

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1237

H.P. 855

House of Representatives, March 10, 2005

### An Act To Amend the Sentencing Laws

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Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative TARDY of Newport.  
Cosponsored by Senator NASS of York and  
Representatives: BLANCHETTE of Bangor, CARR of Lincoln, FAIRCLOTH of Bangor,  
GERZOFKY of Brunswick, GREELEY of Levant, PLUMMER of Windham, SYKES of  
Harrison, Senator: DIAMOND of Cumberland.

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

2  
4       **Sec. 1. 17-A MRSA §1201, sub-§1, ¶A-1**, as enacted by PL 2003, c. 711, Pt. A, §10, is amended to read:

6           A-1. The conviction is for a Class D or Class E crime other  
8           than any Class D crime committed against a family or  
10           household member under chapter 9 or 13 or section 506-B,  
12           554, 555 or 758; any Class D or Class E crime in chapter 11  
14           or 12; a Class D or Class E crime under section 556, 854,  
16           excluding subsection 1, paragraph A, subparagraph (1), or  
18           855; and the Class D or Class E crime under Title 29-A,  
20           section 2411, subsection 1-A, paragraph B. The court may not sentence the person to a sentencing alternative that includes a period of probation unless it is satisfied that the period of probation is necessary to deter future criminal conduct or for the safety of a victim of the crime. As used in this paragraph, "family or household member" has the same meaning as in Title 19-A, section 4002, subsection 4;

22       **Sec. 2. 17-A MRSA §1202, sub-§2-A**, as enacted by PL 2003, c.  
24       711, Pt. A, §13, is amended to read:

26           2-A. Once the period of probation has commenced, on  
28           application motion of the probation officer, or of the person on  
30           probation, or on the court's own motion, the court may convert at  
32           any time a period of probation for a Class D or Class E crime to  
34           a period of administrative release. A conversion to  
36           administrative release may not be ordered ~~upon the motion of the person on probation~~ unless notice of the motion is given to the probation officer by the person on probation and the prosecuting attorney. The provisions of chapter 54-G apply when probation is converted to administrative release. Conversion to administrative release serves to relieve the person on probation of any obligations imposed by the probation conditions.

38       **Sec. 3. 17-A MRSA §1202, sub-§3**, as amended by PL 2003, c.  
40       711, Pt. A, §14, is further amended to read:

42           3. Once the period of probation has commenced, on  
44           application motion of the probation officer, or of the person on  
46           probation, or on its own motion, the court may terminate at any  
48           time a period of probation and discharge the convicted person at  
50           any time earlier than that provided in the sentence made pursuant to subsection 1, if warranted by the conduct of ~~such the~~ the person. A termination and discharge may not be ordered ~~upon the motion of the person on probation~~ unless notice of the motion is given to the probation officer ~~by the person on probation~~ and the prosecuting attorney. ~~Such~~ The termination and discharge serves

2 to relieve the person on probation of any obligations imposed by  
the sentence of probation.

4 **Sec. 4. 17-A MRSA §1348-B, sub-§§1 and 5**, as enacted by PL  
2003, c. 711, Pt. A, §19, are amended to read:

6  
8 1. Unless a court hearing is sooner held under subsection  
10 2, at the conclusion of the period of deferment, after notice, a  
12 person who was granted deferred disposition pursuant to section  
1348-A shall return to court for a hearing on final disposition.  
14 If the court finds that the person has complied with the  
16 court-imposed deferment requirements, the court shall impose a  
~~sentence of unconditional discharge under section 1346~~ sentencing  
alternative authorized for the crime to which the person pled  
guilty and consented to in writing by the person at the time  
sentencing was deferred, unless the attorney for the State, prior  
18 to sentence imposition, moves the court to allow the person to  
20 withdraw the plea of guilty. Except over the objection of the  
defendant, the court shall grant the State's motion. Following  
the granting of the State's motion, the attorney for the State  
shall dismiss the pending charging instrument with prejudice. If  
22 the court finds that the person has inexcusably failed to comply  
with the court-imposed deferment requirements, the court shall  
24 impose a sentencing alternative authorized for the crime to which  
the person pled guilty.

26  
28 5. A summons ~~must~~ may be used to order a person who was  
granted deferred disposition pursuant to section 1348-A to appear  
for a hearing under this section. ~~If the person can be located  
and served with a summons, the attorney for the State may not  
commence a hearing under this section by having the person  
arrested, except that a person who fails to appear as required  
may be arrested pursuant to a bench warrant or an order of  
arrest.~~ If the person fails to appear after having been served  
with a summons, the court may issue a warrant for the arrest of  
36 the person.

38 **Sec. 5. 17-A MRSA §1348-B, sub-§6**, as enacted by PL 2003, c.  
711, Pt. A, §19, is repealed.

40 **Sec. 6. 17-A MRSA §1348-B, sub-§7** is enacted to read:

42  
44 7. If, during the period of deferment, the attorney for the  
State has probable cause to believe that a person who was granted  
deferred disposition pursuant to section 1348-A has violated a  
court-imposed deferment requirement, the attorney for the State  
may apply for a warrant for the arrest of the person.

48  
50 **Sec. 7. 17-A MRSA §1349**, as corrected by RR 2003, c. 2, §28,  
is amended to read:

2       **§1349. Eligibility for sentence alternative that includes**  
4                   **period of administrative release**

6           1. A person who has been convicted of a Class C crime under  
7           Title 29-A, section 2557 or a Class D or Class E crime may be  
8           sentenced to a sentence alternative under section 1152 that  
9           includes a period of administrative release, unless:

10          A. The statute that the person is convicted of violating  
11          expressly provides that the fine and imprisonment penalties  
12          it authorizes may not be suspended, in which case the  
13          convicted person must be sentenced to the imprisonment and  
14          required to pay the fine authorized therein;

16          B. The court sentences the person to a sentencing  
17          alternative under section 1152 that includes a period of  
18          probation; or

20          C. The court finds that such a sentence would diminish the  
21          gravity of the crime for which that person was convicted.

22           **Sec. 8. 17-A MRSA §1349-B, sub-§1**, as enacted by PL 2003, c.  
23           711, Pt. A, §19, is amended to read:

26           1. The court may sentence a person to a term of  
27           imprisonment not to exceed the maximum term authorized for the  
28           Class D or Class E crime, suspend the ~~entire~~ term of imprisonment  
29           in whole or in part and accompany the suspension with a period of  
30           administrative release not to exceed the one year authorized  
31           under section 1349-A, subsection 1.

32           **Sec. 9. 17-A MRSA §1349-D**, as enacted by PL 2003, c. 711,  
33           Pt. A, §19, is amended to read:

36       ~~§1349-D. Commencement of administrative release revocation~~  
37                   ~~proceeding~~

38           1. If during the period of administrative release the  
39           attorney for the State has probable cause to believe that the  
40           person placed on administrative release has violated a  
41           requirement of administrative release, the attorney for the State  
42           may file a motion with the court seeking to revoke administrative  
43           release ~~and cause a summons to be delivered to the person placed~~  
44           ~~on administrative release ordering that person to appear for a~~  
45           ~~court hearing on the alleged violation.~~ The motion must set  
46           forth the facts underlying the alleged violation. ~~The summons~~  
47           ~~must be in the same form as a summons under section 1205-B,~~  
48           ~~subsection 2 except that the summons must include the signature~~  
49           ~~of a law enforcement officer other than a probation officer.~~  
50

2           1-A. A summons may be used to order a person who was placed  
3           on administrative release to appear on a motion to revoke  
4           administrative release.

6           2. A person placed on administrative release appearing on a  
7           motion to revoke administrative release pursuant to a summons  
8           must be afforded an initial appearance as provided in section  
9           1205-C, subsection 4.

10           3. If the person placed on administrative release fails to  
11           appear in court after having been served with a summons, the  
12           court may issue a warrant for the arrest of the person. After  
13           arrest of the person, the court shall afford the person a  
14           preliminary hearing an initial appearance as provided in section  
15           1205-C, subsection 4, and, if retained in custody, section  
16           1205-C, subsection 3 applies.

17           4. ~~If the person placed on administrative release can be~~  
18           ~~located and served a summons, the attorney for the State may not~~  
19           ~~commence the administrative release proceeding by having the~~  
20           ~~person arrested. However, if the person can not, with due~~  
21           ~~diligence, be located, the attorney for the State shall file a~~  
22           ~~written notice of this fact with the court and obtain a warrant~~  
23           ~~of arrest under Rule 41 of the Maine Rules of Criminal~~  
24           ~~Procedure. If during the period of administrative release the~~  
25           ~~attorney for the State has probable cause to believe that the~~  
26           ~~person placed on administrative release has violated a~~  
27           ~~requirement of administrative release, the attorney for the State~~  
28           ~~may apply for a warrant for the arrest of the person.~~ Unless  
29           sooner released, the court shall provide the person with an  
30           initial appearance on the revocation of administrative release  
31           within 14 days after arrest. A copy of the motion must be  
32           furnished to the person prior to or at the initial appearance.  
33           The initial appearance is as provided in section 1205-C,  
34           subsection 4. Bail is as provided in section 1205-C, subsections  
35           5 and 6.

36           **Sec. 10. 19-A MRSA §4002, sub-§4,** as amended by PL 2003, c.  
37           672, §16, is further amended to read:

38           **4. Family or household members.** "Family or household  
39           members" means spouses or domestic partners or former spouses or  
40           former domestic partners, individuals presently or formerly  
41           living together as spouses, natural parents of the same child,  
42           adult household members related by consanguinity or affinity or  
43           minor children of a household member when the defendant is an  
44           adult household member and, for the purposes of this chapter and  
45           Title 17-A, sections 1201, 1202 and 1253 only, includes  
46           individuals presently or formerly living together and individuals  
47           individuals presently or formerly living together and individuals  
48           individuals presently or formerly living together and individuals  
49           individuals presently or formerly living together and individuals  
50           individuals presently or formerly living together and individuals

2 who are or were sexual partners. Holding oneself out to be a  
3 spouse is not necessary to constitute "living as spouses." For  
4 purposes of this subsection, "domestic partners" means 2  
5 unmarried adults who are domiciled together under long-term  
6 arrangements that evidence a commitment to remain responsible  
7 indefinitely for each other's welfare.

8 **Sec. 11. 34-A MRSA §5402, sub-§3, ¶¶B and C,** as amended by PL  
9 1995, c. 502, Pt. F, §34, are further amended to read:

10 B. Obtain psychiatric, psychological and other necessary  
11 services; and

12 C. Sign documents, including warrants and extradition  
13 papers, for the board when so instructed by the board; and

14 **Sec. 12. 34-A MRSA §5402, sub-§3, ¶F** is enacted to read:

15 F. Provide for necessary assessment and supervision  
16 procedures and direct the use of adult probation resources  
17 and staff to the management of adult probationers with a  
18 high risk of reoffending;

19 **Sec. 13. 34-A MRSA §5404, sub-§3, ¶A,** as amended by PL 1989,  
20 c. 127, §14, is further amended to read:

21 A. Supervise the probation, parole or intensive supervision  
22 of each person placed under the officer's supervision to  
23 ensure that departmental resources are directed to the  
24 management of persons with a high risk of reoffending;

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### SUMMARY

35 This bill allows a court to grant a period of probation as  
36 part of an alternative sentence in certain Class D or Class E  
37 crimes if the court is satisfied that the period of probation is  
38 necessary to deter future criminal conduct or for the safety of  
39 the victim of the crime. The bill also requires that a  
40 conversion to administrative release or a termination and  
41 discharge may not be ordered unless notice of the motion is given  
42 to the person's probation officer and the prosecuting attorney.  
43 The bill also makes changes to the procedures for issuing a  
44 warrant or summons in a commencement of administrative release  
45 revocation proceeding.