

# MAINE STATE LEGISLATURE

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# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 1438

H.P. 1032

House of Representatives, April 24, 2013

**An Act To Implement Certain Recommendations of the Criminal  
Law Advisory Commission Relative to the Maine Bail Code,  
Statutory Post-conviction Review, the Maine Criminal Code and a  
Related Statute**

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Reported by Representative DION 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 §1091-A**, as enacted by PL 1995, c. 456, §1, is amended to  
3 read:

4 **§1091-A. Failure to report**

5 **1. Failure to report after stay of execution.** A defendant who has been sentenced  
6 but granted a stay of execution to report ~~at~~ until a specific time specified date or event  
7 and who, in fact, fails to report as ordered is guilty of:

8 A. A Class E crime if the underlying crime was punishable by a maximum period  
9 of imprisonment of less than one year; or

10 B. A Class C crime if the underlying crime was punishable by a maximum period  
11 of imprisonment of one year or more.

12 ~~It is an affirmative defense that the failure to appear resulted from just cause.~~

13 **2. Affirmative defense.** It is an affirmative defense to prosecution under subsection  
14 1 that the failure to report resulted from just cause.

15 **3. Strict liability.** Violation of this section is a strict liability crime as defined in  
16 Title 17-A, section 34, subsection 4-A.

17 **Sec. 2. 15 MRSA §2124, sub-§1, ¶F**, as enacted by PL 2011, c. 601, §7, is  
18 amended to read:

19 F. Restitution imposed by the challenged criminal judgment that has not been paid  
20 and in a case when a person has not inexcusably violated Title 17-A, section 1328-A  
21 or inexcusably defaulted in payment of any portion. Any challenge as to the amount  
22 of restitution ordered is further limited by Title 17-A, section 1330-A; ~~or~~

23 **Sec. 3. 15 MRSA §2124, sub-§1, ¶F-1** is enacted to read:

24 F-1. Community service work imposed by the challenged criminal judgment that has  
25 not been fully performed and in a case when a person has not inexcusably failed to  
26 complete the work within the time specified by the court; or

27 **Sec. 4. 15 MRSA §2125**, as amended by PL 2011, c. 601, §8, is further amended  
28 to read:

29 **§2125. Ground for relief**

30 A person who satisfies the prerequisites of section 2124 may show that the  
31 challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the  
32 impediment resulting from the challenged post-sentencing proceeding is unlawful, as a  
33 result of any error or ground for relief, whether or not of record, unless the error is  
34 harmless or unless relief is unavailable for a reason provided in section 2126 ~~or~~, section  
35 2128 unless section 2128-A applies, or section 2128-B.

1           **Sec. 5. 15 MRSA §2126**, as amended by PL 1985, c. 556, §2, is further amended  
2 to read:

3           **§2126. Exhaustion**

4           A person under restraint or impediment specified in section 2124 must also  
5 demonstrate that ~~he~~ the person has previously exhausted remedies incidental to  
6 proceedings in the trial court, on appeal or administrative remedies. A person who has  
7 taken an appeal from a judgment of conviction ~~or~~ a juvenile adjudication or a judgment  
8 of not criminally responsible by reason of insanity is not precluded from utilizing the  
9 remedy of this chapter while the appeal is pending, ~~provided that the~~. The post-  
10 conviction review proceeding is automatically stayed pending resolution of the appeal  
11 unless the Appellate Court on motion and for good cause otherwise directs.

12           **Sec. 6. 15 MRSA §2138, sub-§12**, as amended by PL 2011, c. 601, §13, is  
13 further amended to read:

14           **12. Exhaustion.** A person who has taken a direct appeal from the judgment of  
15 conviction is not precluded from utilizing the remedy of this chapter while the appeal is  
16 pending, ~~as long as the~~. The resolution of the motion is automatically stayed pending  
17 final disposition of the direct appeal unless the Supreme Judicial Court, sitting as the Law  
18 Court, on motion otherwise directs.

19           A person who has initiated a collateral attack upon the judgment of conviction under  
20 chapter 305-A is not precluded from utilizing the remedy of this chapter while that post-  
21 conviction review proceeding is pending, ~~as long as~~. The resolution of the motion is  
22 automatically stayed pending final disposition of the post-conviction review proceeding  
23 unless the assigned justice or judge in the post-conviction review proceeding otherwise  
24 directs.

25           **Sec. 7. 17-A MRSA §256, sub-§1, ¶B**, as amended by PL 2005, c. 655, §1, is  
26 further amended to read:

27           B. For the purpose of arousing or gratifying sexual desire or for the purpose of  
28 causing affront or alarm, the actor, having in fact attained 18 years of age, exposes  
29 the actor's genitals to another person or causes the other person to expose that  
30 person's genitals to the actor and the other person, not the actor's spouse, has not in  
31 fact attained 12 years of age. Violation of this paragraph is a Class C crime;

32           **Sec. 8. 17-A MRSA §261, sub-§3**, as enacted by PL 2007, c. 393, §1, is amended  
33 to read:

34           **3.** ~~It~~ Except when the defendant would be the person giving the consent, it is an  
35 affirmative defense to prosecution under this section that the parent, foster parent,  
36 guardian or other similar person responsible for the person who had not in fact attained  
37 14 years of age, knowing the conviction status described in subsections 1 and 2, gave  
38 consent that the defendant initiate, have or continue direct or indirect contact. It is also an  
39 affirmative defense to prosecution under this section that any contact is incidental to and  
40 directly related to the defendant's employment.



1           3. It makes a technical correction to the affirmative defense language for failure to  
2 report.

3           4. Current law provides for an action for post-conviction review of a criminal  
4 judgment or of a post-sentencing proceeding following the criminal judgment when the  
5 challenged criminal judgment or post-sentencing proceeding is causing a present restraint  
6 or other specified impediment. This bill provides that these restraints and impediments  
7 include community service work imposed by the challenged criminal judgment that has  
8 not been fully performed when the person has not inexcusably failed to complete the  
9 work within the time specified by the court.

10           5. It rectifies an oversight that occurred during the Second Regular Session of the  
11 125th Legislature when the law granting grounds for relief to show that a challenged  
12 criminal judgment or sentence is unlawful or unlawfully imposed was amended.

13           6. It provides that a person who has taken an appeal from a judgment of not  
14 criminally responsible by reason of insanity may use the remedy of post-conviction  
15 review while the appeal is pending.

16           7. It makes a number of technical corrections to clarify provisions regarding the  
17 exhaustion of remedies with respect to appeals.

18           8. It amends the Class C version of the crime of visual sexual aggression against a  
19 child by adding that a person is guilty of the crime if the person engages in the prohibited  
20 activity for the purpose of causing affront or alarm. This language was included in the  
21 Class D version of the crime but omitted from the Class C version of the crime when both  
22 were enacted by Public Law 2003, chapter 711, Part B, section 4.

23           9. It amends the law that provides an affirmative defense to prosecution for  
24 prohibited contact with a minor to make clear that the defendant may not be the person  
25 whose consent with respect to contact with the minor provides the basis for the  
26 affirmative defense.

27           10. It provides that when an offender defaults on the payment of a fine and the court  
28 determines it to be excusable, in addition to the current statutory options of giving the  
29 offender additional time for payment or reducing the amount of each installment, the  
30 court may permit the offender to perform community service work if the community  
31 service work is supervised by a local sheriff or by a community confinement monitoring  
32 agency with which that sheriff has contracted.

33           11. It adds a person conducting research at a school of pharmacology to the list of  
34 persons who are authorized to possess, furnish and have control of scheduled or  
35 prescription drugs, controlled substances or hypodermic apparatuses.