

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2129

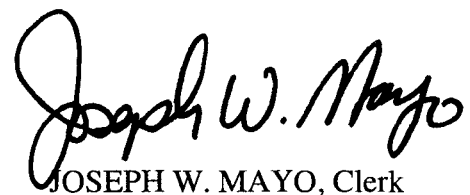
H.P. 1491

House of Representatives, March 31, 1999

**An Act to Bring Certain Criminal Code Provisions Addressing Fines Into
Conformity with Recently Amended Criminal Code Provisions
Addressing Restitution.**

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

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

4 **Sec. 1. 15 MRSA §3314, sub-§1, ¶G,** as amended by PL 1995, c.
470, §8, is further amended to read:

6 G. Except for a violation of section 3103, subsection 1,
8 paragraph D, the court may impose a fine, subject to Title
10 17-A, sections 1301 to ~~1305~~ 1304. For the purpose of this
section, juvenile offenses defined in section 3103,
subsection 1, paragraphs B and C are deemed Class E crimes.

12 **Sec. 2. 17-A MRSA §1301-A** is enacted to read:

14 **§1301-A. Use of fine relative to natural persons**

16 Except when specifically precluded, in choosing the
18 appropriate punishment for every natural person convicted of a
20 crime, the court shall consider the desirability of imposing a
22 sentencing alternative involving a fine either in conjunction
24 with or in lieu of imprisonment. A sentencing alternative
involving imprisonment may not be imposed by a court solely for
the reason that the person does not have the present or future
financial capacity to pay a fine.

26 **Sec. 3. 17-A MRSA §1302,** as amended by PL 1993, c. 103, §4,
is repealed and the following enacted in its place:

28 **§1302. Criteria for imposing fines**

30 1. In determining the amount and method of payment of a
32 fine, the court shall take into account the present and future
34 financial capacity of the offender to pay the fine and the nature
of the financial burden that payment of the fine will impose on
the offender or a dependent of the offender, if any.

36 2. An offender who asserts a present or future incapacity
38 to pay a fine or asserts that the fine will cause an excessive
40 financial hardship on the offender or on a dependent of the
42 offender has the burden of proving the incapacity or excessive
44 hardship by a preponderance of the evidence. On appeal of a
sentencing alternative involving a fine, the offender has the
burden of demonstrating that the incapacity or excessive
financial hardship was proven as a matter of law.

46 **Sec. 4. 17-A MRSA §§1303-A and 1303-B** are enacted to read:

48 **§1303-A. Postconviction relief**

50 If, in any judicial proceeding following conviction, a court
issues a final judgment invalidating the conviction, the judgment

2 may include an order that a fine payment or any part of a fine
3 payment that the convicted person paid pursuant to the sentence
4 for that conviction be returned to the convicted person.

6 **§1303-B. Modification of payment of fine**

8 A convicted person who has been sentenced to pay a fine
9 shall move the court for a modification of time or method of
10 payment to avoid a default. The court may modify its prior order
11 to allow additional time for payment or to reduce the amount of
12 each installment.

14 **Sec. 5. 17-A MRS §1304**, as amended by PL 1997, c. 393, Pt.
15 B, §8, is repealed and the following enacted in its place:

16 **§1304. Default**

18 1. An offender who has been sentenced to pay a fine and has
19 defaulted in payment of that fine must be returned to court for
20 further disposition.

22 2. A probation officer having knowledge of a default in
23 payment of a fine by an offender shall report the default to the
24 office of the attorney for the State. An attorney for the State
25 having knowledge of a default in payment of a fine by an offender
26 shall report the default to the court. If the fine was a
27 condition of probation, the attorney for the State may file a
28 motion to enforce payment of the fine or, with the written
29 consent of the probation officer, a motion to revoke probation
30 under section 1205. If the fine was not a condition of
31 probation, the attorney for the State may file a motion to
32 enforce payment of the fine.

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

40 A. Unless the offender shows by a preponderance of the
41 evidence that the default was not attributable to an
42 intentional or knowing refusal to obey the court's order or
43 to a failure on the offender's part to make a good-faith
44 effort to obtain the funds required for the payment, the
45 court shall find that the default was unexcused and may
46 commit the offender to the custody of the sheriff until all
47 or a specified part of the fine is paid. The length of
48 confinement in a county jail for unexcused default must be
49 specified in the court's order and may not exceed one day
50

2 for every \$5 of unpaid fine or 6 months, whichever is
3 shorter. An offender committed for nonpayment of a fine is
4 given credit toward the payment of the fine for each day of
5 confinement that the offender is in custody, at the rate
6 specified in the court's order. The offender is also given
7 credit for each day that the offender is detained as the
8 result of an arrest warrant issued pursuant to this
9 section. An offender is responsible for paying any fine
10 remaining after receiving credit for confinement and
11 detention. A default on the remaining fine is also governed
12 by this section.

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

16 C. If the court commits a person to the custody of the
17 sheriff for nonpayment of a fine, the court may authorize,
18 at the time of its order only, participation of the person
19 in a project under Title 30-A, section 1606 with the
20 agreement of the sheriff of the county jail where the person
21 is committed. The person must be given credit according to
22 Title 30-A, section 1606, subsection 2.

23 D. The confinement ordered under this subsection must be
24 nonconcurrent with any judgment of conviction involving a
25 term of imprisonment.

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

32 5. When a fine is imposed on an organization, the person or
33 persons authorized to make disbursements from the assets of the
34 organization shall pay the fine from the organization's assets.
35 Failure to do so may subject the person or persons to court
36 action pursuant to this section.

37 Sec. 6. 17-A MRSA §1305, as enacted by PL 1975, c. 499, §1,
38 is repealed.

39 Sec. 7. 17-A MRSA §1329, sub-§3, ¶C is enacted to read:

40 C. The confinement ordered under this subsection must be
41 nonconcurrent with any judgment of conviction involving a
42 term of imprisonment.

43

SUMMARY

2
4 This bill conforms the provisions governing fines in the
6 Maine Criminal Code to similar restitution provisions that were
8 recently amended by Public Law 1997, chapter 413. In the Maine
10 Revised Statutes, Title 17-A, compare section 1302, subsection 1
12 with section 1325, subsection 1, paragraph C and section 1325,
14 subsection 2, paragraph D; compare section 1302, subsection 2
16 with section 1325, subsection 4; compare section 1303-A with
18 section 1328, see also former section 1305, subsection 2; compare
section 1303-B with section 1328-A; compare section 1304,
subsections 1 and 2 with section 1329, subsections 1 and 2;
compare section 1304, subsection 3 with section 1329, subsection
3, see also former section 1304, subsections 3 and 4; and compare
section 1304, subsections 4 and 5 with section 1329, subsections
4 and 5.

20 The bill also enacts Title 17-A, section 1301-A, which
22 contains provisions regarding the use of a fine relative to a
24 natural person convicted of a crime that parallel the provisions
in Title 17-A, section 1152, subsection 2-B and in the 2nd
sentence of section 1302, which is repealed and replaced in this
bill.

26 Finally, the bill adds to Title 17-A, section 1329,
28 subsection 3 the requirement that confinement for a default in
30 payment of restitution be treated as nonconcurrent with any other
32 judgment of conviction involving a term of imprisonment. This
same requirement existed in section 1304, subsection 4, which is
repealed and replaced in this bill, and exists in section 1304,
subsection 3, paragraph D, which is enacted in this bill,
relative to a default in payment of a fine.