

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)

DMG
6/17/19

Date: 6/17/19

L.D. 1304
(Filing No. H-616)

JUDICIARY

Reproduced and distributed under the direction of the Clerk of the House.

STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 947, L.D. 1304, Bill, "An Act To Ease Financial Burdens for Juveniles Involved in the Justice System"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 15 MRSA §3313, sub-§2, ¶F, as enacted by PL 1977, c. 520, §1, is amended to read:

F. The juvenile has made or has agreed to make pay restitution to the victim of ~~his~~ the juvenile's conduct for the damage or injury that the victim sustained in an amount that the court has determined is within the juvenile's ability to pay pursuant to section 3314-C;

Sec. 2. 15 MRSA §3314, sub-§1, ¶E, as amended by PL 2019, c. 113, Pt. C, §46, is further amended to read:

E. The court may require the juvenile to make pay restitution ~~for any damage to the victim or other authorized claimant as compensation for economic loss upon reasonable conditions that the court determines appropriate. For the purposes of this paragraph, the provisions of Title 17-A, chapter 69 apply, except that section 2015 does not apply. Enforcement of a restitution order is available pursuant to subsection 7. If the restitution was a condition of probation, the attorney for the State may, with written consent of the juvenile community corrections officer, file a motion to revoke probation pursuant to section 3314-C.~~

Sec. 3. 15 MRSA §3314, sub-§7, as amended by PL 2009, c. 608, §2, is further amended to read:

7. **Enforcement of a dispositional order or order to appear.** After notice and hearing and in accordance with the Maine Rules of Civil Procedure, Rule 66, the court may exercise its inherent contempt power by way of a plenary contempt proceeding involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, to enforce the disposition ordered following an adjudication for a juvenile crime or to enforce any order requiring the appearance of a juvenile before the court. The court may

COMMITTEE AMENDMENT

14

1 not order confinement as a contempt sanction for any juvenile who has not attained 14
2 years of age. Any confinement imposed as a punitive or remedial sanction upon a person
3 who has not attained 18 years of age may not exceed 30 days and must be served in a
4 facility approved or operated by the Department of Corrections exclusively for juveniles.
5 Any confinement imposed as a punitive or remedial sanction upon a person who has
6 attained 18 years of age, if to be served in a facility approved or operated by the
7 Department of Corrections exclusively for juveniles, may not exceed 30 days. To enforce
8 the disposition ordered following an adjudication for a juvenile crime defined in section
9 3103, subsection 1, paragraph B or C upon a person who has not attained 18 years of age,
10 the court shall, at the time of the disposition, provide written notice to the juvenile of the
11 court's authority to enforce the dispositional order through an exercise of its inherent
12 contempt power and that a contempt order could include an order of confinement for up
13 to 30 days as a punitive sanction and for up to 30 days as a remedial sanction. Except as
14 explicitly set out in this subsection, nothing in this subsection affects the court's ability to
15 exercise its contempt powers for persons who have attained 18 years of age.

16 ~~In addition to the contempt powers described in this subsection, upon a default in~~
17 ~~payment of a fine or restitution, execution may be levied and other measures authorized~~
18 ~~for the collection of unpaid civil judgments may be taken to collect the unpaid fine or~~
19 ~~restitution. A levy of execution does not discharge a juvenile confined as a punitive~~
20 ~~sanction and does not discharge a juvenile confined as a remedial sanction until the full~~
21 ~~amount of the fine or restitution has been paid.~~

22 **Sec. 4. 15 MRSA §3314-C** is enacted to read:

23 **§3314-C. Juvenile restitution**

24 **1. Definitions.** Terms used in this section have the same meaning as in Title 17-A,
25 section 2002, unless otherwise indicated.

26 **2. Mandatory consideration of restitution.** This subsection applies to the
27 mandatory consideration of restitution.

28 **A. The court shall, whenever practicable, inquire of a prosecutor, law enforcement**
29 **officer or victim with respect to the extent of the victim's economic loss and shall**
30 **order restitution when authorized and appropriate.**

31 **B. The order for restitution must designate the amount of restitution to be paid, that**
32 **the order may be subject to modification or termination pursuant to subsection 6 and**
33 **the person or persons to whom restitution must be paid.**

34 **C. In any case in which the court determines that restitution should not be imposed in**
35 **accordance with the criteria set forth in subsection 3, the court shall state on the**
36 **record or in writing the reasons for not imposing restitution.**

37 **3. Criteria for juvenile restitution.** The criteria for ordering restitution to be paid
38 by a juvenile are as follows.

39 **A. Restitution as part of a juvenile disposition may be authorized, in whole or in part,**
40 **as compensation for economic loss. In determining the amount of restitution a court**
41 **is authorized to order a juvenile to pay, the court shall consider the following:**

- 42 (1) **The contributory misconduct of the victim;**

1 (2) Failure by the victim to report the crime to a law enforcement officer within
2 72 hours after its occurrence, without good cause for failure to report within that
3 time period; and

4 (3) The present and future capacity of the juvenile to pay restitution.

5 B. The court is not authorized to order that a juvenile pay restitution:

6 (1) To a victim without that victim's consent;

7 (2) To a victim who is an accomplice of the juvenile;

8 (3) To a victim who has otherwise been compensated from a collateral source,
9 but economic loss in excess of that collateral compensation may be authorized;

10 (4) On a joint and several basis; or

11 (5) When the amount and method of payment of monetary restitution places an
12 excessive financial hardship on the juvenile or dependent of the juvenile. In
13 making this determination, the court shall consider all relevant factors, including,
14 but not limited to, the following:

15 (a) The impact a restitution order would have on a juvenile, the juvenile's
16 dependents and the juvenile's family, with particular consideration given to
17 whether or not the juvenile or the juvenile's parents or guardians have been
18 determined to be indigent;

19 (b) The minimum living expenses of the juvenile and the juvenile's
20 dependents, including any other persons who are actually dependent on the
21 juvenile;

22 (c) The special needs of the juvenile and the juvenile's dependents, including
23 necessary travel expenses to and from work;

24 (d) The juvenile's present income and potential future earning capacity;

25 (e) The juvenile's resources;

26 (f) The juvenile's age;

27 (g) The juvenile's educational obligations;

28 (h) The juvenile's participation in substance use disorder treatment or mental
29 health treatment or both;

30 (i) The stability or transience of the juvenile's living situation;

31 (j) The juvenile's access to transportation;

32 (k) Work restrictions on juveniles as set forth in Title 26, chapter 7; and

33 (l) The confinement of the juvenile as part of the juvenile's disposition.

34 4. Authorized claimants. A court's order directing a juvenile to pay restitution is
35 authorized only for:

1 A. The victim or victims, who must be natural persons, or a dependent of a deceased
2 victim. A juvenile's obligation to pay restitution is not affected by the death of the
3 victim to whom the restitution is due. In the case of the death of a victim, the money
4 collected as restitution must be forwarded to the estate of the victim; and

5 B. Any person legally authorized to act on behalf of the victim.

6 **5. Burdens of proof.** At a hearing on a juvenile's capacity to pay restitution, there
7 exists a rebuttable presumption that a juvenile who has not attained 16 years of age lacks
8 the capacity to pay restitution. The State has the burden to rebut that presumption by a
9 preponderance of the evidence. At a hearing in which a juvenile who has attained 16
10 years of age asserts a present or future incapacity to pay restitution, the juvenile has the
11 burden of proving the incapacity to pay restitution by a preponderance of the evidence.
12 On appeal of a restitution order, as part of a juvenile disposition, the juvenile has the
13 burden of demonstrating that the court abused its discretion in ordering an amount of
14 restitution.

15 **6. Modification of orders on juvenile restitution.** This subsection governs the
16 modification of juvenile restitution orders.

17 A. A juvenile who is not able to make restitution payments in the manner ordered by
18 the court shall move the court for a modification of the time or method of payment.
19 If the juvenile establishes by a preponderance of the evidence that the juvenile is
20 unable to pay restitution in the time and manner ordered, the court may modify its
21 prior order to reduce the amount of each installment or to allow additional time for
22 payment.

23 B. Upon motion of the juvenile, the juvenile's parent or parents or the juvenile's
24 guardian, and upon notice to the State and providing an opportunity for the victim to
25 comment on the motion, pursuant to Title 17-A, sections 2102, 2104 and 2105, the
26 court may review the restitution order and may modify its dispositional order to
27 reduce or eliminate the amount of restitution ordered when the court determines that
28 the juvenile has established by a preponderance of the evidence that payment of the
29 current restitution order would, based on a substantial change in the juvenile's
30 circumstances, constitute an excessive financial hardship on the juvenile or the
31 juvenile's dependents. Additionally, if a court determines that a juvenile's failure to
32 pay restitution was not willful and was excusable, the court may order that the
33 juvenile complete court-approved community service to offset the juvenile's
34 restitution obligations at an hourly rate set by the court that may be no less than the
35 minimum wage established in Title 26, section 664.

36 **7. Enforcement of an order of juvenile restitution.** Notwithstanding section 3314,
37 subsection 7, to enforce an order of restitution upon a finding that the juvenile has
38 inexcusably failed to comply with the order, the court may not order confinement as a
39 remedial or punitive contempt sanction unless the juvenile has in fact attained 16 years of
40 age. Upon a motion by the State to enforce the payment of restitution, the court may
41 order, in addition to other remedial or punitive contempt sanctions for an inexcusable
42 failure to pay restitution, that a juvenile complete court-approved community service at
43 an hourly rate set by the court that may be no less than the minimum wage established in
44 Title 26, section 664.'

1 Amend the bill by relettering or renumbering any nonconsecutive Part letter or
2 section number to read consecutively.

3 **SUMMARY**

4 This amendment replaces the bill. It enacts a new section in the Maine Juvenile Code
5 governing court orders of restitution and orders to modify restitution. The new section:

6 1. Requires that restitution be considered by the court and, when the court does not
7 order restitution, that the court state on the record or in writing the reasons for not
8 imposing restitution;

9 2. Establishes criteria that must be considered in determining whether restitution is
10 appropriate and the amount of restitution to be paid. The amendment specifically
11 prohibits an order of restitution in enumerated circumstances;

12 3. Clarifies to whom restitution may be paid;

13 4. Establishes who has the burden of proof with regard to the capacity to pay
14 restitution. If the juvenile has not attained 16 years of age, there is a rebuttable
15 presumption that the juvenile does not have the capacity to pay restitution; the State may
16 rebut the presumption by a preponderance of evidence. If the juvenile is 16 years of age
17 or older, the juvenile has the burden of proving the incapacity to pay restitution by a
18 preponderance of the evidence. On appeal, the juvenile has the burden of demonstrating
19 that the court abused its discretion in ordering an amount of restitution;

20 5. Provides for the modification of orders of juvenile restitution; and

21 6. Provides that, in enforcing an order to pay restitution, the court may not enter an
22 order for confinement as a remedial or contempt sanction unless the juvenile has in fact
23 attained 14 years of age. The court may also order the juvenile to complete community
24 service.