

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1630

H.P. 1213

House of Representatives, April 27, 2021

An Act To Establish a System of Proportional Fines and To Repeal Certain Fees and Assessments

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative PLUECKER of Warren.
Cosponsored by Representatives: EVANGELOS of Friendship, MORALES of South Portland,
WARREN of Hallowell, Senator: KEIM of Oxford.

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

2 **Sec. 1. 5 MRSA §12004-J, sub-§11-A** is enacted to read:

3 **11-A.**

4 <u>Criminal</u>	<u>Proportional Fine Commission</u>	<u>Expenses Only</u>	<u>17-A MRSA</u>
5 <u>Justice</u>			<u>§1783</u>

6

7 **Sec. 2. 17-A MRSA §1502, sub-§10** is enacted to read:

8 **10. Proportional fines.** Beginning January 1, 2023, the court in imposing a fine for a
9 conviction of a crime or adjudication of a civil violation under this Title for which an
10 offense unit, as defined in section 1782, subsection 5, has been established by the
11 Legislature shall apply the proportional fine system established in chapter 65, subchapter
12 3 and determine the sentence to be ordered.

13 **Sec. 3. 17-A MRSA c. 65, sub-c. 3** is enacted to read:

14 **SUBCHAPTER 3**

15 **PROPORTIONAL FINES**

16 **§1781. Proportional fines**

17 There is established a system of proportional fines to be based on the offense units for
18 all criminal convictions and adjudications of civil violations under this Title. Beginning
19 January 1, 2023, in sentencing a person convicted of a crime or adjudicated of a civil
20 violation under this Title for which an offense unit has been established by the Legislature,
21 the court shall determine the fine by application of the system of proportional fines
22 provided in this subchapter.

23 **§1782. Definitions**

24 For the purposes of this subchapter, unless the context otherwise indicates, the
25 following terms have the following meanings.

26 **1. Commission.** "Commission" means the Proportional Fine Commission established
27 in Title 5, section 12004-J, subsection 11-A and whose duties are described in section 1783.

28 **2. Debt payment.** "Debt payment" means any payment, including other criminal
29 justice debt, made to service or pay down debt or otherwise required by a debt instrument,
30 during the 12 months prior to the date on which the proportional fine is ordered by the
31 court, but not including mortgage payments. "Debt payment" includes a debt on which a
32 defendant has not paid or accrued liability during the preceding 12 months but on which
33 the defendant will be required to make payments during the 12 months after the
34 proportional fine is ordered.

35 **3. Deductions.** "Deductions" means any of the following adjustments to Maine
36 adjusted gross income as defined in Title 36, section 5102, subsection 1-C:

37 A. Any debt payments listed in a sworn affidavit or other comparable proof of debt
38 payments;

- 1 B. Self-support in an amount of 15% of after-tax income;
- 2 C. Needs of a dependent spouse in the amount of 15% of after-tax income;
- 3 D. Needs of nonspouse additional dependents in the amounts of 15% for the first
- 4 dependent and 10% each for the 2nd and 3rd dependents and 5% for each additional
- 5 dependent; and
- 6 E. After applying all of the deductions under paragraphs A to D, the applicable
- 7 deduction of: 60% of income below the federal nonfarm income poverty level as
- 8 defined by the federal Office of Management and Budget and revised annually in
- 9 accordance with the United States Omnibus Budget Reconciliation Act of 1981,
- 10 Section 673(2); 40% of income between the federal nonfarm income poverty level and
- 11 200% of the nonfarm income poverty level; or 20% of income between the federal
- 12 nonfarm income poverty level and 400% of the nonfarm income poverty level.

13 **4. Net income.** "Net income" means the self-reported, after-tax income of a defendant
14 from all sources, minus deductions, supported by sworn affidavit for the one-year period
15 prior to the date of the offense under this Title. The court in its discretion may adjust net
16 income reported by the defendant up or down, based on clear and convincing evidence that
17 the defendant earned income of a different amount and may adjust net income to reflect a
18 change in circumstances and to better represent the defendant's average income. For a
19 person with little or no income and income in an unascertainable amount, the court in its
20 discretion may establish net income based on the amount of the defendant's self-reported
21 benefits received in the prior 12 months, minus deductions, and any adjustment to those
22 figures to more accurately represent the defendant's income.

23 **5. Offense unit.** "Offense unit" means the numerical value, which must be an integer
24 between one and 120, that is assigned to each crime or civil violation.

25 **6. Proportional fine.** "Proportional fine" means the product of the offense unit and
26 the quotient of the net income of the defendant divided by 365.

27 **§1783. Proportional Fine Commission**

28 The Proportional Fine Commission, established in Title 5, section 12004-J, subsection
29 11-A, shall assign to each criminal and civil violation of this Title an offense unit for the
30 purposes of implementing proportional fines throughout the State.

31 **1. Membership.** The commission consists of 9 members. The members include a
32 representative of the judicial branch who is a judge or justice appointed by the Governor,
33 the dean of the University of Maine School of Law or the designee of the dean and the
34 following members who are appointed by the Governor subject to confirmation by the
35 Senate:

36 A. An employee of the Office of the Attorney General, a district attorney or an assistant
37 district attorney;

38 B. An attorney who practices as a defense attorney for clients who qualify for court-
39 appointed counsel;

40 C. A representative of an agency that provides pretrial services;

41 D. An employee of the Department of Corrections who provides probation services
42 under Title 34-A, chapter 5, subchapter 3;

1 E. A representative of an agency that provides public assistance services or that serves
2 lower-income communities;

3 F. A representative of a statewide organization working for the protection of
4 constitutional rights; and

5 G. An expert in the field of sentencing or criminology.

6 **2. Membership; volunteer service.** Members of the commission shall serve for terms
7 of 5 years and may serve 2 consecutive terms. Members whose terms have expired
8 continue to serve until their successors have been confirmed by the Senate. Vacancies must
9 be filled in the manner in which the original appointment was made. Members serve as
10 volunteers and are not paid for their service on the commission. Members may be
11 reimbursed for necessary expenses of serving on the commission.

12 **3. Chair; meetings.** The Governor shall appoint a member of the commission to serve
13 as chair for a term of 2 years. The chair shall convene all meetings of the commission. The
14 commission shall meet at least once per year for the first 5 years and at least every 2 years
15 thereafter.

16 **4. List of offenses and determination of offense units.** The commission shall review
17 all criminal and civil violations under this Title and shall make a list of those crimes and
18 civil violations and the fines assigned to each crime or civil violation in effect on the
19 effective date of this subchapter. The commission shall assign an offense unit to each crime
20 and civil violation. The commission shall compile, analyze, publish and distribute to the
21 public information related to the compilation of criminal and civil violations, the
22 assignment of an offense unit to each crime and civil violation and the performance by the
23 commission of its duties.

24 **5. Data related to fines imposed and collected, payment rates and compliance**
25 **data.** The commission shall collect data related to the imposition of proportional fines by
26 the court in accordance with this subchapter and shall distribute public information
27 regarding proportional fines imposed, fines collected, payment rates, average and median
28 fines by crime or civil violation and data indicating payment in accordance with the court
29 order. The data must be broken down by the demographic variables of race and income.

30 **6. New criminal and civil offenses.** The commission shall meet within 45 days of the
31 effective date of any legislation establishing a new violation of this Title in order to review
32 the new violation for determination of the offense units to be assigned to the crime or civil
33 violation. Within 75 days after the effective date of legislation establishing a new crime or
34 civil violation under this Title, the commission shall determine the offense unit to be
35 assigned to the crime or civil violation and shall publish a revised list of all designated
36 crimes and civil violations and their offense units. The commission shall submit the list to
37 the joint standing committee having jurisdiction over criminal justice and public safety
38 matters. The joint standing committee may submit legislation necessary to establish an
39 offense unit.

40 **§1784. Proportional fine system**

41 Beginning January 1, 2023, the provisions of chapter 61 and this subchapter govern the
42 procedures of the court in ordering payment of a fine for conviction of a crime or
43 adjudication of a civil violation under this Title for which an offense unit has been
44 established by the Legislature.

1 **1. Calculation of fine amount; payment.** In calculating the amount of a fine, the
2 court, in addition to the procedures required in chapter 61 and any other law, shall
3 determine the proportional fine as provided in this subsection.

4 A. The court shall require a defendant to file a statement of net income and deductions
5 as provided in rules adopted by the court.

6 B. If a defendant does not file a statement of net income and deductions as required in
7 paragraph A or if the defendant deliberately misleads the court as to income or
8 deductions and the defendant fails to demonstrate by a preponderance of the evidence
9 why the defendant is unable to comply with the requirement to file the statement of net
10 income and deductions, the court may order a fine up to the maximum fine for the
11 crime or civil violation.

12 C. Except as provided in this paragraph, the court shall determine the amount of the
13 fine for a crime or civil violation by calculating the product of the offense unit and the
14 quotient of the net income of the defendant divided by 365. The court may, in its
15 discretion and upon a finding stated in the record and documentation of the reasons for
16 the deviation, order a deviation from the proportional fine required by this paragraph
17 by varying the offense unit by no more than 10% from the offense unit assigned to the
18 crime or civil violation.

19 D. A defendant may apply to the court at any time to convert all or part of a fine to
20 programmatic participation or community service hours by applying a credit of \$20 per
21 hour for hours of participation or service. Programmatic participation or community
22 service may be ordered only if it does not interfere with employment, travel restrictions
23 or family care responsibilities. The court may specify the type of programmatic
24 participation or community service, including, but not limited to, substance use
25 disorder treatment, mental health treatment, educational programs, job training and job
26 readiness programs and appointments or coaching for the purposes of learning about
27 and applying for housing, employment, health care, food assistance, general assistance
28 and other benefits.

29 E. If the court finds, based on the totality of circumstances, that the amount of the
30 proportional fine would grossly exceed a defendant's ability to pay, the court may order
31 a fine that is less than the proportional fine.

32 F. If the court finds, based on the totality of circumstances, that the amount of a
33 proportional fine would be disproportionate to the severity of an offense, the court may
34 order a fine that is more than the proportional fine, subject to a limit of 10% above the
35 amount of the proportional fine.

36 G. The court may order payment of a fine in installment payments. Unless the court
37 makes a finding on the record to justify a fine that will take a defendant more than 24
38 months to pay from the date of imposition of the fine or the date of release from prison
39 or jail, the court may not order a fine to be paid in installment payments that extend
40 beyond 24 months. A defendant who is unable to make installment payments as
41 ordered by the court may apply to the court for modification of the court order and may
42 not be required to be present in court for the judge to consider and rule on the
43 application for modification.

1 H. A person subject to an order of payment of a fine may not be required to be present
2 in court to pay the fine.

3 I. The court must accept payment of fines by mail, in person and through an electronic
4 payment system without additional charge to the defendant because of the manner in
5 which the fine is paid.

6 J. The court shall credit all fines imposed pursuant to this subchapter and chapter 61
7 to the General Fund.

8 **§1785. Collection of data; staffing**

9 The commission shall determine the data on crimes and fines needed for the
10 performance of its work and shall request assistance to enable it to perform its duties. The
11 Office of the Attorney General shall provide arrest and summons data from law
12 enforcement agencies statewide and the judicial branch shall provide data on crimes and
13 fines as determined to be needed by the commission. Except during any regular or special
14 session of the Legislature, the Legislative Council shall provide staff as needed by the
15 commission to assist the commission in performing its duties under this subchapter,
16 including but not limited to compiling the list of crimes and civil violations under this Title
17 and a list of offense units applicable to each crime or civil violation, and compiling,
18 analyzing, publishing and distributing to the public data related to the performance by the
19 commission of its duties and the imposition of proportional fine sentences by the court in
20 accordance with this subchapter.

21 **§1786. Rulemaking**

22 The commission shall adopt rules to implement this subchapter. Rules adopted
23 pursuant to this section are routine technical rules as defined by Title 5, chapter 375,
24 subchapter 2-A.

25 **Sec. 4. Proportional Fine Commission review of fines for crimes and civil**
26 **violations in the Maine Revised Statutes, Title 17-A and assignment of offense**
27 **units.** By January 1, 2022, the Proportional Fine Commission pursuant to the Maine
28 Revised Statutes, Title 17-A, chapter 65, subchapter 3 shall complete its review of all
29 criminal and civil violations under Title 17-A and the fines assigned to each crime or civil
30 violation on the effective date of this section and shall assign to each crime and civil
31 violation an offense unit, as defined in Title 17-A, section 1782, subsection 5, to be used
32 in determining the amount of the proportional fine for a crime or civil violation, as provided
33 in Title 17-A, section 1784, subsection 1, paragraph C. By February 1, 2022, the
34 Proportional Fine Commission shall report to the Joint Standing Committee on Criminal
35 Justice and Public Safety on the result of its work under this section and shall include
36 legislation to be considered by the Second Regular Session of the 130th Legislature to
37 amend Title 17-A to repeal fines in existence on the effective date of this Act and enact
38 offense units into Title 17-A, chapter 65, subchapter 3.

39 **SUMMARY**

40 This bill establishes the Proportional Fine Commission to begin the process of change
41 from fines that are currently set in the Maine Revised Statutes, Title 17-A for crimes and
42 civil violations to proportional fines set by determination of an offense unit for each crime
43 and civil violation and established by the Legislature. The bill requires that, by January 1,

1 2022, the Proportional Fine Commission complete its review of all criminal and civil
2 violations under Title 17-A and the fine currently assigned to each offense. The bill
3 requires the Proportional Fine Commission to assign to each crime and civil violation an
4 offense unit to be used in determining the amount of the proportional fine. By February 1,
5 2022, the Proportional Fine Commission is required to report to the Joint Standing
6 Committee on Criminal Justice and Public Safety on the result of its work, including
7 legislation to be considered by the Second Regular Session of the 130th Legislature to
8 amend Title 17-A to repeal fines set in statute and to enact offense units into Title 17-A as
9 the foundation for the system of proportional fines. The bill requires that the system of
10 proportional fines take effect January 1, 2023. Beginning January 1, 2023, the court is
11 required to determine the amount of a fine by calculating the product of the offense unit
12 and the quotient of the net income of the defendant divided by 365.