standards for failure to report data as required and for delaying payments to jails based on failure to report. Rules adopted pursuant to this subsection may not take effect before July 1, ~~2022~~ 2023.

5. Rulemaking. The council shall adopt rules in accordance with section 1210-E, subsection 7 and section 1208-B, subsection 3. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. Rules adopted pursuant to this subsection may not take effect before July 1, ~~2022~~ 2023.

Sec. A-5. Effective date. Those sections of this Part that repeal the Maine Revised Statutes, Title 34-A, section 1210-D and that enact Title 34-A, section 1210-E take effect July 1, ~~2022~~ 2023.

Amend the bill in Parts B through D to read as follows:

PART B

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

2-C. Tax assessment for correctional services beginning July 1, 2015. Beginning July 1, ~~2015~~ ~~2021~~ 2022, the counties shall annually collect ~~no less than \$62,172,374~~ the base assessment limit of ~~\$74,267,107~~ from municipalities for the provision of correctional services in accordance with this subsection. ~~The~~ In subsequent years, the counties may collect an amount that is more or less than the base assessment limit established in this subsection, except that if the amount is increased above the base assessment limit established in this paragraph, the additional amount each year may not exceed the original such base assessment limit as adjusted by 4% or the growth limitation factor, as established in section 706-A, subsection 3, including any adjustments for extraordinary circumstances allowed under section 706-A, subsection 5 or 4%, ~~whichever is less~~. If a county collects in a year an amount that is more or less than the base assessment limit established for that county pursuant to this subsection, the base assessment limit in the succeeding year is the amount collected in the prior year, excluding any adjustments for extraordinary circumstances allowed under section 706-A, subsection 5. For the purposes of this subsection, "correctional services" includes management services, personal services, contractual services, commodity purchases, capital expenditures and all other costs, or portions thereof, necessary to maintain and operate correctional services. "Correctional services" does not include county jail debt unless there is a surplus in the account that pays for correctional services at the end of the state fiscal year.

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

- A. A sum of ~~\$4,287,340~~ \$4,975,110 in Androscoggin County;
- B. A sum of ~~\$2,316,666~~ \$3,312,333 in Aroostook County;

Commented [JC3]: Need to update to reflect current costs?

Commented [JC4]: Do we want to include annual debt service costs? If so, this would need to be modified.

Commented [JC5]: Need to update these numbers to reflect current costs.

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- C. A sum of ~~\$11,575,602~~ \$14,197,182 in Cumberland County;
- D. A sum of ~~\$1,621,201~~ \$2,400,000 in Franklin County;
- E. A sum of ~~\$1,670,136~~ \$1,965,610 in Hancock County;
- F. A sum of ~~\$5,588,343~~ \$6,478,421 in Kennebec County;
- G. A sum of ~~\$3,188,700~~ \$4,646,484 in Knox County;
- H. A sum of ~~\$2,657,105~~ \$3,046,145 in Lincoln County;
- I. A sum of ~~\$1,228,757~~ \$2,400,000 in Oxford County;
- J. A sum of ~~\$5,919,118~~ \$7,375,000 in Penobscot County;
- K. A sum of ~~\$878,940~~ \$1,170,158 in Piscataquis County;
- L. A sum of ~~\$2,657,105~~ \$2,922,605 in Sagadahoc County;
- M. A sum of \$5,363,665 in Somerset County;
- N. A sum of ~~\$2,832,353~~ \$3,212,779 in Waldo County;
- O. A sum of ~~\$2,000,525~~ \$2,080,546 in Washington County; and
- P. A sum of ~~\$8,386,815~~ \$8,721,069 in York County.

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

2-D. Requirement of legislative approval to adjust base assessment for correctional services. A county may adjust its base assessment limit for correctional services as established in subsection 2-C only with the approval of the Legislature. Beginning July 1, ~~2025~~ 2026, once every 4 years a county may submit for approval by the Legislature a request to adjust the base assessment limit for that county. To begin the process for legislative approval the county shall submit to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters the information required by this subsection. The joint standing committee may introduce a bill to grant approval of the adjustment of the base assessment limit for the county and to amend the base assessment limit set in subsection 2-C. The information that must be submitted includes the following:

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

Commented [JC6]: Does there need to be a provision for "extraordinary circumstances"?

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F. A record of the vote of the county commissioners on the request for approval of the increase in the base assessment limit, including, if the vote was not unanimous, a record of why a county commissioner voted against making the request; and

G. Certification of approval of the request by the county commissioners.

Sec. B-3. Appropriation for state fiscal year 2021-22. For the state fiscal year ~~2021-22~~ **2022-23** the Legislature shall appropriate at least \$18,412,104 in General Fund funding to the County Jail Operations Fund established in the Maine Revised Statutes, Title 34-A, section 1210-D, subsection 1.

PART C

Sec. C-1. 34-A MRSA §1208-B, sub-§2, as enacted by PL 2015, c. 335, §22, is amended to read:

2. Rulemaking. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. ~~Rules adopted pursuant to this section must take effect January 1, 2016.~~

Sec. C-2. 34-A MRSA §1208-B, sub-§3 is enacted to read:

3. Requirements. Beginning July 1, ~~2021~~ **2022**, the jails shall operate in accordance with best practices applicable to facilities of their type and size including the mandatory standards, policies and procedures established by rules adopted by the commissioner under subsection 1 and, beginning July 1, ~~2022~~ **2023**, with the following requirements as set forth in rules adopted by the County Corrections Professional Standards Council as established in section 1210-F:

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

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

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

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

E. Each jail shall provide community programs and services, through July 1, ~~2022~~ **2023** pursuant to section 1210-D, subsections 2 and 2-A, and, beginning July 1, ~~2022~~ **2023**, pursuant to section 1210-E, subsection 3, including at a minimum pretrial or conditional release, alternative sentencing or housing programs and electronic monitoring.

PART D

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

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

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

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

A. During a state fiscal year in which ~~at least \$12,202,104~~ the funding required by Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund and disbursements have been made equal to that amount to the counties as required by Title 34-A, section ~~4210-D~~ 1210-E, subsection 5, the receiving jail or the department may not charge the sending jail a per diem rate for the transferred prisoner.

B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund or disbursements have not been made equal to that amount to the counties as required by Title 34-A, section ~~4210-D~~ 1210-E, subsection 5, the following provisions apply:

- (1) The receiving jail may charge the sending jail a per diem rate for the transferred prisoner;
- (2) The rate charged by the receiving jail must equal the per diem per prisoner amount calculated by the department in making the disbursement to the counties under Title 34-A, section ~~4210-D~~ 1210-E, subsection 4; and
- (3) The department may charge the sending jail an amount that has been negotiated between the department and the jail that does not exceed \$108 per diem per prisoner.

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

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

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

B. In administering and distributing funding to the jails pursuant to section ~~4210-D~~ 1210-E, subsection ~~4~~ 5, the commissioner shall:

- (1) Require reporting of data that indicates average daily population of prisoners, that excludes federal prisoners, that indicates sending and receiving jails for transferred prisoners and that is useful in calculating the distributions to the counties pursuant to section ~~4210-D~~ 1210-E, subsection 4; and
- (2) Consider the performance of each jail in meeting the standards established pursuant to this section. The commissioner shall work with the jails to assist them in achieving compliance with the standards. The commissioner shall enforce the standards by imposition of monetary penalties upon a county for noncompliance by the county jail or regional jail. A monetary penalty imposed under this subsection may not in any fiscal year exceed the

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County Jail Operations Fund distribution payable to a county for a fiscal year pursuant to section ~~4210-D 1210-E~~, subsection 4 5.

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

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

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

13. Report on jails. Beginning ~~January 15, 2016~~ July 1, 2022 2023 and annually thereafter, the department, in collaboration with a statewide association of sheriffs and a statewide association of county commissioners, shall submit a report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters on the mandatory standards, policies and procedures for jails adopted pursuant to section 1208-B and the status of funding for the jails from the County Jail Operations Fund established in section ~~4210-D 1210-E~~, subsection 2, county taxes and other sources. The department and representatives of the associations shall conduct a review of the funding provided to county jails pursuant to subsection 12 and section ~~4210-D 1210-E~~, subsection 5 and the distribution formula established by the department pursuant to section ~~4210-D 1210-E~~, subsection 4 9. If the department and the associations find that changes are needed to the distribution method or procedures or the level of General Fund support, the department shall report that finding to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters and shall recommend changes in the formula determined pursuant to section ~~4210-D 1210-E~~, subsection 4 9 and the level of General Fund support. After reviewing the report, the joint standing committee is authorized to submit legislation to address issues raised by the report and to improve the funding and operation of the jails.

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

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

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

B. During a state fiscal year in which less than ~~\$12,202,104~~ the funding required by Title 34-A, section 1210-E, subsection 2 has been appropriated to the County Jail Operations Fund or disbursements have not been made equal to ~~that~~ the amount due to the counties as required by section ~~4210-D 1210-E~~, the receiving jail may charge the department for the transferred prisoner

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a rate to be negotiated between the sheriff of the county jail and the department that is no higher than \$108 per diem per prisoner.

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

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

Sec. D-7. Effective date. This Part takes effect July 1, ~~2022~~ 2023.

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

SUMMARY

This amendment extends by one year the implementation of the funding provisions of the bill.
[need to reference any other changes added]

Commented [JC7]: Are these payments supposed to be in addition to the per diem rates negotiated above?