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An Act To Ensure Humane Treatment for Special Management Prisoners

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

Sec. 1. 34-A MRSA §1406 is enacted to read:

§ 1406. Minimum standards governing the humane treatment of special management prisoners

The commissioner shall ensure that special management prisoners are treated in accordance with the minimum standards for humane treatment established in this section.

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

A. "Serious mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality or ability to cope with the ordinary demands of life. "Serious mental illness" includes, but is not limited to, disorders that involve an individual's repeated attempt to self-harm, disorders that induce psychiatric distress or other impairment to an individual confined in segregated housing and any illness defined as an Axis I psychotic or mood disorder as defined in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, published by the American Psychiatric Association.

B. "Special management prisoner" means a prisoner housed in a special management unit.

C. "Special management unit" means a high-security unit within a prison facility that houses a prisoner assigned by the commissioner to a high-risk management status, an administration segregation status or a disciplinary segregation status.

2. Special management unit criteria for prisoners with serious mental illness.

A prisoner determined to be suffering from a serious mental illness may not be confined in a special management unit. Prisoners confined in a special management unit must be evaluated by a licensed mental health professional in private within 48 hours of placement and at least every 7 days thereafter. Such evaluations must be conducted in person, not through a cell door, and must assess the current mental status and condition of the prisoner and the current risk of suicide or other self-harming behavior and include a review of the prisoner's inpatient and outpatient treatment history. A prisoner determined to suffer from a serious mental illness at the time of an evaluation must be removed from the special management unit within 7 days. If the prisoner is subsequently transferred to a psychiatric or mental health unit or a hospital, the commissioner shall ensure that the prisoner is held in conditions that do not violate this section.

3. Limitation on confinement; rights to a hearing. A prisoner may not remain confined in a special management unit for more than 45 consecutive calendar days unless it is determined by a hearing that within the previous 45 days the prisoner has, while incarcerated, committed or attempted

to commit a sexual assault, an escape from confinement or an act of violence. The hearing must be conducted by a panel of at least 3 persons appointed by the commissioner, one of whom must be a clinician representing the mental health staff at the facility in which the prisoner is housed. At such hearings, the department has the burden of proof. The following provisions apply to a hearing conducted under this subsection:

A. The commissioner shall provide written notice to the prisoner at least 72 hours before the hearing. That written notice must set forth the factual basis for the continued placement in the special management unit and must provide notice that the prisoner has the right to appear in person at the hearing, the right to submit evidence in the prisoner's defense, the right to call relevant witnesses and the right to be represented at the hearing by an attorney;

B. The commissioner shall make an audiovisual recording of the hearing and shall maintain all records of the hearing, including the audiovisual record and all written records, until at least 120 days after the release of the prisoner from incarceration;

C. The panel conducting the hearing shall issue a written decision within 5 days after the hearing and provide a copy of that decision to the prisoner, including the reasons for the decision;

D. If the panel authorizes the commissioner to continue holding the prisoner for longer than 45 days in the special management unit, the decision of the panel must include guidance to the prisoner as to what the prisoner must do to gain release from the special management unit and inform the prisoner that the panel must review its decision every 7 days to determine if the prisoner should continue to be housed in the special management unit; and

E. A prisoner may appeal a decision of the panel under paragraph C to the commissioner after notice of the decision is received by the prisoner. The commissioner shall respond in writing to an appeal within 7 days. A decision by the commissioner on an appeal or a failure by the commissioner to issue a decision within 7 days is a final agency action as defined in Title 5, section 8002, and the prisoner is entitled to judicial review of that decision under the provisions of Title 5, chapter 375, subchapter 7.

4. Corporal punishment, physical restraints, chemical agents and forcible extraction. Corporal punishment of a prisoner in a special management unit is prohibited. A prisoner may not be subjected to the use of chemical agents or forcible extraction from the prisoner's cell unless an audiovisual record of that process is made and the procedure is conducted in the presence of appropriate medical staff. The audiovisual record of such procedures must be preserved until at least 120 days after the release of the prisoner from incarceration. Instruments of physical restraint, including but not limited to handcuffs, chains, leg shackles, restraint chairs and 4-point restraints, may not be used on a special management prisoner.

5. Other disciplinary restrictions. A special management prisoner's access to food, medical or sanitary facilities, mail or legal assistance may not be restricted for disciplinary reasons.

6. Listing of special management prisoners. The commissioner shall maintain a current list of all special management prisoners that includes the date of confinement in the special management unit, the date of the last review, the reasons for placement in the special management unit and, in cases

when the prisoner has been housed in that unit for more than 60 days, a written statement of the criteria relied upon to support that extended confinement. The commissioner shall provide the board of visitors for each correctional facility appointed under section 3001-A with a copy of that list on a quarterly basis.

7. Transfer to out-of-state facilities. To the extent allowed under an interstate compact in effect at the time, the commissioner may not transfer a prisoner to an out-of-state facility unless the administrator of that out-of-state facility has agreed in writing to adhere to the provisions of this section with respect to the treatment of that prisoner. If the commissioner determines that a prisoner transferred to an out-of-state facility is not being treated in a manner consistent with this section, the commissioner shall take all legal steps necessary to secure the return of that prisoner to a correctional facility in the State.

8. Annual review. The board of visitors for each correctional facility appointed under section 3001-A shall annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management prisoners complies with this section. The board shall include its findings under this subsection in the annual report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters required by section 3001-A.

Sec. 2. Review of current status of special management prisoners. The Commissioner of Corrections shall review the status of all special management prisoners in the State within 45 days after the effective date of this Act to determine whether prisoners confined to special management units should remain in those units and to ensure that prisoners held in special management units more than 45 days receive a hearing as provided in the Maine Revised Statutes, Title 34-A, section 1406. The commissioner shall report the results of this evaluation to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters no later than January 15, 2011.

Sec. 3. Review of existing policies. The Commissioner of Corrections shall review all policies of the Department of Corrections in effect on the effective date of this Act relating to special management prisoners and update those policies as necessary to conform to this Act.

SUMMARY

This bill establishes minimum standards for the humane treatment of special management prisoners of the Department of Corrections. As defined in this bill, a "special management prisoner" is a prisoner assigned to one of several high-risk categories and confined in a secure special management unit.

The minimum standards established in this bill include limiting a prisoner's confinement to a special management unit to 45 days unless it is determined at a hearing that the prisoner has committed or attempted to commit a sexual assault, an escape from confinement or an act of violence within the previous 45 days. The bill also prohibits the confinement of prisoners with serious mental illness to a special management unit and requires that a special management prisoner determined to be suffering from serious mental illness be removed from the special management unit within 7 days. The bill also prohibits corporal punishment of special management prisoners and the use of chemical agents or instruments of physical restraint on special management prisoners. The bill also prohibits the Commissioner of Corrections, to the extent permitted by an interstate compact in effect at the time, from transferring a prisoner to an out-

of-state facility unless the administrator of that out-of-state facility has agreed in writing to adhere to the provisions of this section with respect to the treatment of that prisoner, and requires the commissioner to return that prisoner to Maine if those standards are not met.

The bill also requires the Commissioner of Corrections to maintain a current list of all special management prisoners and requires the board of visitors of each correctional facility to annually conduct a comprehensive review of the policies, standards and treatment of special management prisoners to determine the effectiveness of those policies and standards and the degree to which the treatment of special management prisoners complies with the law. The board is required to include its findings in its annual report to the joint standing committee of the Legislature having jurisdiction over criminal justice and public safety matters.

The bill also requires the Commissioner of Corrections to review the status of all special management prisoners in the State to determine whether prisoners confined to special management units should remain in those units and to ensure that prisoners held in special management units more than 45 days receive a hearing under the provisions of this bill. The commissioner is also required to review all policies in effect on the effective date of this bill relating to special management prisoners and update those policies as necessary to conform to the law.