

# MAINE STATE LEGISLATURE

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# 123rd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2007

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Legislative Document

No. 1736

H.P. 1219

House of Representatives, March 26, 2007

### **An Act To Amend the Laws Relating to Probation and Supervised Release for Sex Offenders**

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Submitted by the Department of Corrections pursuant to Joint Rule 204.  
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered  
printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative PLUMMER of Windham.  
Cosponsored by Representatives: GREELEY of Levant, TIBBETTS of Columbia, Senator:  
McCORMICK of Kennebec.

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

2 **Sec. 1. 17-A MRSA §1201, sub-§1, ¶A-1**, as amended by PL 2005, c. 265, §7,  
3 is further amended to read:

4 A-1. The conviction is for a Class D or Class E crime other than:

5 (1) A Class D or Class E crime relative to which, based upon both the written  
6 agreement of the parties and a court finding, the facts and circumstances of the  
7 underlying criminal episode giving rise to the conviction generated probable  
8 cause to believe the defendant had committed a Class A, Class B or Class C  
9 crime in the course of that criminal episode and, as agreed upon in writing by the  
10 parties and found by the court, the defendant has no prior conviction for murder  
11 or for a Class A, Class B or Class C crime and has not been placed on probation  
12 pursuant to this subparagraph on any prior occasion;

13 (2) A Class D crime that the State pleads and proves was committed against a  
14 family or household member under chapter 9 or 13 or section 506-B, 554, 555 or  
15 758. As used in this subparagraph, "family or household member" has the same  
16 meaning as in Title 19-A, section 4002, subsection 4;

17 (3) A Class D or Class E crime in chapter 11 or 12;

18 (4) A Class D crime under section 210-A;

19 (5) A Class D or Class E crime under section 556, section 854, excluding  
20 subsection 1, paragraph A, subparagraph (1), or section 855;

21 (6) A Class D crime in chapter 45 relating to a schedule W drug; or

22 (7) A Class D or Class E crime under Title 29-A, section 2411, subsection 1-A,  
23 paragraph B.

24 **Sec. 2. 17-A MRSA §1203, sub-§1-A, ¶D** is enacted to read:

25 D. If execution of the sentence is stayed, the court may revoke probation for criminal  
26 conduct committed during the period of stay or for failure to report as ordered.

27 **Sec. 3. 17-A MRSA §1206, sub-§10** is enacted to read:

28 10. If a probation revocation proceeding results in the court vacating a part of the  
29 suspension of execution as to imprisonment while the person is in execution of the initial  
30 unsuspended portion of the sentence, the portion of imprisonment to be serve as a result  
31 of the vacating commences only after the initial unsuspended portion of imprisonment  
32 has been fully served. If separate probation revocation proceedings result in the vacating  
33 of 2 or more parts of the suspension of execution as to imprisonment on the same  
34 sentence, the portions to be served must be served successively.

35 **Sec. 4. 17-A MRSA §1231, sub-§6**, as amended by PL 2005, c. 673, §2, is  
36 further amended to read:

37 6. The court may revoke a period of supervised release pursuant to section 1233 for  
38 any ground specified in subsection 7. If the court revokes a period of supervised release,

1 the court shall require the person to serve time in prison under the custody of the  
2 Department of Corrections. This time in prison may equal all or part of the period of  
3 supervised release, without credit for time served on post-release supervision. The  
4 remaining portion of the period of supervised release that is not required to be served in  
5 prison remains in effect to be served after the person's release and is subject to revocation  
6 at a later date.

7 **Sec. 5. 17-A MRSA §1231, sub-§7** is enacted to read:

8 7. The court may revoke a period of supervised release for:

9 A. A violation of supervised release;

10 B. Criminal conduct committed during the term of imprisonment; or

11 C. Refusal during the term of imprisonment to actively participate, when requested  
12 to do so by the Department of Corrections, in a sex offender treatment program in  
13 accordance with the expectations and judgment of the treatment providers.

14 **Sec. 6. 17-A MRSA §1349, sub-§1, ¶A**, as enacted by PL 2003, c. 711, Pt. A,  
15 §19, is amended to read:

16 A. The statute that the person is convicted of violating expressly provides that the  
17 ~~fine and imprisonment penalties~~ penalty it authorizes may not be suspended, in which  
18 case the convicted person must be sentenced to the imprisonment ~~and required to pay~~  
19 ~~the fine~~ authorized therein;

20 **Sec. 7. 17-A MRSA §1349-D, sub-§4**, as amended by PL 2005, c. 265, §18, is  
21 further amended to read:

22 4. If during the period of administrative release the attorney for the State has  
23 probable cause to believe that the person placed on administrative release has violated a  
24 requirement of administrative release, the attorney for the State may apply for a warrant  
25 for the arrest of the person. Unless sooner released, the court shall provide the person  
26 with an initial appearance on the revocation of administrative release within ~~44~~ 5 days  
27 after arrest. A copy of the motion must be furnished to the person prior to or at the initial  
28 appearance. The initial appearance is as provided in section 1205-C, subsection 4. Bail  
29 is as provided in section 1205-C, subsections 5 and 6.

30 **Sec. 8. 32 MRSA §13723, sub-§7, ¶A**, as amended by PL 1991, c. 274, §2, is  
31 further amended to read:

32 A. Prescriptions, orders and records required by this chapter and stocks of  
33 prescription and legend drugs are open only to the board, the board's inspectors and  
34 investigators, federal and state law enforcement officers whose duty it is to enforce  
35 the laws of this State or of the United States relating to scheduled drugs or controlled  
36 substances or to enforce conditions of probation or other supervision imposed by a  
37 court relating to scheduled drugs or controlled substances and other law enforcement  
38 officers authorized by the board or the Attorney General for the purposes of  
39 inspecting, investigating and gathering evidence of violations of law or any rule of  
40 the board. ~~Ne~~ An officer having knowledge by virtue of the officer's office of any

1 such prescription, order or record may not divulge that knowledge, except before a  
2 licensing or registration board or officer or in connection with a prosecution or  
3 proceeding in court.

4 **Sec. 9. 34-A MRSA §5404, sub-§2**, as amended by PL 2005, c. 488, §§23 and  
5 24, is further amended to read:

6 **2. Arrest.** Arrest, after completing the entry level and orientation training course  
7 prescribed by the commissioner, in the following circumstances:

8 A. Arrest violators of probation or supervised release for sex offenders and parole  
9 violators and return parole violators upon request of the commissioner;

10 B. Arrest and return to a correctional facility persons released from the correctional  
11 facility under section 3035 or transferred from the facility under section 3036-A; ~~and~~

12 C. If the officer has probable cause to believe that a person under the supervision of  
13 the department has violated a condition of that person's probation, supervised release  
14 for sex offenders, parole or intensive supervision, the officer may arrest that person;  
15 and

16 D. Arrest for a violation of Title 17-A, section 751 a person who intentionally  
17 interferes by force, violence or intimidation or by any physical act with a probation  
18 and parole officer performing or purporting to perform an official function;

19 **Sec. 10. 34-A MRSA §9888** is enacted to read:

20 **§9888. Administrative preliminary hearing**

21 Whenever it appears that a person accepted for supervision under this compact  
22 arrested for an alleged violation of a supervision condition is entitled under the compact  
23 to a determination of whether there is probable cause to believe the person has violated a  
24 condition of that person's supervision, the determination must be made at an  
25 administrative preliminary hearing meeting the requirements of the compact and held  
26 before an official designated by the Commissioner of Corrections within 5 days after the  
27 arrest, excluding Saturdays, Sundays and holidays.

28 **SUMMARY**

29 This bill amends the law relating to probation and supervised release for sex  
30 offenders as follows. The bill:

31 1. Provides that if a stay of execution is given by a court on a term of imprisonment  
32 on a split sentence, the court may revoke the subsequent probation for criminal conduct  
33 committed during the stay or for failure to report as ordered;

34 2. Clarifies that if probation is partially revoked on more than one occasion on the  
35 same sentence the periods of imprisonment imposed are successive and that a period of  
36 imprisonment imposed on a partial revocation does not commence until the initial  
37 unsuspended portion of imprisonment has been fully served;

- 1           3. Adds to the provisions for supervised release for sex offenders provisions similar  
2 to those for probation regarding revocation for criminal conduct during imprisonment or  
3 failure to cooperate with sex offender treatment during imprisonment;
- 4           4. Allows probation officers to see pharmacy records of probationers and others  
5 under the officers' supervision as the result of a court order on the same basis as other law  
6 enforcement officers;
- 7           5. Gives probation officers the power to arrest for obstruction of government  
8 administration those who interfere with them while they are performing their official  
9 functions;
- 10          6. Sets out explicitly the "plead and prove" requirement that federal constitutional  
11 law requires whenever the available sentencing alternatives depend on the crime  
12 committed;
- 13          7. Adds a cross-reference in the provision governing revocation of supervised release  
14 for sex offenders;
- 15          8. Removes the prohibition on administrative release when there is a mandatory fine  
16 provision as the imposition of administrative release is not inconsistent with the  
17 imposition of a fine;
- 18          9. Makes the timeline for an initial appearance on an administrative release  
19 revocation consistent with the timeline for an initial appearance on a probation  
20 revocation; and
- 21          10. Makes it clear that probable cause determinations for persons transferred from  
22 other jurisdictions for probation or parole supervision in Maine are done administratively  
23 since the Maine courts have no role in the imposition of supervision or the revoking of  
24 supervision.