

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 536

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S.P. 223

In Senate, February 24, 2021

### An Act To Amend the Maine Criminal Code

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Submitted by the Criminal Law Advisory Commission pursuant to the Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

Received by the Secretary of the Senate on February 22, 2021. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator DESCHAMBAULT of York.  
Cosponsored by Representative PICKETT of Dixfield and  
Representative: RECKITT of South Portland.

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

2 **PART A**

3 **Sec. A-1. 17-A MRSA §1609**, as enacted by PL 2019, c. 113, Pt. A, §2, is repealed  
4 and the following enacted in its place:

5 **§1609. Nonconcurrent sentence**

6 **1. Mandatory nonconcurrent sentence.** Notwithstanding section 1608, when an  
7 individual subject to an undischarged term of imprisonment is convicted of a crime  
8 committed while in execution of any term of imprisonment, the sentence is not concurrent  
9 with any undischarged term of imprisonment. The court may order that any undischarged  
10 term of imprisonment be tolled and service of the nonconcurrent sentence commence  
11 immediately and the court shall so order if any undischarged term of imprisonment is a  
12 split sentence. No portion of the nonconcurrent sentence may be suspended. Any sentence  
13 that the convicted individual receives as a result of the conviction of a crime while in  
14 execution of a term of imprisonment must be nonconcurrent with all other sentences.

15 This subsection also applies to prisoners on supervised community confinement pursuant  
16 to Title 34-A, section 3036-A.

17 **2. Discretionary nonconcurrent sentence.** Notwithstanding section 1608, when an  
18 individual subject to an undischarged term of imprisonment is convicted of a crime  
19 committed during a stay of execution of any term of imprisonment, convicted of a crime  
20 committed after failure to report after a stay of execution of any term of imprisonment or  
21 convicted of failure to report as ordered after a stay of execution of any term of  
22 imprisonment, the court may order that the sentence is not concurrent with any  
23 undischarged term of imprisonment. If the court orders that the sentence is not concurrent,  
24 the court may order that any undischarged term of imprisonment be tolled and service of  
25 the nonconcurrent sentence commence immediately, and the court shall so order if any  
26 undischarged term of imprisonment is a split sentence. No portion of the nonconcurrent  
27 sentence may be suspended. Any nonconcurrent sentence that the convicted individual  
28 receives as a result of an order entered pursuant to this subsection must be nonconcurrent  
29 with all other sentences.

30 **PART B**

31 **Sec. B-1. 17-A MRSA §2016, sub-§1**, as enacted by PL 2019, c. 113, Pt. A, §2, is  
32 amended to read:

33 **1. Work program; payment of restitution and fines.** A prisoner who has been  
34 ordered to pay restitution or fines may not be released pursuant to a work program  
35 administered by the Department of Corrections under Title 34-A, section 3035, or a sheriff  
36 under Title 30-A, section 1605, or participate in an industry program under Title 34-A,  
37 section 1403, subsection 9 or any other program administered by the Department of  
38 Corrections or a sheriff by which a prisoner is able to generate money, unless the prisoner  
39 consents to pay at least 25% of the prisoner's gross weekly wages or other money generated  
40 to the victim or the court until such time as full restitution has been made or the fine is paid  
41 in full. The chief administrative officer of the correctional facility where the prisoner is  
42 incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's  
43 wages or other money generated agreed to as payment of restitution. The chief

1 administrative officer of the correctional facility where the prisoner is incarcerated shall  
2 also collect and disburse to the court that portion of the prisoner's wages or other money  
3 generated agreed to as payment of fines after the restitution is paid in full. If the victim or  
4 victims ordered by the court to receive restitution cannot be located, the correctional facility  
5 shall ~~inform the court that ordered restitution. The court shall determine the distribution of~~  
6 ~~these funds~~ forward the funds, as provided in section 2009, to the Treasurer of State to be  
7 handled as unclaimed property.

8 **Sec. B-2. 17-A MRSA §2016, sub-§2**, as enacted by PL 2019, c. 113, Pt. A, §2, is  
9 amended to read:

10 **2. Payment of restitution or fines from other sources.** A prisoner, other than one  
11 addressed by subsection 1, who receives money, from any source, shall pay 25% of that  
12 money to any victim or the court if the court has ordered that restitution or a fine be paid.  
13 The chief administrative officer of the correctional facility in which the prisoner is  
14 incarcerated shall collect and disburse to the victim or victims that portion of the prisoner's  
15 money ordered as restitution. The chief administrative officer of the correctional facility  
16 where the prisoner is incarcerated shall also collect and disburse to the court that portion  
17 of the prisoner's money ordered as fines after the restitution is paid in full. If the victim or  
18 victims ordered by the court to receive restitution cannot be located, the correctional facility  
19 shall ~~inform the court that ordered restitution. The court shall determine the distribution of~~  
20 ~~these funds~~ forward the funds, as provided in section 2009, to the Treasurer of State to be  
21 handled as unclaimed property. Money received by the prisoner and directly deposited into  
22 a telephone call account established by the Department of Corrections for the sole purpose  
23 of paying for use of the department's client telephone system is not subject to this  
24 subsection, except that 25% of any money received by the prisoner and transferred from  
25 the telephone call account to the department's general client account at the time of the  
26 prisoner's discharge or transfer to supervised community confinement must be collected  
27 and disbursed as provided in this subsection.

## 28 PART C

29 **Sec. C-1. 17-A MRSA §301, sub-§1, ¶A**, as amended by PL 2001, c. 383, §26  
30 and affected by §156, is further amended to read:

31 A. The actor knowingly restrains another person with the intent to:

- 32 (1) Hold the other person for ransom or reward;
- 33 (2) Use the other person as a shield or hostage;
- 34 (3) Inflict bodily injury upon the other person ~~or subject the other person to~~  
35 ~~conduct defined as criminal in chapter 11;~~
- 36 (3-A) Subject the other person to conduct defined as criminal in chapter 11;
- 37 (4) Terrorize the other person or a 3rd person;
- 38 (5) Facilitate the commission of another crime by any person or flight thereafter;
- 39 or
- 40 (6) Interfere with the performance of any governmental or political function; or

41 **Sec. C-2. 34-A MRSA §11273, sub-§16, ¶C**, as enacted by PL 2011, c. 663, §3,  
42 is amended to read:

1 C. Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3) if the crime is  
2 committed prior to January 1, 2022;

3 **Sec. C-3. 34-A MRSA §11273, sub-§16, ¶C-1** is enacted to read:

4 C-1. Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3-A) if the  
5 crime is committed on or after January 1, 2022;

6 **Sec. C-4. 37-B MRSA §504, sub-§4, ¶H**, as enacted by PL 2015, c. 175, §1, is  
7 amended by amending subparagraph (3) to read:

8 (3) Been convicted of a Class A or Class B crime under:

9 (a) Title 17-A, chapter 11;

10 (b) Title 17-A, chapter 12; ~~or~~

11 (c) Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3) if the  
12 crime is committed prior to January 1, 2022; or

13 (d) Title 17-A, section 301, subsection 1, paragraph A, subparagraph (3-A) if  
14 the crime is committed on or after January 1, 2022;

#### 15 **PART D**

16 **Sec. D-1. 17-A MRSA §1111-B**, as amended by PL 2019, c. 292, §1, is further  
17 amended to read:

18 **§1111-B. Exemption from criminal liability for reporting a drug-related medical**  
19 **emergency or administering naloxone**

20 A person who in good faith seeks medical assistance for or administers naloxone  
21 hydrochloride to another person experiencing a drug-related overdose or who is  
22 experiencing a drug-related overdose and is in need of medical assistance may not be  
23 arrested or prosecuted for or subject to revocation of probation based on conduct that would  
24 otherwise constitute a violation of section 1107-A, 1108, 1111 or 1111-A ~~or a violation of~~  
25 ~~probation as authorized by chapter 49~~ if the grounds for arrest or prosecution are obtained  
26 as a result of the person's seeking medical assistance, administering naloxone  
27 hydrochloride or experiencing a drug-related overdose.

#### 28 **PART E**

29 **Sec. E-1. 17-A MRSA §257**, as amended by PL 2007, c. 476, §3, is repealed.

#### 30 **SUMMARY**

31 This bill is submitted by the Criminal Law Advisory Commission pursuant to the  
32 Maine Revised Statutes, Title 17-A, section 1354, subsection 2.

33 Part A of the bill authorizes nonconcurrent sentencing when a crime is committed by a  
34 convicted person during a stay of execution of any term of imprisonment or after failure to  
35 report after a stay of execution of any term of imprisonment. It also authorizes  
36 nonconcurrent sentencing when the convicted person is convicted of the crime of failure to  
37 report as ordered after a stay of execution of any term of imprisonment.

38 Part B amends Title 17-A, section 2016 to make it consistent with existing law in Title  
39 17-A, section 2009 with respect to disposition of funds by correctional facilities when they

1 hold funds for the purposes of restitution and the victim cannot be located. Current Title  
2 17-A, section 2016 requires the facility to notify the court and the court to determine  
3 distribution of the funds. The bill requires the facility to forward the funds to the Treasurer  
4 of State to be handled as unclaimed property, consistent with current Title 17-A, section  
5 2009.

6 Part C separates 2 variants of kidnapping, restraining a person with intent to commit  
7 bodily injury and restraining a person with intent to commit a sexual assault, which are  
8 included in current law in the same provision. This Part amends the Sex Offender  
9 Registration and Notification Act of 2013 to clarify that, beginning January 1, 2022,  
10 kidnapping with intent to commit sexual assault, and not kidnapping with intent to commit  
11 bodily injury, qualifies as a Tier III offense under that Act. This Part also clarifies that,  
12 beginning January 1, 2022, kidnapping with intent to commit sexual assault, and not  
13 kidnapping with intent to commit bodily injury, renders a person ineligible for interment  
14 in the Maine Veterans' Memorial Cemetery System.

15 Part D clarifies that immunity from revocation of probation is limited to the same  
16 conduct for which there is immunity from prosecution under the law protecting persons  
17 seeking medical assistance or administering naloxone hydrochloride or experiencing a  
18 drug-related overdose.

19 Part E repeals a section of law in Title 17-A, chapter 11 on factors aiding in predicting  
20 high-risk sex offenders for sentencing purposes, leaving individual risk assessment at  
21 sentencing to the judgment of the court.