

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 974

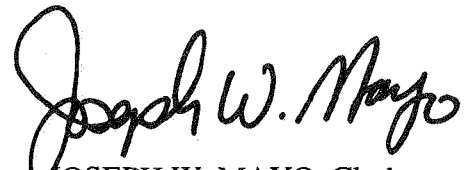
H.P. 710

House of Representatives, February 11, 1997

**An Act to Allow the State to Appeal Certain Sentences Imposed on Defendants.**

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Reference to the Committee on Judiciary suggested and ordered printed.

  
JOSEPH W. MAYO, Clerk

Presented by Representative JABAR of Waterville.

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

4 **Sec. 1. 15 MRSA §2115**, as amended by PL 1987, c. 166, §3, is  
further amended to read:

6 **§2115. Appeals from the Superior Court**

8 In any criminal proceeding in the Superior Court, any  
defendant aggrieved by a judgment of conviction, ruling or order  
10 may appeal to the Supreme Judicial Court, sitting as the Law  
Court. The time for taking the appeal and the manner and any  
12 conditions for the taking of the appeal ~~shall be~~ are as the  
Supreme Judicial Court provides by rule. A defendant may, at any  
14 time after entry of a judgment of conviction, waive any rights of  
appeal conferred by this section.

16 In an appeal from a judgment of conviction imposing an order  
of restitution as part of a sentence or as a condition of  
18 probation, a defendant is limited on direct appeal of the order  
of restitution to the issue of the accuracy of the court's  
20 determination of the amount of restitution owed. The court's  
22 determination of the defendant's ability to pay restitution is  
24 not reviewable on appeal until such time as a court determines  
that the defendant has inexcusably failed to comply with the  
26 court-ordered restitution or the conditions of probation relating  
to payment of restitution.

28 In an appeal from a judgment imposing a sentence of  
imprisonment for life, if 3 justices concur, the judgment shall  
30 must be reversed and may be remanded for a new trial. In all  
other criminal cases, the judgment shall must be affirmed, unless  
32 a majority of the justices sitting and qualified to act in the  
case concur in its reversal.

34 **Sec. 2. 15 MRSA §2115-A, sub-§3-A** is enacted to read:

36 3-A. Appeals of sentence in certain cases. When the  
38 defendant appeals a judgment of conviction pursuant to section  
2115, the State may seek approval of the Supreme Judicial Court,  
40 sitting as the Law Court, for review of the sentence imposed on  
the defendant pursuant to that judgment.

42 **Sec. 3. 15 MRSA §2115-A, sub-§4**, as amended by PL 1995, c. 47,  
44 §2, is further amended to read:

46 **4. Time.** An appeal taken pursuant to subsection 1, 2, 2-A  
or 2-B must be taken within 20 days after the entry of the order  
48 or such further time as may be granted by the court pursuant to a  
rule of court, and an appeal taken pursuant to subsection 1 must  
50 also be taken before the defendant has been placed in jeopardy.  
An application for review of sentence made pursuant to subsection

3-A must be made within 20 days after the defendant files a notice of appeal of the judgment of conviction. An appeal taken pursuant to this subsection must be diligently prosecuted.

**Sec. 4. 15 MRSA §2115-A, sub-§5**, as amended by PL 1995, c. 47, §3, is further amended to read:

**5. Approval of Attorney General.** In any appeal taken pursuant to subsection 1, 2, 2-A or 2-B or 3-A, the written approval of the Attorney General or the district attorney for the prosecutorial district taking the appeal is required; provided except that if the attorney for the State filing the notice of appeal states in the notice that the Attorney General or the district attorney for the prosecutorial district taking the appeal has orally stated that the approval will be granted, the written approval may be filed at a later date.

**Sec. 5. 15 MRSA §2151**, as enacted by PL 1989, c. 218, §5, is repealed and the following enacted in its place:

**§2151. Application to the Supreme Judicial Court by defendant for review of certain sentences**

The following provisions apply to the right to appeal by a defendant.

**1. Appeal of sentence.** In a case arising in the District Court or the Superior Court in which a defendant has been convicted of a criminal offense and sentenced to a term of imprisonment of one year or more, the defendant may, except in any case in which a different term of imprisonment could not have been imposed, apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence. If the Supreme Judicial Court allows for a review of the sentence imposed upon application of the defendant, the State, without necessity of further application to the Supreme Judicial Court, may seek a full review of the sentence imposed. A defendant may waive the right to apply for review of sentence conferred by this section at any time after entry of a judgment of conviction.

**2. Appeal of conviction.** When a defendant has filed an appeal of a judgment of conviction, pursuant to section 2115, the State may apply to the Supreme Judicial Court, sitting as the Law Court, for review of the sentence imposed on the defendant pursuant to that judgment.

**3. Waiver of right to appeal.** A defendant may enter into a plea agreement with the State whereby any right of appellate review pursuant to this section is waived as a part of the plea agreement.

