# MAINE STATE LEGISLATURE

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## 119th MAINE LEGISLATURE

### **FIRST REGULAR SESSION-1999**

Legislative Document

No. 791

H.P. 570

House of Representatives, January 28, 1999

An Act to Clarify Sentencing Alternatives Involving Probation and Unconditional Discharge Under the Criminal Code.

Reported by Representative POVICH for the Criminal Law Advisory Commission pursuant to Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Reference to the Joint Standing Committee on Criminal Justice suggested and printing ordered under Joint Rule 218.

JOSEPH W. MAYO, Clerk

	Be it enacted by the People of the State of Maine as follows:
4	Sec. 1. 17-A MRSA §1152, sub-§2, ¶A, as repealed and replaced by PL 1985, c. 821, §3, is amended to read:
6	A. Unconditional discharge as authorized by chapter $4950$
8 10	Sec. 2. 17-A MRSA $\S1201$ , as amended by PL 1987, c. 361, $\S3$ , is further amended to read:
12 14	§1201. Eligibility for a sentence alternative that includes a period of probation
16	1. A person who has been convicted of a crime may be sentenced to a section 1152 sentencing alternative which that includes a period of probation er-to-the-sentencing-alternative
18	ef-uneenditienal-discharge, unless:
20	A. The conviction is for murder;
22	B. The statute which that the person is convicted of violating expressly provides that the fine and imprisonment
24	penalties it authorizes may not be suspended, in which case the convicted person shall must be sentenced to the
26	imprisonment and required to pay the fine authorized therein; or
28	GThe-court-finds-that-there-is-an-unduc-risk-that-during
30	the-period-ef-probation-the-convicted-persen-would-eemmit anether-erime;-er
32	D. The court finds that such a sentence would diminish the
34	gravity of the crime for which he that person was convicted.
36	2. A convicted person who is eligible for sentence under this chapter, as provided in subsection 1, shall may be sentenced
38	to a sentencing alternative that includes a period of probation if he the person is in need of the supervision, guidance
40	assistance or direction that probation can provide. If-there-in-such-need,-and-ne-proper-purpose-would-be-served-by-imposing
42	anyconditionorsupervisiononhisrelease,heshallbe sentencedtoanunconditionaldischargehsentencee
44	unconditional-discharge-is-for-all-purposes-a-final-judgment-o
46	CONTECERORY

425, §1, is further amended to read:

Sec. 3. 17-A MRSA §1203, sub-§1, as amended by PL 1995, c.

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2	1. The court may sentence a person to a term of
	imprisonment, not to exceed the maximum term authorized for the
4	crime, an initial portion of which shall must be served and the
	remainder of which shall must be suspended, and accompany that
6	term with a period of probation not to exceed the maximum period
_	authorized for the crime. As to both the suspended and
8	unsuspended portions of the sentence term of imprisonment, the
	place of imprisonment must be as follows.
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10	A. For a Class D or Class E crime the court must shall
12	specify a county jail as the place of imprisonment.
14	B. For a Class A, Class B or Class C crime the court must
1.4	shall:
16	PIIGTT:
10	(1) Specify a county jail as the place of imprisonment
18	for any portion of the sentence that is 9 months or
_ •	less; and
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	(2) Commit the person to the Department of Corrections
22	for any portion of the sentence that is more than 9
	months.
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	The period of probation commences on the date the person is
26	released from the initial unsuspended portion of the term of
	imprisonment, unless the court orders it to commence on an
28	earlier date. If the period of probation commences upon release
20	of the person from the initial unsuspended portion of the term of
30	imprisonment, the court may revoke probation for any criminal
32	conduct committed during that initial period of imprisonment.
34	Sec. 4. 17-A MRSA §1203-C is enacted to read:
34	bec. 4. 17-A MINDA 31205-C 15 enacted to read.
J.	§1203-C. Wholly suspended sentence with probation
36	Trans at the State Designation of the State of
	The court may sentence a person to a term of imprisonment
38	not to exceed the maximum term authorized for the crime, suspend
	the entire term of imprisonment and accompany the suspension with
40	a period of probation not to exceed the maximum period authorized
	for the crime, to commence on the date the person goes into
42	actual execution of the sentence.
	Coo F 17 A MDCA o F4 D
44	Sec. 5. 17-A MRSA c. 54-D is enacted to read:
46	CHAPTER 54-D
	Frank THE AF.

UNCONDITIONAL DISCHARGE

### §1346. Sentencing alternative of unconditional discharge

A convicted person who is eligible for sentence under section 1201, subsection 1 and for whom a court determines that no other authorized sentencing alternative is appropriate punishment must be sentenced by the court to an unconditional discharge. A sentence of unconditional discharge is for all purposes a final judgment of conviction.

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#### **SUMMARY**

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This bill removes the sentencing alternative unconditional discharge from the Maine Revised Statutes, Title 17-A, chapter 49, section 1201 of the Criminal Code and gives it unique treatment in new chapter 54-D, section 1346. additionally makes clear relative to this punishment alternative that it is to be imposed only when no other authorized sentencing alternative is found appropriate to be imposed by a sentencing court. Under current law, unconditional discharge is treated solely as an alternative to a sentencing alternative involving probation. Further, this bill addresses directly the currently authorized sentencing alternative of a wholly suspended term of imprisonment with probation by creating a new section 1203-C. (See section 1152, subsection 2, paragraph D.) Currently, this sentencing alternative is implicit in chapter 49. Still further, it makes a nonsubstantive change to section 1203, subsection 1 to conform it to new section 1203-C. Finally, this bill eliminates from section 1201 the current prohibition against the use of a sentencing alternative involving probation in the event the person to be sentenced poses a significant risk of further criminal activity while on probation.

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