

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1139

H.P. 842

House of Representatives, March 4, 2003

An Act To Increase Parental Responsibility for Restitution

Reference to the Committee on Judiciary suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McKENNEY of Cumberland.
Cosponsored by Senator TURNER of Cumberland.

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

4 **Sec. 1. 14 MRSA §304**, as enacted by PL 1995, c. 694, Pt. C,
5 §1 and affected by Pt. E, §2, is amended to read:

6 **§304. Liability of parents or legal guardians for damage by**
7 **children**

8
9 If a minor who is between 7 and 17 years of age willfully or
10 maliciously causes damage to property or injury to a person and
11 ~~the minor would have been liable for the damage or injury if the~~
12 ~~minor were an adult and~~ the minor lives with that minor's parents
13 or legal guardians, the parents or legal guardians are jointly
14 and severally liable with the minor for that damage or injury in
15 an amount not exceeding \$800 ~~\$10,000~~. This section does not
16 relieve the minor from personal liability for that damage or
17 injury.

18
19 **Sec. 2. 15 MRSA §3314, sub-§1**, as amended by PL 2001, c. 696,
20 §§3 and 4, is further amended to read:

21
22 1. **Dispositional alternatives.** When a juvenile has been
23 adjudicated as having committed a juvenile crime, the court shall
24 enter a dispositional order containing one or more of the
25 following alternatives.

26
27 A. The court may allow the juvenile to remain in the legal
28 custody of ~~his~~ the juvenile's parents or a guardian under
29 such conditions as the court may impose. Conditions may
30 include participation by the juvenile, ~~his~~ the juvenile's
31 parents or legal guardian in treatment services aimed at the
32 rehabilitation of the juvenile and improvement of the home
33 environment.

34
35 A-1. Whether the juvenile remains at home or resides in an
36 appropriate placement outside of the home, the court may
37 order the parents or legal guardian of the juvenile to
38 personally participate in counseling, education and
39 treatment reasonably available in the parents' or legal
40 guardian's area as specified in a plan set out in the court
41 order. If the court orders the parents or legal guardian to
42 participate in treatment under this subsection, the court
43 shall also order the parents or legal guardian to use any
44 available insurance or other resource to cover the
45 counseling, education and treatment or to pay for the
46 treatment unless the court determines that such a
47 requirement would create an excessive hardship on the
48 parents or legal guardian or other dependent of the parents
49 or legal guardian, in which case the court shall order the
50 parents or legal guardian to pay a reasonable amount toward
the cost, the amount to be determined by the court.

2 B. The court may require a juvenile to participate in a
supervised work or service program. Such a program may
4 provide restitution to the victim by requiring the juvenile
to work or provide a service for the victim, or to make
6 monetary restitution to the victim from money earned from
such a program. Such a supervised work or service program
8 may be required as a condition of probation if:

10 (1) The juvenile is not deprived of the schooling that
is appropriate to the juvenile's age, needs and
12 specific rehabilitative goals;

14 (2) The supervised work program is of a constructive
nature designed to promote rehabilitation and is
16 appropriate to the age level and physical ability of
the juvenile; and

18 (3) The supervised work program assignment is made for
20 a period of time not exceeding 180 days.

22 A juvenile participating in a supervised work or service
program, performing community service or providing
24 restitution under this section or section 3301 may not be
subject to Title 39-A, Part 1, the Maine Workers'
26 Compensation Act of 1992.

28 C-1. The court may commit a juvenile to the custody of the
Department of Human Services when the court has determined
30 that reasonable efforts have been made to prevent or
eliminate the need for removal of the juvenile from the
32 juvenile's home or that no reasonable efforts are necessary
because of the existence of an aggravating factor as defined
34 in Title 22, section 4002, subsection 1-B, and that
continuation therein would be contrary to the welfare of the
36 juvenile. The court may not enter an order under this
paragraph unless the parents have had notice and an
38 opportunity to be heard at the dispositional hearing.

40 Notwithstanding any other provision of law, the court may
not commit a juvenile to the custody of the Department of
42 Human Services unless such notice has been served on the
parents, custodians and the Department of Human Services in
44 accordance with District Court civil rules at least 10 days
prior to the dispositional hearing. A party may waive this
46 time requirement if the waiver is written and voluntarily
and knowingly executed in court before a judge.

48
50 The Department of Human Services shall provide for the care
and placement of the juvenile as for other children in the

2 department's custody pursuant to the Child and Family
Services and Child Protection Act, Title 22, chapter 1071,
4 subchapter VII 7.

6 The court may impose conditions that may include
participation by the juvenile or the juvenile's parents or
8 legal guardian in treatment services aimed at the
rehabilitation of the juvenile, reunification of the family
and improvement of the home environment.

10 C-2. The court may commit a juvenile to the custody of a
relative or other person when the court determines that this
12 is in the best interest of the juvenile. The court may not
enter an order under this paragraph unless the parents have
14 had notice and an opportunity to be heard at the
dispositional hearing.

18 E. The court may require the juvenile to make restitution
for any damage to the victim or other authorized claimant as
20 compensation for economic loss upon reasonable conditions
that the court determines appropriate. For the purposes of
22 this paragraph, the definitions in Title 17-A, section 1322
and the provisions of Title 17-A, sections 1324, 1328-A and
24 1329 apply, except that section 1329, subsection 3,
paragraph A does not apply.

26 E-1. If after ordering restitution pursuant to paragraph E
28 the court subsequently finds that the earning capacity of
30 the juvenile is insufficient to pay restitution to the
32 victim, the court, in the same proceeding, may order one or
34 both of the juvenile's custodial parents or any legal
guardian to make restitution to the victim of the offense
for which the juvenile was adjudicated. For the purposes of
36 this paragraph, the definitions in Title 17-A, section 1322
and the provisions of Title 17-A, sections 1323, 1324, 1327,
1328-A and 1329 apply. The amount of restitution that may
38 be ordered by the court is not subject to the limitations of
Title 14, section 304.

40 F. The court may commit the juvenile to a Department of
Corrections juvenile correctional facility. Whenever a
42 juvenile is committed to a Department of Corrections
juvenile correctional facility, the court shall determine
44 whether reasonable efforts have been made to prevent or
eliminate the need for removal of the juvenile from the
46 juvenile's home or that no reasonable efforts are necessary
because of the existence of an aggravating factor as defined
48 in Title 22, section 4002, subsection 1-B, and whether
continuation in the juvenile's home would be contrary to the
50 welfare of the juvenile. This determination does not affect

2 whether the court orders a commitment to a Department of
Corrections juvenile correctional facility, which continues
to be governed by section 3313.

4
6 G. Except for a violation of section 3103, subsection 1,
paragraph D, the court may impose a fine, subject to Title
17-A, sections 1301 to 1304. For the purpose of this
8 section, juvenile offenses defined in section 3103,
subsection 1, paragraphs B and C are deemed Class E crimes.

10
12 H. The court may commit the juvenile to a Department of
Corrections juvenile correctional facility and order that
14 the disposition be suspended or may commit the juvenile for
a period of detention that may not exceed 30 days, with or
16 without an underlying suspended disposition to a Department
of Corrections juvenile correctional facility, which
18 detention must be served concurrently with any other period
of detention previously imposed and not fully discharged or
20 imposed on the same date but may be served intermittently as
the court may order and must be ordered served in a
22 detention facility approved or operated by the Department of
Corrections exclusively for juveniles. The court may order
24 such a disposition to be served as a part of and with a
period of probation that is subject to such provisions of
Title 17-A, section 1204 as the court may order and that
26 must be administered pursuant to Title 34-A, chapter 5,
subchapter IV 4. Revocation of probation is governed by the
28 procedure contained in subsection 2. Any disposition under
this paragraph is subject to Title 17-A, section 1253,
30 subsection 2, but not to Title 17-A, section 1253,
subsection 3-B, 4, 5 or 8.

32
34 I. The court may order the juvenile unconditionally
discharged.

36 The court may invoke its contempt powers as established in the
38 Maine Rules of Criminal Procedure, Rule 42 to enforce any order
entered pursuant to this subsection. If the court after notice
40 and hearing, in accordance with the Maine Rules of Criminal
Procedure, Rule 42, holds a person in contempt for violating a
42 court order issued pursuant to this section, the court may impose
a fine of not more than \$1,000 plus any applicable surcharges and
44 assessments; impose a term of incarceration in jail for a period
of not more than 30 days; or order the parents, legal guardian or
46 custodian to perform community service with the juvenile.

48 Before a hearing is held that may result in incarceration for a
person alleged to have violated a court order under this
subsection, the court shall advise that person of the right to be

2 represented by counsel and that the court may appoint counsel if
3 the court finds that person indigent.

4

5 SUMMARY

6

7 This bill increases the limit of liability from \$800 to
8 \$10,000 for a parent or guardian for damage caused by that parent
9 or guardian's minor child. It provides that when a juvenile has
10 been adjudicated as having committed a juvenile crime and the
11 court orders restitution and subsequently finds that the earning
12 capacity of the juvenile is insufficient to pay restitution to
13 the victim, the court may order a custodial parent or legal
14 guardian to make restitution to the victim of the offense for
15 which the juvenile was adjudicated. It also provides that a
16 court may order the parents or legal guardian of a juvenile who
17 has been adjudicated as having committed a juvenile crime to
18 personally participate in counseling, education and treatment
19 reasonably available in the parents' or legal guardian's area.
20 Finally, it permits a court to invoke its contempt powers to
21 enforce an order entered regarding dispositional alternatives for
22 juveniles.