

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 951

H.P. 654

House of Representatives, March 17, 2015

An Act To Restore Judicial Discretion in the Administration of Fines

Reference to the Committee on Judiciary suggested and ordered printed.


ROBERT B. HUNT
Clerk

Presented by Representative DION of Portland.
Cosponsored by Senator BRAKEY of Androscoggin and
Representatives: BECK of Waterville, FREY of Bangor, KRUGER of Thomaston, Senator:
DUTREMBLE of York.

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

2 **Sec. 1. 9-A MRSA §5-105, sub-§2, ¶A**, as repealed and replaced by PL 2007, c.
3 7, §1, is amended to read:

4 A. ~~Twenty-five~~ Ten percent of the individual's disposable earnings for that week;
5 and

6 **Sec. 2. 14 MRSA §3141, sub-§7**, as amended by PL 1999, c. 587, §9, is further
7 amended to read:

8 **7. Remedies.** ~~Failure~~ Having the ability to pay and willfully failing to pay by the
9 date fixed by the court's order or an amended order subjects the defendant to the contempt
10 procedures provided in section 3142, suspensions under Title 29-A, section 2605, and all
11 procedures for collections provided for in sections 3127-A, 3127-B, 3131, 3132, 3134,
12 3135 and 3136. An installment agreement under this section must be considered an
13 agreement under section 3125, and a court order to pay under section 3126-A. In
14 addition to other penalties provided by law, the court may impose on the defendant
15 reasonable costs for any failure to appear.

16 **Sec. 3. 15 MRSA §651, sub-§4, ¶C**, as enacted by PL 2011, c. 214, §2 and
17 affected by §6, is repealed.

18 **Sec. 4. 15 MRSA §651, sub-§9**, as enacted by PL 2011, c. 214, §2 and affected
19 by §6, is repealed.

20 **Sec. 5. 17-A MRSA §1206, sub-§6-A** is enacted to read:

21 **6-A.** When the alleged violation is failure to pay a fine, the court may revoke
22 probation if it finds by a preponderance of the evidence that the person on probation has
23 the ability to pay the monetary amount as directed by the court and intentionally fails to
24 pay. In determining ability to pay, the court shall take into account the present and future
25 financial capacity of the person on probation to pay the fine and the nature of the
26 financial burden that payment of the fine will impose on the person on probation or a
27 dependent of the person on probation, if any.

28 **Sec. 6. 17-A MRSA §1301, sub-§6**, as amended by PL 2011, c. 464, §22, is
29 further amended to read:

30 **6.** In addition to any other authorized sentencing alternative, the court ~~shall~~ may
31 impose a ~~minimum~~ fine of \$400, ~~none of which may be suspended~~, for a person
32 convicted of a crime under section 1103; 1104; 1105-A; 1105-B; 1105-C; 1105-D; 1106;
33 1107-A; 1108; 1109; 1110; 1111; 1111-A, subsection 4-A; 1116; 1117; or 1118.

34 **Sec. 7. 17-A MRSA §1303, sub-§2**, as enacted by PL 1975, c. 499, §1, is
35 amended to read:

36 **2.** If a convicted person sentenced to pay a fine is also placed on probation, the
37 court may make the payment of the fine a condition of probation. In such cases, the court

1 may order that the fine be paid to the probation officer. Probation may not be revoked for
2 failure to pay a fine unless the person on probation has the ability to pay the fine and
3 intentionally fails to pay.

4 **Sec. 8. 17-A MRSA §1303-B**, as enacted by PL 1999, c. 367, §4, is amended to
5 read:

6 **§1303-B. Modification of payment of fine**

7 A convicted person who has been sentenced to pay a fine shall move the court for a
8 modification of time or method of payment to avoid a default. The court on its own
9 motion or pursuant to the convicted person's motion may modify its prior order to reduce
10 the fine pursuant to section 1304 or to allow additional time for payment ~~or~~ to reduce the
11 amount of each installment.

12 **Sec. 9. 17-A MRSA §1304**, as amended by PL 2013, c. 266, §8, is further
13 amended to read:

14 **§1304. Default**

15 **1.** An offender who has been sentenced to pay a fine and has defaulted in payment of
16 that fine must be ~~returned to court for further disposition~~ issued a court order requiring
17 the offender to appear for a court hearing.

18 **1-A.** For purposes of this section, if an offender is returned to court pursuant to a
19 warrant, both the court located where the warrant is issued and the court located where
20 the warrant is executed are authorized to conduct the default hearing pursuant to
21 subsection 3.

22 **2.** A probation officer having knowledge of a default in payment of a fine by an
23 offender shall report the default to the office of the attorney for the State. An attorney for
24 the State having knowledge of a default in payment of a fine by an offender shall report
25 the default to the court. ~~If the fine was a condition of probation, the attorney for the State~~
26 ~~may file a motion to enforce payment of the fine or, with the written consent of the~~
27 ~~probation officer, a motion to revoke probation under section 1205. If the fine was not a~~
28 ~~condition of probation, the~~ The attorney for the State may file a motion to enforce
29 payment of the fine.

30 **3.** Either the attorney for the State or the court may initiate a motion to enforce
31 payment of a fine. Notification for the hearing on the motion must be sent by regular
32 mail to the offender's last known address. If the offender does not appear for the hearing
33 after proper notification has been sent, the court may issue a bench warrant. A court need
34 not bring a motion to enforce payment of a fine nor notify the offender by regular mail of
35 the date of the hearing if at the time of sentence imposition the court's order to pay the
36 fine and accompanying warnings to the offender comply with Title 14, section 3141,
37 subsection 3 or 4 and, if the offender fails to appear as directed by the court's fine order,
38 the court may issue a bench warrant.

39 **A.** Unless the offender shows by a preponderance of the evidence that the default
40 was not attributable to an intentional or knowing refusal to obey the court's order or

1 to a failure on the offender's part to make a good faith effort to obtain the funds
2 required for the payment, the court shall find that the default was unexcused and may:

3 ~~(1) Commit the offender to the custody of the sheriff until all or a specified part~~
4 ~~of the fine is paid. The length of confinement in a county jail for unexcused~~
5 ~~default must be specified in the court's order and may not exceed 6 months. An~~
6 ~~offender committed for nonpayment of a fine is given credit toward the payment~~
7 ~~of the fine for each day of confinement that the offender is in custody at the rate~~
8 ~~specified in the court's order, which may not be less than \$25 or more than \$100~~
9 ~~of unpaid fine for each day of confinement. The offender is also given credit for~~
10 ~~each day that the offender is detained as the result of an arrest warrant issued~~
11 ~~pursuant to this section. An offender is responsible for paying any fine remaining~~
12 ~~after receiving credit for confinement and detention. A default on the remaining~~
13 ~~fine is also governed by this section; or~~

14 (2) If the unexcused default relates to a fine imposed for a Class D or Class E
15 crime, as authorized by chapter 53, order the offender to perform community
16 service work, as authorized in chapter 54-C, until all or a specified part of the
17 fine is paid. The number of hours of community service work must be specified
18 in the court's order and the offender must receive a credit against the unpaid fine
19 of no less than \$25 for every 8 hours the minimum wage under Title 26, section
20 664, subsection 1 for each hour of community service work completed, which
21 may not exceed one hundred 8-hour days. An offender ordered to perform
22 community service work pursuant to this subparagraph is given credit toward the
23 payment of the fine for each 8-hour day of community service work performed at
24 the rate specified in the court's order. The offender is also given credit toward the
25 payment of the fine for each day that the offender is detained as a result of an
26 arrest warrant issued pursuant to this section at a rate specified in the court's order
27 that is up to \$100 of unpaid fine per day of confinement. An offender is
28 responsible for paying any fine remaining after receiving credit for any detention
29 and for community service work performed. A default on the remaining fine is
30 also governed by this section.

31 B. If it appears that the default is excusable, the court may give the offender
32 additional time for payment, may reduce the amount of the fine, may reduce the
33 amount of each installment or may permit the offender to perform community service
34 work at a rate authorized by paragraph A, subparagraph (2), supervised by the sheriff
35 of the county in which the court that assessed the fine is located or by a community
36 confinement monitoring agency with which that sheriff has contracted under Title
37 30-A, section 1659-A.

38 ~~C. If the court commits a person to the custody of the sheriff for nonpayment of a~~
39 ~~fine pursuant to subsection 3, paragraph A, subparagraph (1), the court may~~
40 ~~authorize, at the time of its order only, participation of the person in a project under~~
41 ~~Title 30-A, section 1606 with the agreement of the sheriff of the county jail where the~~
42 ~~person is committed. The person must be given credit according to Title 30-A,~~
43 ~~section 1606, subsection 2.~~

44 ~~D. The confinement ordered under subsection 3, paragraph A, subparagraph (1) must~~
45 ~~be nonconcurrent with any judgment of conviction involving a term of imprisonment.~~

