

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 882

S.P. 274

In Senate, February 6, 1997

An Act to Require Defendants to Pay Restitution, Monetarily or Through Work Restitution.

Reference to the Committee on Criminal Justice suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BENOIT of Franklin.
Cosponsored by Representative WATERHOUSE of Bridgton and
Senator CASSIDY of Washington, Representative: WHEELER of Bridgewater.

2
3 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 15 MRSA §1091-A, sub-§1**, as enacted by PL 1995, c.
456, §1, is amended to read:

6 **1. Failure to report after stay of execution.** A defendant
7 who has been sentenced but granted a stay of execution to report
8 at a specific time or place or in compliance with any other
9 condition and who fails to report as ordered or fails to return
10 to court pursuant to Title 17-A, section 1329 is guilty of:

12 A. A Class E crime if the underlying crime was punishable
13 by a maximum period of imprisonment of less than one year or
14 was a violation of Title 17-A, section 1329; or

16 B. A Class C crime if the underlying crime was punishable
17 by a maximum period of imprisonment of one year or more.

18 It is an affirmative defense that the failure to appear resulted
19 from just cause.

22 **Sec. 2. 17-A MRSA §1151, sub-§7**, as enacted by PL 1975, c.
499, §1, is amended to read:

24 **7.** To promote the development of correctional programs
25 which that elicit the cooperation of convicted persons; and

28 **Sec. 3. 17-A MRSA §1151, sub-§8**, as amended by PL 1995, c.
149, §1, is further amended to read:

30 **8.** To permit sentences that do not diminish the gravity of
31 offenses, with reference to the factors, among others, of:

34 A. The age of the victim; and

36 B. The selection by the defendant of the person against
37 whom the crime was committed or of the property that was
38 damaged or otherwise affected by the crime because of the
39 race, color, religion, sex, ancestry, national origin,
40 physical or mental disability or sexual orientation of that
41 person or of the owner or occupant of that property; and

42 **Sec. 4. 17-A MRSA §1151, sub-§9** is enacted to read:

44 **9.** To require all offenders to pay restitution to the
45 victims of crime, and to require offenders who are unable to make
46 direct financial payment to their victims to satisfy their
47 restitution obligation through public work restitution or, with
48 the consent of the victim, private victim work restitution.

2 **Sec. 5. 17-A MRSA §1152, sub-§2-A**, as amended by PL 1991, c.
824, Pt. A, §25, is further amended to read:

4 2-A. Every natural person convicted of a crime ~~may-be~~ is
6 required to make restitution as authorized by chapter 54.
Subject to the limitations of chapter 54, restitution ~~may~~ must be
8 imposed as a condition of probation or ~~may~~ must be imposed in
10 addition to any other sentencing alternative included within
subsection 2 with the exception of the alternative in subsection
2, paragraph A.

12 **Sec. 6. 17-A MRSA §1205, sub-§§8 and 9** are enacted to read:

14 8. Probation is tolled and does not expire until a
16 probation officer certifies to the court that an offender who has
18 been ordered to pay restitution as a condition of probation has
20 in fact completed the restitution obligation. A probation
22 officer shall file a certification of restitution payment only
24 when an offender has completely paid the entire restitution
sentence. If a probationer fails to complete the restitution
payment, a probation officer shall commence a probation
revocation proceeding pursuant to the requirements of this
section.

26 9. If a court finds that an offender has inexcusably failed
28 to pay restitution, a court shall revoke the probation pursuant
30 to section 1206. If the court finds that the offender has not
32 inexcusably violated probation, the court may either continue the
34 probationary period to permit the offender more time to complete
36 the restitution payments or modify the conditions and period of
probation to require the offender to complete a public
restitution program or, with the consent of the victim, a victim
restitution work program pursuant to section 1330-C. The court
may not discharge an offender from the restitution obligation of
probation. The court may extend the probationary period for any
length of time necessary to accomplish the restitution sentence.

38 **Sec. 7. 17-A MRSA §1322, sub-§6, ¶¶B and C**, as enacted by PL
40 1977, c. 455, §3, are amended to read:

42 B. Work or service provided to a victim for economic loss
or work provided to the public or community that is in the
44 nature of community service; or

46 C. Any combination of service or monetary reimbursement by
an offender to the victim of his the crime or to other
48 authorized claimants, either directly or indirectly, or to
the public, the community or a charitable organization that
50 is in the nature of public work restitution.

2 **Sec. 8. 17-A MRSA §1323, sub-§2**, as repealed and replaced by
PL 1983, c. 352, §3, is amended to read:

4 **2. Reasons for not imposing monetary restitution.** In any
6 case where the court determines that monetary restitution should
not be imposed in accordance with the criteria set forth in
8 section 1325, the court shall state in open court or in writing
the reasons for not imposing monetary restitution. If the court
10 does not impose monetary restitution, the court shall order an
offender to pay public work restitution or, with the consent of
12 the victim, private victim work restitution. The court shall fix
the number of hours of restitution work to be performed at an
14 hourly rate in accordance with the federal minimum wage rate.

16 **Sec. 9. 17-A MRSA §1325, sub-§§1 and 2**, as enacted by PL 1977,
c. 455, §3, are amended to read:

18 **1. Restitution authorized.** Restitution ~~may be authorized,~~
20 ~~in whole or in part,~~ must be ordered as compensation for economic
loss. In determining the amount of restitution authorized, the
22 following shall must be considered:

24 A. The contributory misconduct of the victim;

26 B. Failure to report the crime to a law enforcement officer
within 72 hours after its occurrence, without good cause for
28 failure to report within that time; and

30 C. The present and future financial ability of the offender
to pay restitution or the offender's ability to participate
32 in public work restitution or, with the consent of the
victim, private victim work restitution.

34 **2. Restitution not authorized.** Restitution shall may not be
authorized:

36 A. To a victim without that victim's consent;

38 B. To a victim who is an accomplice of the offender;

40 C. To a victim who has otherwise been compensated from a
42 collateral source, but economic loss in excess of the
collateral compensation may be authorized; and

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

- 2 (1) The number of the offender's dependents;
- 4 (2) The usual minimum living expenses of the offender
and his the offender's dependents;
- 6 (3) The special needs of the offender and his the
8 offender's dependents, including necessary travel
expense to and from work;
- 10 (4) The offender's present income and potential future
12 earning capacity and the offender's ability to perform
14 public work restitution or, with the consent of the
victim, private victim work restitution; and
- 16 (5) The offender's resources, from whatever source.

18 Every offender is presumed willing and able to complete either a
20 financial or work-related restitution. An offender has the
22 burden of establishing, by a preponderance of the evidence, that
the offender is unable to comply with either a monetary
restitution obligation or a work-related restitution obligation.

24 **Sec. 10. 17-A MRSA §1329, sub-§§3 to 7** are enacted to read:

26 **3. Proof of completed work.** Every sentence that is imposed
28 upon every offender must include a requirement that an offender
30 shall supply proof to the court or clerk of court, or probation
officer or other appropriate public official named in the
32 sentencing order, that restitution has been paid, or if the court
ordered work restitution, that the work has been completed. An
offender may not be finally discharged from a sentence until
proof has been supplied as required by the court.

34 **4. Completion date.** The court shall order an offender to
36 complete restitution by a specified date and return to court with
proof that the restitution was completed.

38 **5. Failure to complete.** An offender who fails to complete
40 the restitution portion of the sentence by the date specified
42 shall return to court in person and explain the failure to
complete the restitution obligation, request modification of the
44 restitution obligation or request an extension of the period of
time required to complete the restitution obligation.

2 6. Failure to report. An offender who fails to return to
court as required in this section commits the crime of failure to
report as defined in Title 15, section 1091-A.

4
6 7. Offense. An offender who fails to return to court
commits a Class E crime.

8 **Sec. 11. 17-A MRSA §1330, sub-§2,** as amended by PL 1995, c.
534, §1, is further amended to read:

10 **2. Payment of restitution from other sources.** Any
12 prisoner, other than one addressed by subsection 1, who is able
to generate money, from whatever source, shall pay 25% of that
14 money to any victim if the court has ordered that restitution be
paid. The correctional facility in which the prisoner is
16 incarcerated shall collect and disburse to the ~~victim or victims~~
appropriate prosecutor's office that portion of the prisoner's
18 money ordered as restitution for distribution to the victim or
victims. If the victim or victims ordered by the court to
20 receive restitution have died or can not be located, the
correctional facility shall inform the court that ordered
22 restitution. The court shall determine the distribution of these
funds.

24 **Sec. 12. 17-A MRSA §§1330-A to 1330-C** are enacted to read:

26 §1330-A. No direct appeal of restitution order

28 1. A restitution order is not reviewable on direct appeal,
30 except as to the accuracy of the determination of the victim's
loss. An offender who fails to object at the time of sentencing
32 to a court's determination of the extent of a victim's loss has
waived the right to review this issue on appeal or in future
34 court proceedings.

36 2. A restitution court order imposed upon an offender is
38 not reviewable upon appeal until it has been established that the
offender has not paid restitution and an offender's probation has
40 been revoked pursuant to section 1206, subsection 6 or the
offender has been found in contempt of court for failing to pay
restitution pursuant to Title 14, section 251.

42 §1330-B. Determining offender's financial ability to pay

44 1. In determining the financial ability of an offender to
46 pay restitution, a court shall focus on an offender's future
ability to pay restitution over a period of years as well as an
48 offender's present ability to pay.

2 2. An offender who agrees, asserts or claims that the
3 offender is willing or able to pay restitution at the time of the
4 offender's sentencing hearing is not permitted to claim that the
5 offender is financially unable to pay restitution in either a
6 future court appearance or on appeal of the original sentence
7 without first establishing, by a preponderance of the evidence,
8 that there has been a substantial change in financial conditions
9 since the time of the offender's sentencing hearing.

10 3. In determining whether an offender has inexcusably
11 failed to comply with a restitution requirement imposed as a
12 condition of probation, the court shall use the standard of a
13 preponderance of the evidence.

14 4. The court may extend an original probation period or a
15 restitution payment schedule to maximize an offender's ability to
16 pay restitution for any term of years.

17 5. If the court determines that an offender has no ability
18 to pay monetary restitution, the court shall order an offender to
19 participate in public work restitution or, with the consent of
20 the victim, private victim work restitution.

21 6. If a court has determined that a victim has suffered
22 economic loss and is entitled to restitution pursuant to section
23 1325 and the court has also found that an offender has no
24 financial ability to pay monetary compensation, a court shall
25 order the offender to satisfy the restitution obligation through
26 public work restitution or, with the consent of the private
27 victim, private victim work restitution. An offender who
28 satisfies a restitution obligation through public work
29 restitution or victim work restitution must receive credit for
30 work performed on an hourly basis at the federal minimum wage
31 rate.

32 §1330-C. Default in payment of restitution

33 1. When an offender sentenced to pay restitution defaults
34 in the payment of the restitution or of any installment, the
35 court, upon the motion of the district attorney, Attorney General
36 or other official to whom the money is payable, as provided in
37 section 1326, or upon its own motion, may require the offender to
38 show cause why the offender should not be committed to the
39 custody of the sheriff for nonpayment and may issue a summons or
40 a warrant of arrest for the offender's appearance. Unless the
41 offender shows that the default was not attributable to a willful
42 refusal to obey the order of the court or to a failure on the
43 offender's part to make a good faith effort to obtain the funds
44 required to make the payment, the court shall find that the
45 default was unexcused and may commit the offender to the custody
46 of the sheriff until the restitution or a specified part of the

2 restitution is paid. The length of incarceration for an
3 unexcused nonpayment of the restitution must be specified in the
4 court's order and may not exceed one day for every \$5 of the fine
5 or 6 months, whichever is shorter. When restitution is imposed
6 on an organization, it is the duty of the person or persons
7 authorized to make disbursements from the assets of the
8 organization to pay the restitution from the assets and failure
9 to do so may subject every such person to court action pursuant
10 to this section. An offender committed for nonpayment of
11 restitution is given credit toward the payment of restitution for
12 each day after confinement that the offender is in custody, at
13 the rate specified in the court's order. The offender must also
14 be given credit for each day that the offender has been detained
15 as a result of an arrest warrant issued pursuant to this section.

16 2. If it appears that the default in the payment of
17 restitution is excusable, the court may make an order allowing
18 the offender additional time for payment, reducing the amount of
19 the restitution or of each installment or revoking the
20 restitution or the unpaid portion of restitution in whole or in
21 part.

22 3. Upon any default in the payment of restitution or any
23 installment of payment of the restitution, execution may be
24 levied and such other measures may be taken for the collection of
25 the restitution or the unpaid balance of the restitution as are
26 authorized for the collection of an unpaid civil judgment entered
27 against an offender. The levy of execution for the collection of
28 restitution does not discharge an offender imprisoned for
29 nonpayment of the restitution until such time as the amount of
30 the restitution has been collected.

31 4. A court shall presume that an offender is willing and
32 capable of paying a restitution obligation.

33 5. An offender who the court seeks to discharge from a
34 restitution order must first be ordered to perform public service
35 work. An offender may, with the consent of the victim, be
36 ordered to perform work restitution directly for the victim on an
37 hourly basis. An offender must receive credit toward the
38 restitution obligation at the established federal rate for
39 minimum wage whenever the offender is assigned to work directly
40 for a victim or public organization. An offender may not be
41 ordered to perform public services or direct restitution in
42 excess of 1,000 hours per year.

43 **Sec. 13. 17-A MRS §1345, sub-§4 is enacted to read:**

2 4. An offender who has been sentenced to perform public
work restitution may be sentenced under this section, regardless
4 of the classification of crime.

6 **SUMMARY**

8 Many offenders escape paying restitution to their victims by
claiming a financial inability to pay restitution. This bill
10 amends the present law and provides the court with a wider
definition of the ability to pay restitution. This bill
12 authorizes a court to order offenders to work in the public
interest to repay their victims. The bill also postpones
14 appellate review of restitution orders until offenders are found
to have inexcusably violated probation or court payment
16 schedules. In many respects, this bill causes restitution
provisions to parallel those regarding payment of fines and
18 tracks the language of the method presently used to collect fines
owed to the State.

20 This bill creates a concept of public service restitution by
22 recognizing that the traditional restitution concept of direct
monetary payment to the victim is not always successfully
24 accomplished. While direct monetary restitution should remain as
the first best option for a court to consider, this bill proposes
26 that if an offender is financially unable to repay the victim
monetarily, the offender can repay the victim through work.

28 This bill requires all offenders to pay restitution either
30 by monetary compensation or through work.

32 This bill also allows an offender who is unable financially
to repay the victim to repay society in the same method presently
34 used and encouraged by the courts to pay a fine through public
service restitution.