

TITLE D2 SUBSTANTIVE OFFENSES

Chapter 29 Offenses Against the Family

Section 5. Endangering Welfare of an Incompetent Person

1. A person is guilty of endangering the welfare of an incompetent person if he knowingly endangers the health, safety, or mental welfare of a person who is unable to care for himself because of advanced age, physical or mental disease, disorder, or defect.

2. As used in this section "endangers" includes a failure to act only when the defendant had a legal duty to protect the health, safety or mental welfare of the incompetent person.

[3. Sentencing classification to be inserted.]

Section 6. Incest

1. A person is guilty of incest if, being at least 18 years of age, he has sexual intercourse with another person who is at least 18 years of age and as to whom he knows marriage is prohibited by section 31 of Title 19.

[2. Sentencing classification to be inserted.]

State of Maine

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31-1

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TITLE D3 THE SENTENCING SYSTEM

Chapter 31 General Sentencing Provisions

Section 1 Purposes

The general purposes of the provisions of this Title are:

1. To prevent crime through the deterrent effect of sentences, the rehabilitation of convicted persons, and the restraint of convicted persons when required in the interest of public safety;
2. To minimize correctional experiences which serve to promote further criminality;
3. To give fair warning of the nature of the sentences that may be imposed on the conviction of a crime;
4. To eliminate inequalities in sentences that are unrelated to legitimate criminological goals;
5. To encourage differentiation among offenders with a view to a just individualization of sentences;
6. To promote the development of correctional programs which elicit the cooperation of convicted persons; and
7. To permit sentences which do not diminish the gravity of offenses.

Section 2. Authorized Sentences

1. Every natural person and organization convicted of a crime shall be sentenced in accordance with the provisions of this Title.

2. Every natural person convicted of a crime shall be sentenced to one of the following:

A. A suspended period of imprisonment with probation as authorized by Chapter 32; or

B. Unconditional discharge as authorized by Chapter 32; or

C. To a period of imprisonment as authorized by Chap. 34.

D. To pay a fine as authorized by Chapter 35. Subject to the limitations of Chapter 35, section 2, such a fine may be imposed in addition to probation or a sentence authorized by Chapter 34.

3. Every organization convicted of a crime shall be sentenced to one of the following:

A. Probation or unconditional discharge as authorized by Chapter 32; or

B. The sanction authorized by section 3. Such sanction may be imposed in addition to probation *OR a FINE.*

C. A fine authorized by Chapter 35. Such fine may be imposed in addition to probation *OR the SANCTIONS authorized by SECTION 3.*

4. The provisions of this chapter shall not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office or impose any other civil penalty. An appropriate order exercising such authority may be included as part of the judgment of conviction.

Section 3. Sanctions for Organizations

1. If an organization is convicted of a crime, the court may, in addition to or in lieu of imposing other authorized penalties, sentence it to give appropriate publicity to the conviction by notice to the class or classes of persons or sector of the public interested in or affected by the conviction, by advertising in designated areas or by designated media, or otherwise as the court may direct. Failure to do so may be punishable as contempt of court.

2. If a director, trustee or managerial agent of an organization is convicted of a class A or class B crime committed in its behalf, the court may include in the sentence an order disqualifying him from holding office in the same or other organizations for a period not exceeding five years, if it finds the scope or nature of his illegal actions makes it dangerous or inadvisable for such office to be entrusted to him.

3. Prior to the imposition of sentence, the court may direct the Attorney General, a District Attorney, or any other attorney specially designated by the court, to institute supplementary proceedings in the case in which the organization was convicted of the crime to determine, collect and distribute damages to persons in the class which the statute was designed to protect who suffered injuries by reason of the crime, if the court finds that the multiplicity of small claims or other circumstances make restitution by individual suit impractical. Such supplementary proceedings shall be pursuant to rules adopted by the Supreme Judicial Court for this purpose. The court in which proceedings authorized by this subsection are commenced may order the state to make available to the attorney appointed to institute such proceedings all documents and investigative reports as are in its possession or control and grand jury minutes as are relevant to the proceedings.

Section 4. Sentence in Excess of One Year Deemed Tentative

1. When a person has been sentenced to imprisonment for a term in excess of one year and such imprisonment has not been suspended, the sentence shall be deemed tentative, to the extent provided in this section.

2. If, as a result of the Department's evaluation of such person's progress toward a non-criminal way of life, the Department is satisfied that the sentence of the court may have been based upon a misapprehension as to the history, character, or physical or mental condition of the offender, or as to the amount of time that would be necessary to provide for protection of the public from such offender, the Department may file in the sentencing court a petition to resentence the offender. The petition shall set forth the information as to the offender that is deemed to warrant his resentence and shall include a recommendation as to the sentence that should be imposed.

3. The court may, in its discretion, dismiss a petition filed under subsection 2 without a hearing if it deems the information set forth insufficient to warrant reconsideration of the sentence. If the court finds the petition warrants such reconsideration, it shall cause a copy of the petition to be served on the offender, the district attorney, the attorney general and the victim of the crime or, in the case of a criminal homicide, on the victim's next of kin, all of whom shall have the right to be heard on the issue.

4. If the court grants a petition filed under subsection 2, it shall resentence the offender and may impose any sentence not exceeding the original sentence that was imposed. The period of his being in the custody of the Department of Mental Health and Corrections prior to resentence shall be applied in satisfaction of the revised sentence.

5. For all purposes other than this section, a sentence of imprisonment has the same finality when it is imposed that it would have if this section were not in force. Nothing in this section shall alter the remedies provided by law for appealing a sentence, or for vacating or correcting an illegal sentence. As used in this section, "court" means the judge who imposed the original sentence, unless he is disabled or otherwise unavailable, in which case it means any judge exercising similar jurisdiction.

Section 5. Multiple Sentences

1. When multiple sentences of imprisonment are imposed on a person at the same time, or when such a sentence is imposed on a person who is already subject to an undischarged term of imprisonment, the sentences shall run concurrently, or, subject to the provisions of this section, consecutively, as determined by the court. When multiple fines are imposed on a person or an organization, the court

may, subject to the provisions of this section, sentence the person or organization to pay the cumulated amount or the highest single fine. Sentences shall run concurrently and fines shall not be cumulated unless otherwise specified by the court.

2. The court shall not impose consecutive custody terms or cumulative fines unless, having regard to the nature and circumstances of the offense, and the history and character of the defendant, it is of the opinion that such a sentence is required because of the exceptional features of the case, for reasons which the court shall set forth for the record in detail.

3. The aggregate maximum of consecutive sentences to which a defendant may be subject shall not exceed the maximum term authorized for the most serious offense involved, and the cumulated amount of fines shall not exceed that authorized for the most serious offense involved, except that a defendant being sentenced for two or more class C or D crimes may be subject to an aggregate maximum of imprisonment and fines not exceeding that authorized for a class B crime if each class C or D crime was committed as part of a different course of conduct or each involved a substantially different criminal objective.

4. A defendant may not be sentenced to consecutive terms or cumulative fines for more than one offense when:

1. One offense is an included offense of the other;

2. One offense consists only of a conspiracy, attempt, solicitation or other form of preparation to commit, or facilitation of, the other; or

3. The offenses differ only in that one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or

4. In separate trials, inconsistent findings of fact are required to establish the commission of the offenses.

Section 6. Consideration of Other Crimes

1. If the convicted person consents, the court may, in its discretion, take into account in determining sentence, any other crimes committed by such person for which he has not been convicted; provided that if there is such consent, the prosecuting attorney shall be notified and afforded an opportunity to be heard. If, following any such hearing, or waiver thereof by the prosecuting attorney, the court takes into account such other crimes as are disclosed by the convicted person, the record shall so state and the sentence imposed shall bar the prosecution or conviction in this state of the person

so sentenced. If the court does not take such other crimes into account, the convicted person's disclosure of them, in whole or in part, and any evidence derived directly or indirectly from such disclosure, shall not be admissible against him in any court. Before taking into account any such disclosed crimes, the court must be satisfied that the convicted person engaged in the conduct constituting such crimes.

2. Sentences imposed under this section are subject to the provisions of section 5. Upon the imposition of sentence under this section, the clerk of the court imposing sentence shall notify in writing the clerk of the court in which there are pending any of the crimes taken into account, and the clerk of the court in which they are pending shall cause the record of such pending cases to show that they were the subject of proceedings under this section. The record of the case in which sentence is imposed shall reflect all action taken under this section.

3. Before imposing sentence, the court shall inform the convicted person of the provisions of this section.

Chapter 32 Probation and Unconditional Discharge

Section 1 Eligibility for Probation and Unconditional Discharge

1. A person who has been convicted of any crime, except aggravated murder or murder, may be sentenced to a suspended term of imprisonment with probation or to an unconditional discharge, unless the court finds that

A. there is undue risk that during the period of probation the convicted person would commit another crime; or

B. the convicted person is in need of correctional treatment that can be provided most effectively by commitment to the Department of Mental Health and Corrections; or

C. such a sentence would diminish the gravity of the crime for which he was convicted.

2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, shall be sentenced to probation if he is in need of the supervision, guidance, assistance or direction that probation can provide. If there is no such need, and no proper purpose would be served by imposing any condition or supervision on his release, he shall be sentenced to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

Section 2. Period of Probation: Modification and Discharge

1. A person convicted of a class A or class B crime may be placed on probation for a period not to exceed three years; for a class C crime, for a period not to exceed two years; and for a class D crime, ^{or E crime} for a period not to exceed one year.

2. During the period of probation specified in the sentence made pursuant to subsection 1, and upon application of a person on probation, his probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on probation, modify the requirements imposed, add further requirements authorized by section 3, or relieve the person on probation of any requirement that, in its opinion, imposes an unreasonable burden on him.

3. On application of the probation officer, or of the person on probation, or on its own motion, the court may terminate a period of probation and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of such person. Such termination and discharge shall serve to relieve the person on probation of any obligations imposed by the sentence of probation.

Section 3. Split Sentences

1. Subject to the limitations in subsection 2, the court may require that a person placed on probation be imprisoned in a designated institution for the initial period of the probation, not to exceed [one half of the probation period? 6 months? - ?].

2. If, pursuant to subsection 1, the court requires the person placed on probation to be imprisoned in the state prison for the initial period of the probation, it shall fix such period of imprisonment not to exceed 90 days.

Section 4. Conditions of Probation

1. If the court imposes a sentence of probation, it shall attach such conditions, as authorized by this section, as it deems to be reasonable and appropriate to assist the convicted person to lead a law-abiding life.

2. As a condition of probation, the court in its sentence may require the convicted person:

A. to support his dependents and to meet his family responsibilities;

B. to devote himself to an approved employment or occupation;

C. to undergo, as an out-patient, available medical or psychiatric treatment, or to enter and remain, as a voluntary patient, in a specified institution when required for that purpose. Failure to comply with this condition shall be considered only as a violation of probation and shall not, in itself, authorize involuntary treatment or hospitalization.

D. to pursue a prescribed secular course of study or vocational training;

E. to refrain from criminal conduct or from frequenting unlawful places or consorting with specified persons;

F. to refrain from possessing any firearm or other dangerous weapon;

G. to make restitution, in whole or in part, according to the resources of the convicted person, to the victim or victims of his crime, or to the county where the offense is prosecuted where the identity of the victim or victims cannot be ascertained. As used in this subsection, "restitution" includes the money equivalent of property taken from the victim, or property destroyed or otherwise broken or harmed, and out-of-pocket losses attributable to the crime, such as medical expenses or loss of earnings.

H. to remain within the jurisdiction of the court unless permission to leave temporarily is granted in writing by the probation officer, and to notify the court or the probation officer of any change in his address or his employment;

I. to refrain from drug abuse and excessive use of alcohol;

J. to report as directed to the court or the probation officer, to answer all reasonable inquiries by the probation officer and to permit the officer to visit him at reasonable times at his home or elsewhere;

K. to pay a fine as authorized by chapter 35;

L. to satisfy any other conditions reasonably related to the rehabilitation of the convicted person or the public safety or security.

3. The convicted person shall be given a written statement setting forth the particular conditions on which he is released on probation, and he shall then be given an opportunity to address the court on these conditions if he so requests at the time.

Section 5. Preliminary Hearing on Violation of Conditions of Probation

1. If a probation officer has probable cause to believe that a person under his supervision has violated a condition of his probation, he may issue a summons to such person to appear before the District Supervisor or such other official as may be designated by the Director of Probation and Parole for a preliminary hearing to determine whether such probable cause in fact exists. If the alleged violation constitutes the commission of a new crime, the probation officer may communicate the basis for his belief that there is probable cause that the person under supervision has committed a crime to any law enforcement officer who may, in his discretion, thereupon arrest such person. The probation officer shall forthwith provide the arrested person with a written notice of a preliminary hearing before the District Supervisor to determine whether there is probable cause to believe that he has committed the new crime.

2. The preliminary hearing shall be held within forty eight hours if a person under supervision has been arrested, and as soon as practicable if he has not. It shall be held as near to the place where the violation is alleged to have taken place as is reasonable under the circumstances. The summons and written notice provided for in subsection 1 shall name the place and time of the preliminary hearing, state the conduct alleged to constitute the violation, and inform the person ^{of} if his rights under this section. In no case shall there be a waiver of the right to a preliminary hearing.

3. At the preliminary hearing the person alleged to have violated a condition of his probation has the right to confront and ~~cross~~-examine persons who have information to give against him, to present evidence on his own behalf, and to remain silent. If the District Supervisor determines on the basis of the evidence before him that there is not probable cause to believe that a condition of probation has been violated, he shall terminate the proceedings and order the person on probation forthwith released from any detention he may then be in. In such a case, no further proceedings to revoke the probation, based on the conduct alleged to have been the violation may be brought. If he determines that there is such probable cause, he shall prepare a written statement summarizing the evidence that was brought before him, and particularly describing that which supports the belief that there is probable cause. The person on probation shall be provided a copy of this statement. At the outset of the preliminary hearing, the District Supervisor shall inform the person of his rights under this section and of the provisions of section 6. Such person may waive, at the preliminary hearing, his right to confront and cross-examine witnesses against him, his right to present evidence in his own behalf, and his right to remain silent. No other rights may then be waived.

Section 6. Court Hearing on Probation Revocation

1. If, as a result of proceedings held under section 5, there is a determination of probable cause, the Director of Probation and Parole may apply to any court for a summons ordering the person to appear before the court for a hearing on the alleged violation. The application for summons shall include a copy of the written statement prepared pursuant to subsection 3 of section 5. The person on probation shall be furnished a copy of the application by the Director of Probation and Parole.

2. Upon the receipt of the application provided for in subsection 1, the court may, in its discretion:

A. issue the summons and order a hearing on the allegations or deny the application and order the person on probation released forthwith if he has been arrested on the allegations; or

B. if it is not the court which imposed the probation sentence, transfer the proceedings to such court which shall then proceed pursuant to this section.

C. If a hearing is ordered, the person on probation shall be notified, and the court, including the court to which the proceedings may have been transferred, may issue a warrant for his arrest and order him committed, with or without bail, pending the hearing.

3. If a hearing is held, the person on probation shall be afforded the opportunity to confront and cross-examine witnesses against him, to present evidence on his own behalf, and to be represented by counsel. If he cannot afford counsel, the court shall appoint counsel for him.

4. When the alleged violation constitutes a crime:

A. If the court hearing the violation is a District Court, it may

1. accept a plea of guilty or nolo contendere to such crime, provided all the requirements for accepting such pleas are complied with; or

2. if it has jurisdiction to try such crime, revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime, or it may order him tried for such crime; or

3. order the allegation of such new crime to be brought before the Superior Court, if it does not have jurisdiction to try such crime.

B. If the court hearing the violation is a Superior Court, it may

1. accept a plea of guilty or nolo contendere to crime, provided all the requirements for accepting such pleas are complied with; or

2. revoke probation if it finds by a preponderance of the evidence that the person on probation committed the crime; or

3. order the person tried for such crime.

5. If the alleged violation does not constitute a crime and the court finds that the person has inexcusably failed to comply with a requirement imposed as a condition of probation, it may revoke probation. In such case, the court shall impose the sentence of imprisonment that was suspended when probation was granted.

6. If the person on probation is convicted of a new crime during the period of probation, the court may sentence him for such crime, revoke probation and impose the sentence of imprisonment that was suspended when probation was granted, subject to the provisions of section 5 of chapter 31.

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Chapter 34 Sentences of Imprisonment

Section 1 Imprisonment for Aggravated Murder and Murder

1. A person who has been convicted of a crime may be sentenced to imprisonment pursuant to the provisions of this chapter.

2. In the case of a person convicted of aggravated murder or murder, the court shall commit him to the custody of the Department for purposes of an evaluation of such person as is relevant to sentence. No later than 120 days from such commitment, the Department shall return the convicted person to the court, along with the report of its evaluation and a recommended sentence.

3. Upon receipt of the report and recommendations provided for in subsection 2, the court shall sentence him to the state prison, and

A. in the case of ^{CRIM HM 1ST DEG} aggravated murder fix the period of imprisonment at life or any term of years that is not less than 35; and

B. in the case of ^{CRIM HM 2d DEGREE} murder, the court shall fix the period of (imprisonment at life or) any term of years that is not less than 20.

Section 2. Imprisonment for Crimes Other than Aggravated Murder or Murder

1. In the case of a person convicted of a crime other than aggravated murder or murder, the court may sentence to imprisonment for a definite term as provided for in this section. The sentence of the court shall specify the place of imprisonment, provided that no person shall be sentenced to imprisonment in the Men's Correctional Center located at South Windham, Maine, if his sentence exceeds 5 years or he is, at the time of sentence, more than 26 years old.

2. The court shall set the term of imprisonment as follows:

A. In the case of a class A crime, the court shall set a definite period not to exceed ²⁰thirty years;

B. In the case of a class B crime, the court shall set a definite period not to exceed ten years;

C. In the case of a class C crime, the court shall set a definite period not to exceed five years;

D. In the case of a class D crime, the court shall set a definite period not to exceed one year;

E. In the case of a class E crime, the court shall set a definite period not to exceed 6 months.

3. The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 32, section 3 (2) G. In such cases, it shall be the responsibility of the Department to determine whether the order has been complied with, and consideration shall be given in the Department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.

Section 3. Calculation of Period of Imprisonment

1. The sentence of any person committed to the custody of the Department of Mental Health and Corrections shall commence to run on the date on which such person is received into the custody of the Department.

2. When a person sentenced to imprisonment has been committed for presentence evaluation pursuant to subsection 2 of section 1, or has previously been detained to await trial, in any state or county institution, or local lock-up, for the conduct for which such sentence is imposed, such period of evaluation and detention shall be deducted from the time he is required to be imprisoned under such sentence. The Department shall have the same authority regarding such local lock-ups as is provided regarding county jails by chapter 34, section 3. The attorney representing the state shall furnish the court, at the time of sentence, a statement showing the length of such detention, and the statement shall be attached to the official records of the commitment.

3. Each person sentenced to imprisonment ^{FOR} more than six months whose record of conduct shows that he has observed all the rules and requirements of the institution in which he has been imprisoned shall be entitled to a deduction of 12 1/2 days a month from his sentence, commencing, in the case of all convicted persons, on the first day of his delivery into the custody of the Department.

4. An additional two days a month may be deducted in the case of those who are assigned duties outside the institution or who are assigned to work within the institution which is deemed to be of sufficient importance and responsibility to warrant such deduction.

Section 4. Release from Imprisonment

1. Except in the case of a person sentenced to life imprisonment an imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in his sentence, minus the deductions authorized under section 3.

2. A person sentenced to life imprisonment may, after having served 20 years, and annually thereafter, petition the Superior Court of the county in which he is imprisoned for a reduction of his sentence to a term of years. Upon notice to the Attorney General and the next of kin of the victim, the court shall hold a hearing on the petition and may, in its discretion, reduce the sentence to a term of years that is not less than 35. If the sentence is so reduced the imprisoned person shall be unconditionally released and discharged upon the expiration of the term specified in such sentence, minus such deductions authorized under section 3 as he shall have accumulated.

Chapter 35 Fines

Section 1 Amounts Authorized

1. A natural person who has been convicted of a class C, class D or class E crime may be sentenced to pay a fine, subject to the provisions of section 2, which shall not exceed:

- A. \$1,000 for a class C crime;
- B. \$500 for a class D crime;
- C. \$250 for a class E crime; and

D. regardless of the classification of the crime, any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

2. As used in this section, "pecuniary gain" means the amount of money or the value of property at the time of the commission of the crime derived by the defendant from the commission of the crime, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority prior to the time sentence is imposed. When the court imposes a fine based on the amount of gain, the court shall make a finding as to the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding, the court may conduct, in connection with its imposition of sentence, a hearing on this issue.

3. If the defendant convicted of a crime is an organization, the maximum allowable fine which such a defendant may be sentenced to pay shall be:

- A. \$50,000 for a class A crime;
- B. \$20,000 for a class B crime;
- C. \$10,000 for a class C crime;
- D. \$5,000 for a class D crime or a class E crime; and
- E. any higher amount which does not exceed twice the pecuniary gain derived from the crime by the convicted organization.

Section 2. Criteria for Imposing Fines

No convicted person shall be sentenced to pay a fine unless the court determines that he is or will be able to pay the fine. In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the offender and the nature of the burden that its payment will impose. No person shall be imprisoned solely for the reason that he will not be able to pay a fine.

Section 3. Time and Method of Payment of Fines

1. If a convicted person is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments. If no such permission is embodied in the sentence, the fine shall be payable forthwith to the clerk.

2. If a convicted person sentenced to pay a fine is also placed on probation, the court may make the payment of the fine a condition of probation. In such cases, the court may order that the fine be paid to the probation officer.

Section 4. Default in Payment of Fines

1. When a convicted person sentenced to pay a fine defaults in the payment thereof or of any installment, the court, upon the motion of the official to whom the money is payable, as provided in section 3, or upon its own motion, may require him to show cause why he should not be sentenced to be imprisoned for non-payment and may issue a summons or a warrant of arrest for his appearance. Unless such person shows that his default was not attributable to a wilful refusal to obey the order of the court or to a failure on his part to make a good faith effort to obtain the funds required for the payment, the court shall find that his default was unexcused and may

order him imprisoned until the fine or a specified part thereof is paid. The term of imprisonment for such unexcused non-payment of the fine shall be specified in the court's order and shall not exceed one day for each five dollars of the fine or six months, whichever is the shorter. When a fine is imposed on an organization, it is the duty of the person or persons authorized to make disbursements from the assets of the organization to pay it from such assets and failure so to do may be punishable under this section. A person imprisoned for non-payment of a fine shall be given credit towards its payment for each day that he is in the custody of the Department, at the rate specified in the court's order. He shall also be given credit for each day that he has been detained as a result of an arrest warrant issued pursuant to this section.

2. If it appears that the default in the payment of a fine is excusable, the court may make an order allowing the offender additional time for payment, reducing the amount thereof or of each installment, or revoking the fine or the unpaid portion thereof in whole or in part.

3. Upon any default in the payment of a fine or any installment thereof, execution may be levied, and such other measures may be taken for the collection of the fine or the unpaid balance thereof as are authorized for the collection of an unpaid civil judgment entered against a person. The levy of execution for the collection of a fine shall not discharge a person imprisoned for non-payment of the fine until such time as the amount of the fine has been collected.

Section 5. Revocation of Fines

1. A convicted person who has been sentenced to pay a fine and has not inexcusably defaulted in payment thereof, may at any time petition the court which sentenced him for a revocation of any unpaid portion thereof. If the court finds that the circumstances which warranted the imposition of the fine have changed, or that it would otherwise be unjust to require payment, the court may revoke the unpaid portion thereof in whole or in part, or modify the time and method of payment.

2. If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, such judgment may include an order that any or all of a fine which the convicted person paid pursuant to the sentence for such conviction be returned to him.