

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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**Legislative Document**

**No. 1789**

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H.P. 1277

House of Representatives, February 22, 2010

**An Act Containing the Recommendations of the Criminal Law  
Advisory Commission**

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Reported by Representative HASKELL of Portland for the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.  
Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed pursuant to Joint Rule 218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

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

2 **Sec. 1. 15 MRSA §3314, sub-§1, ¶E,** as amended by PL 2005, c. 507, §10, is  
3 further amended to read:

4 E. The court may require the juvenile to make restitution for any damage to the  
5 victim or other authorized claimant as compensation for economic loss upon  
6 reasonable conditions that the court determines appropriate. For the purposes of this  
7 paragraph, ~~the definitions in Title 17-A, section 1322 and the provisions of Title~~  
8 ~~17-A, sections 1324, 1326-B, 1326-E, 1328-A and 1329 chapter 54~~ apply, except that  
9 section 1329, subsection 3, paragraph A does not apply. Enforcement of restitution  
10 order is available pursuant to subsection 7. If the restitution was a condition of  
11 probation, the attorney for the State may with written consent of the juvenile  
12 community corrections officer, file a motion to revoke probation.

13 **Sec. 2. 15 MRSA §3314, sub-§7,** as amended by PL 2007, c. 536, §3, is further  
14 amended to read:

15 **7. Enforcement of a dispositional order or order to appear.** After notice and  
16 hearing and in accordance with the Maine Rules of Civil Procedure, Rule 66, the court  
17 may exercise its inherent contempt power by way of a plenary contempt proceeding  
18 involving punitive sanctions, accompanied or unaccompanied by remedial sanctions, to  
19 enforce the disposition ordered following an adjudication for a juvenile crime or to  
20 enforce any order requiring the appearance of a juvenile before the court. Any  
21 confinement imposed as a punitive or remedial sanction upon a person who has not  
22 attained 18 years of age may not exceed 30 days and must be served in a facility  
23 approved or operated by the Department of Corrections exclusively for juveniles. Any  
24 confinement imposed as a punitive or remedial sanction upon a person who has attained  
25 18 years of age, if to be served in a facility approved or operated by the Department of  
26 Corrections exclusively for juveniles, may not exceed 30 days. To enforce the  
27 disposition ordered following an adjudication for a juvenile crime defined in section  
28 3103, subsection 1, paragraph B or C upon a person who has not attained 18 years of age,  
29 the court shall, at the time of the disposition, provide written notice to the juvenile of the  
30 court's authority to enforce the dispositional order through an exercise of its inherent  
31 contempt power and that a contempt order could include an order of confinement for up  
32 to 30 days as a punitive sanction and for up to 30 days as a remedial sanction. Except as  
33 explicitly set out in this subsection, nothing in this subsection affects the court's ability to  
34 exercise its contempt powers for persons who have attained 18 years of age.

35 In addition to the contempt powers described in this subsection, upon a default in  
36 payment of a fine or restitution, execution may be levied and other measures authorized  
37 for the collection of unpaid civil judgments may be taken to collect the unpaid fine or  
38 restitution. A levy of execution does not discharge a juvenile confined as a punitive  
39 sanction and does not discharge a juvenile confined as a remedial sanction until the full  
40 amount of the fine or restitution has been paid.

41 **Sec. 3. 17-A MRSA §283, sub-§3** is enacted to read:

1           3. For purposes of this section, any element of age of the person depicted means the  
2 age of the person at the time the sexually explicit conduct occurred, not the age of the  
3 person depicted at the time of dissemination or possession of the sexually explicit visual  
4 image or material.

5           **Sec. 4. 17-A MRSA §284, sub-§5** is enacted to read:

6           5. For purposes of this section, any element of age of the person depicted means the  
7 age of the person at the time the sexually explicit conduct occurred, not the age of the  
8 person depicted at the time of dissemination or possession of the sexually explicit visual  
9 image or material.

10           **Sec. 5. 17-A MRSA §756, as amended by PL 2009, c. 142, §4,** is further amended  
11 to read:

12           **§756. Aiding escape**

13           1. A person is guilty of aiding escape if, with the intent to aid another person to  
14 violate section 755:

15           A. The actor person conveys or attempts to convey to the other person any  
16 contraband tool or other thing that may be used to facilitate a violation of section 755.  
17 Violation of this paragraph is a Class C crime;

18           A-1. The actor person conveys or attempts to convey to the other person contraband  
19 that includes a dangerous weapon. Violation of this paragraph is a Class B crime;

20           B. The actor person furnishes plans, information or other assistance to the other  
21 person. Violation of this paragraph is a Class C crime; or

22           C. The actor person whose official duties include maintaining persons in official  
23 custody, as defined in section 755, subsection 3, permits such violation or an attempt  
24 at such violation. Violation of this paragraph is a Class C crime.

25           ~~2. As used in this section, "contraband" means a dangerous weapon, any tool or~~  
26 ~~other thing that may be used to facilitate a violation of section 755, any thing that a~~  
27 ~~person is prohibited by statute from making, possessing or trafficking in or a scheduled~~  
28 ~~drug as defined in section 1101, subsection 11, unless the drug was validly prescribed to~~  
29 ~~the person in official custody and was approved for use by the person pursuant to the~~  
30 ~~procedures of the custodial agency.~~

31  
32           4. A person may not be indicted or charged in an information with both a violation  
33 of this section and as an accomplice to a violation of section 755.

34           **Sec. 6. 17-A MRSA §757, sub-§2,** as repealed and replaced by PL 1977, c. 510,  
35 §65, is amended to read:

36           2. As used in this section, "official custody" has the same meaning as in section  
37 755. As used in this section, "contraband" ~~has the same meaning as in section 756~~ means

1 a dangerous weapon or anything that a person confined in official custody is prohibited  
2 by statute from making, possessing or trafficking in or a scheduled drug as defined in  
3 section 1101, subsection 11, unless the drug was validly prescribed to the person in  
4 official custody and was approved for use by the person pursuant to the procedures of the  
5 custodial agency.

6 **Sec. 7. 17-A MRSA §1177** is enacted to read:

7 **§1177. Certain communications by victims confidential**

8 The following communications are privileged from disclosure:

9 1. Communications by a victim as described in Title 16, section 53-A, subsection 2  
10 to a sexual assault counselor as defined in Title 16, section 53-A, subsection 1, paragraph  
11 B are privileged from disclosure as provided in Title 16, section 53-A, subsection 2.

12 2. Communications by a victim as defined in Title 16, section 53-B, subsection 1,  
13 paragraph B, to an advocate, as defined in Title 16, section 53-B, subsection 1, paragraph  
14 A, are privileged from disclosure as provided in Title 16, section 53-B, subsection 2.

15 3. Communications by a victim as defined in Title 16, section 53-C, subsection 1,  
16 paragraph B, to a victim witness advocate or a victim witness coordinator, as defined in  
17 Title 16, section 53-C, subsection 1, paragraph C, are privileged from disclosure as  
18 provided in Title 16, section 53-C, subsection 2.

19 **Sec. 8. 17-A MRSA §1202, sub-§1-A, ¶A,** as repealed and replaced by PL  
20 2003, c. 711, Pt. B, §14, is amended to read:

21 A. If the State pleads and proves that at the time of the crime the victim had not  
22 attained 12 years of age or, in the case of a crime under sections 283 and 284, the  
23 victim had not attained 12 years of age at the time the sexually explicit conduct  
24 occurred, the period of probation for a person convicted under chapter 11 or 12 may  
25 not exceed:

- 26 (1) Eighteen years for a Class A crime;  
27 (2) Twelve years for a Class B crime; and  
28 (3) Six years for a Class C crime;

29 **Sec. 9. 17-A MRSA §1204, sub-§2-A, ¶B,** as repealed and replaced by PL 1977,  
30 c. 455, §2, is amended to read:

31 B. To make restitution pursuant to chapter 54 to each victim of his the convicted  
32 person's crime, or to the county where the offense is prosecuted if the identity of the  
33 victim cannot be ascertained or if the victim voluntarily refuses the restitution. If the  
34 court orders as a condition of probation that the convicted person forfeit and pay a  
35 specific amount of restitution, that order, as a matter of law, also constitutes the  
36 imposition of restitution pursuant to chapter 54 as a sentencing alternative and no  
37 additional order in this regard is necessary.

38 **Sec. 10. 17-A MRSA §1304, sub-§1-A** is enacted to read:

1           1-A. For purposes of this section, if an offender is returned to court pursuant to a  
2 warrant, both the court located where the warrant is issued and the court located where  
3 the warrant is executed are authorized to conduct the default hearing pursuant to  
4 subsection 3.

5           **Sec. 11. 17-A MRSA §1304, sub-§3, ¶A**, as repealed and replaced by PL 2007,  
6 c. 517, §1, is amended to read:

7           A. Unless the offender shows by a preponderance of the evidence that the default  
8 was not attributable to an intentional or knowing refusal to obey the court's order or  
9 to a failure on the offender's part to make a good faith effort to obtain the funds  
10 required for the payment, the court shall find that the default was unexcused and may:

11           (1) Commit the offender to the custody of the sheriff until all or a specified part  
12 of the fine is paid. The length of confinement in a county jail for unexcused  
13 default must be specified in the court's order and may not exceed one day for  
14 every \$5 of unpaid fine or 6 months, whichever is shorter. An offender  
15 committed for nonpayment of a fine is given credit toward the payment of the  
16 fine for each day of confinement that the offender is in custody, at the rate  
17 specified in the court's order. The offender is also given credit for each day that  
18 the offender is detained as the result of an arrest warrant issued pursuant to this  
19 section. An offender is responsible for paying any fine remaining after receiving  
20 credit for confinement and detention. A default on the remaining fine is also  
21 governed by this section; or

22           (2) If the unexcused default relates to a fine imposed for a Class D or Class E  
23 crime, as authorized by chapter 53, order the offender to perform community  
24 service work, as authorized in chapter 54-C, until all or a specified part of the  
25 fine is paid. The number of hours of community service work must be specified  
26 in the court's order and may not exceed 8 hours for every \$25 of unpaid fine or  
27 one hundred 8-hour days, whichever is shorter. An offender ordered to perform  
28 community service work pursuant to this subparagraph is given credit toward the  
29 payment of the fine for each 8-hour day of community service work performed at  
30 the rate specified in the court's order. The offender is also given credit toward the  
31 payment of the fine for each day that the offender is detained as a result of an  
32 arrest warrant issued pursuant to this section at a rate specified in the court's order  
33 that is not less than \$5 of unpaid fine per day of confinement. An offender is  
34 responsible for paying any fine remaining after receiving credit for any detention  
35 and for community service work performed. A default on the remaining fine is  
36 also governed by this section.

37           **Sec. 12. 17-A MRSA §1326-A**, as amended by PL 2009, c. 94, §3, is further  
38 amended to read:

39           **§1326-A. Time and method of restitution**

40           When restitution is authorized, and the offender is not committed to the Department  
41 of Corrections ~~or~~ and does not receive a sentence that includes a period of probation, the  
42 time and method of payment or of the performance of the services must be specified by  
43 the court and monetary compensation may be ordered paid to the office of the prosecuting

1 attorney who is prosecuting the case or to the clerk of the court. If the offender is  
2 committed to the Department of Corrections or receives a sentence that includes a period  
3 of probation, monetary compensation must be paid to the Department of Corrections and  
4 the time and method of payment must be determined by the Department of Corrections  
5 during the term of commitment or the period of probation. Once any term of  
6 commitment to the Department of Corrections or period of probation is completed and if  
7 the restitution ordered has not been paid in full, the offender is subject to the provisions  
8 of section 1326-F and, in the event of a default, the provisions of section 1329, including  
9 a specification by the court of the time and method of payment of monetary compensation  
10 upon a finding of excusable default. The state agency receiving the restitution shall  
11 deposit any money received in the account maintained by the Treasurer of State for  
12 deposit of state agency funds, from which funds are daily transferred to an investment  
13 account and invested. Interest accrued on that money is the property of and accrues to the  
14 State for deposit in the General Fund. The agency receiving the restitution shall make the  
15 disbursement to the victim or other authorized claimant as soon as possible after the  
16 agency receives the money.

17 **Sec. 13. 17-A MRSA §1326-B, sub-§1**, as enacted by PL 1999, c. 469, §1, is  
18 amended to read:

19 **1.** When restitution is required of an offender who will not be commencing service  
20 of a period of institutional confinement, who does not receive a sentence that includes a  
21 period of probation and who is employed, the court shall, at the time of ordering  
22 restitution, enter a separate order for income withholding. When restitution is required of  
23 an offender who receives a sentence that includes a period of probation and who is  
24 employed, upon application of the offender's probation officer, the court shall enter a  
25 separate order for income withholding. The withholding order must direct the employer  
26 to deduct from all income due and payable to the offender an amount ~~required by the~~  
27 ~~court~~ determined pursuant to section 1326-A to meet the offender's restitution obligation.  
28 The withholding order must include an instruction to the employer that upon receipt of a  
29 copy of the withholding order the employer shall:

- 30 A. Immediately begin to withhold the offender's income when the offender is usually  
31 paid;
- 32 B. Send each amount withheld to the agency to which restitution has been ordered to  
33 be paid at the address set forth in the order within 7 business days of the withholding;  
34 and
- 35 C. Identify each amount sent to the agency by indicating the court's docket number.

36 **Sec. 14. 17-A MRSA §1326-F** is enacted to read:

37 **§1326-F. Former Department of Corrections' clients owing restitution**

38 An offender is responsible for paying any restitution outstanding at the time the term  
39 of commitment to the Department of Corrections or period of probation is completed.  
40 Monetary compensation must continue to be paid to the Department of Corrections and,  
41 unless otherwise modified by the court pursuant to section 1328-A or 1329, the offender

1 shall continue to comply with the time and method of payment determined by the  
2 Department of Corrections during the term of commitment or the period of probation.

3 **Sec. 15. 17-A MRSA §1329, sub-§6** is enacted to read:

4 6. Payments ordered pursuant to this section must be made to the same agency to  
5 which the restitution was required to be paid under section 1326-A or section 1326-F.

## 6 SUMMARY

7 This bill amends the Maine Juvenile Code to specify that restitution for juvenile  
8 offenders is the same as restitution for adult offenders under the Maine Revised Statutes,  
9 Title 17-A, chapter 54, except that section 1329, the restitution default provision, does not  
10 apply to juvenile offenders. Although section 1329 does not apply to juvenile offenders,  
11 enforcement of a restitution order imposed in a juvenile case is available pursuant to Title  
12 15, section 3314, subsection 7, enforcement of a dispositional order.

13 The bill amends the Maine Juvenile Code to provide the court the authority to employ  
14 upon any default in payment of a fine or restitution the levying of execution or the taking  
15 of other measures authorized for the collection of unpaid civil judgments to collect the  
16 unpaid fine or restitution. A levy of execution does not affect confinement ordered as a  
17 punitive sanction and does not discharge a juvenile confined as a remedial sanction until  
18 the full amount of the fine or restitution has been paid. The amendment is modeled on  
19 Title 17-A, section 1304, subsection 4 and Title 17-A, section 1329, subsection 4.

20 The bill amends laws regarding dissemination of sexually explicit material and  
21 possession of sexually explicit material by clarifying that the age of the person depicted  
22 means the age of the person at the time the sexually explicit conduct occurred, not the age  
23 of the person depicted at the time of dissemination or possession of the sexually explicit  
24 visual image or material.

25 The bill clarifies the law regarding the offense of aiding escape by striking the term  
26 "contraband" from the offense and replacing that term with the relevant portion of the  
27 current definition of "contraband."

28 The bill deletes from the law regarding the offense of trafficking in prison contraband  
29 the current reference to the definition of "contraband" in Title 17-A, section 756 and  
30 defines "contraband" in Title 17-A, section 757, subsection 2 using the relevant portion  
31 that is repealed in Title 17-A, section 756, subsection 2.

32 The bill enacts Title 17-A, section 1177 in chapter 48 of the Maine Criminal Code  
33 addressing victims' rights to provide notice to victims of the existence of Title 16,  
34 sections 53-A, 53-B and 53-C, to clarify that certain communications by victims to sexual  
35 assault counselors, victim advocates, victim witness advocates or victim witness  
36 coordinators are privileged from disclosure.

37 The bill specifies that, in the context of dissemination of sexually explicit material,  
38 and possession of sexually explicit material for purposes of determining a period of  
39 probation, it is not the age of the person depicted at the time of the alleged dissemination



1 or possession of the sexually explicit visual image or material that the State must plead  
2 and prove, but rather the age of the victim at the time the sexually explicit conduct  
3 occurred.

4 The bill clarifies that if a court orders as a condition of probation that the convicted  
5 person forfeit and pay a specific amount of restitution, that order, as a matter of law, also  
6 constitutes the imposition of restitution as a sentencing alternative and no additional  
7 stand-alone order in this regard is necessary.

8 The bill gives the court where a warrant of arrest is executed the same authority to  
9 conduct the default hearing as the court located where the warrant is issued. The court  
10 where a warrant of arrest is executed may exercise its discretion as to whether to hold the  
11 hearing or instead return the offender to the issuing court for that purpose.

12 The bill clarifies the statutes concerning default by adding a reference to Title 17-A,  
13 chapter 54-C following the reference to "community service work."

14 The bill amends the provision regarding time and method of restitution to reflect the  
15 new Title 17-A, section 1326-F, which addresses restitution deducted from judgment in  
16 civil action, and Title 17-A, section 1329, which addresses what happens when a  
17 defendant defaults in payment of restitution. The changes comprehensively address any  
18 offender who has completed any term of commitment to the Department of Corrections  
19 or any period of probation and still has not paid the restitution ordered by the court in full.

20 The bill amends the provision regarding income withholding orders to expressly  
21 allow probation officers to apply for income withholding orders when an offender owing  
22 restitution receives a sentence that includes a period of probation, making this provision  
23 consistent with the recent amendment to Title 17-A, section 1326-A, which leaves to the  
24 Department of Corrections the determination for probationers of the time and method of  
25 restitution payment.

26 The bill enacts a new section that comprehensively addresses the situation in which  
27 an offender who has completed the term of commitment to the Department of Corrections  
28 or the period of probation still has not paid the restitution ordered by the court in full. It  
29 provides notice to former Department of Corrections' clients still owing restitution that  
30 the duty to pay remains; requires that monetary compensation continue to be paid to the  
31 Department of Corrections; and requires that, unless otherwise modified by the court, the  
32 time and method of payment determined by the Department of Corrections during the  
33 former term of commitment or period of probation continues to control.

34 The bill amends the statutes concerning default to ensure that restitution payments are  
35 made to the same agency to which the restitution was required to be paid under Title 17-  
36 A, section 1326-A or 1326-F.