

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

M
R. O. S.

L.D. 882

2
4
DATE: *May 21, 1997*

(Filing No. S-305)

6
8
CRIMINAL JUSTICE

Reported by: *Senator Murray*

10
12
Reproduced and distributed under the direction of the Secretary
of the Senate.

14
16
**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

18
20
22
COMMITTEE AMENDMENT "*A*" to S.P. 274, L.D. 882, Bill, "An
Act to Require Defendants to Pay Restitution, Monetarily or
Through Work Restitution"

24
26
Amend the bill by striking out everything after the enacting
clause and before the summary and inserting in its place the
following:

28
'**Sec. 1. 17-A MRSA §1325, sub-§1, ¶C**, as enacted by PL 1977,
c. 455, §3, is amended to read:

30
32
C. The present and future financial ability capacity of the
offender to pay restitution.

34
Sec. 2. 17-A MRSA §1325, sub-§2, ¶D, as enacted by PL 1977, c.
455, §3, is amended to read:

36
38
40
42
D. When the amount and method of payment of monetary
restitution or the performance of service restitution ~~will~~
~~create~~ creates an excessive financial hardship on the
offender or dependent of the offender. In making this
determination, all relevant factors ~~shall~~ must be
considered, including, but not limited to the following:

44
(1) The number of the offender's dependents;

46
(2) The usual minimum living expenses of the offender
and ~~his~~ the offender's dependents;

48
50
(3) The special needs of the offender and ~~his~~ the
offender's dependents, including necessary travel
expense to and from work;

COMMITTEE AMENDMENT

2 (4) The offender's present income and potential future
earning capacity; and

4 (5) The offender's resources, from whatever source.

6 **Sec. 3. 17-A MRSA §1325, sub-§4** is enacted to read:

8 **4. Burdens of proof.** An offender who asserts a present or
10 future incapacity to pay restitution has the burden of proving
12 the incapacity by a preponderance of the evidence. On appeal of
a restitution order, the offender has the burden of demonstrating
that the incapacity was proven as a matter of law.

14 **Sec. 4. 17-A MRSA §1328**, as enacted by PL 1977, c. 455, §3,
16 is repealed and the following enacted in its place:

18 **§1328. Postconviction relief**

20 If, in any judicial proceeding following conviction, a court
issues a final judgment invalidating the conviction, the judgment
22 may include an order that any or all of a restitution payment
that the convicted person paid pursuant to the sentence for that
conviction be returned to the convicted person.

24 **Sec. 5. 17-A MRSA §1328-A** is enacted to read:

26 **§1328-A. Modification of restitution**

28 A convicted person who can not make restitution payments in
30 the manner ordered by the court shall move the court for a
modification of the time or method of payment or service to avoid
32 a default. The court may modify its prior order to reduce the
amount of each installment or to allow additional time for
34 payment or service.

36 **Sec. 6. 17-A MRSA §1329, sub-§2**, as amended by PL 1989, c.
502, Pt. D, §15, is further amended to read:

38 **2. Reports.** A probation officer having knowledge of a
40 default in restitution by an offender shall report the default to
the office of the ~~prosecutor~~ attorney for the State. --A
42 ~~prosecutor~~ An attorney for the State having knowledge of a
44 default in restitution by an offender shall report the default to
the court. If the restitution was a condition of probation, the
attorney for the State may file a motion to enforce payment of
46 restitution or, with the written consent of the probation
officer, a motion to revoke probation under section 1205. If the
48 restitution was not a condition of probation, the attorney for
the State may file a motion to enforce payment of restitution.

50

Sec. 7. 17-A MRSA §1329, sub-§§3, 4 and 5 are enacted to read:

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48

3. Motion to enforce payment of restitution. Either the attorney for the State or the court may initiate a motion to enforce payment of restitution. Notification for the hearing on the motion must be sent by regular mail to the offender's last known address. If the offender does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant.

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good-faith effort to obtain the funds required to make payment, the court shall find that the default was unexcused and may commit the offender to the custody of the sheriff until all or a specified part of the restitution is paid. The length of confinement in a county jail for unexcused default must be specified in the court's order and may not exceed one day for every \$5 of unpaid restitution or 6 months, whichever is shorter. An offender committed for nonpayment of restitution is given credit toward the payment of restitution for each day of confinement that the offender is in custody, at the rate specified in the court's order. The offender is also given credit for each day that the offender has been detained as the result of an arrest warrant issued pursuant to this section. An offender is responsible for paying any restitution remaining after receiving credit for confinement and detention. A default on the remaining restitution is also governed by this section.

B. If it appears that the default is excusable, the court may give the offender additional time for payment or may reduce the amount of each installment.

4. Collection. Upon any default, execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect the unpaid restitution. A levy of execution does not discharge an offender confined to a county jail under subsection 3 for unexcused default until the full amount of the restitution has been collected.

5. Organizations. When restitution is imposed on an organization, the person or persons authorized to make disbursements from the assets of the organization shall pay the restitution from the organization's assets. Failure to do so may subject the person or persons to court action pursuant to this section.'

2

FISCAL NOTE

4

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties are estimated to be \$83.78 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.'

18

SUMMARY

20

This amendment replaces the bill. The amendment requires the court to consider an offender's present and future ability to pay when imposing restitution and specifies that the burden lies on the offender to prove an incapacity to pay restitution.

The amendment places an affirmative duty on the convicted person to seek from the court a modification of the time or method of payment or service before a default occurs. It allows a court to modify its prior order by reducing the amount of each installment or by allowing more time for the convicted person to make payments or perform services. The option of allowing the court to revoke the unpaid portion of the restitution in whole or in part has been removed as an apparent unconstitutional intrusion into the Governor's exclusive postconviction pardon power. See State v. Hunter, 447 A.2d 797 (Me. 1982).

36

The amendment also imposes an enforcement mechanism by requiring a person who defaults on payment of restitution to return to court. The attorney for the State may file either a motion to enforce payment of restitution or, with the probation officer's written consent, a motion to enforce payment of restitution. The court may initiate its own motion to enforce payment of restitution as well. The court must find an offender's default unexcused, unless the offender shows by a preponderance of the evidence that the offender did not intentionally or knowingly refuse to obey the court order or fail to make a good-faith effort to obtain the funds required to make payment. An offender whose default is unexcused may be incarcerated for 6 months or one day for every \$5 of unpaid

COMMITTEE AMENDMENT "A" to S.P. 274, L.D. 882

restitution, whichever is shorter.

2

4

6

8

The amendment specifies that execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect defaulted restitution. Finally, the amendment states that persons authorized to disburse an organization's assets may be personally liable for failing to pay the organization's restitution.

10

The amendment also adds a fiscal note.