

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE
AS PASSED BY THE

ONE HUNDRED AND TENTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 1980 to June 19, 1981

AND AT THE

FIRST SPECIAL SESSION
August 3, 1981

**PUBLISHED BY THE DIRECTOR OF LEGISLATIVE RESEARCH IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE
3, SECTION 164, SUBSECTION 6.**

K.J. Printing Co.
Augusta, Maine
1981

PUBLIC LAWS
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States Hazardous Materials Transportation Act, 49 United States Code, Section 1801, et seq. and regulations issued under those sections, shall come to a full stop before crossing any unattended or unautomated railroad grade crossing. The stop is to be made at a point not more than 50 feet nor less than 10 feet from the nearest rail. The operator shall take steps necessary to ascertain beyond a reasonable doubt that no train, engine or conveyance is approaching the crossing before he may proceed to drive the vehicle over the crossing. The operator shall not proceed to the opposite side of the crossing until he believes there is ample room for the complete unit to clear the crossing.

A vehicle carrying a hazardous material shall display a sign which is clearly visible from a distance of not less than 100 feet behind the vehicle which states: "This vehicle stops at all railroad crossings."

The operator of a motor truck, trailer or semitrailer failing to so stop or to yield the right of way to any train, engine or conveyance on the track is guilty of a Class B crime.

Effective September 18, 1981

CHAPTER 238

S. P. 443 — L. D. 1281

AN ACT to Amend Certain Aspects of Post-Conviction Review.

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

Sec. 1. 15 MRSA § 2121, sub-§ 2, as enacted by PL 1979, c. 701, § 15, is amended to read:

2. **Post-sentencing proceeding.** "Post-sentencing proceeding" means a court proceeding or administrative action occurring during the course of and pursuant to the operation of a sentence which affects whether there is incarceration or its length, including ~~revocation of probation~~ revocation of parole or entrustment of a juvenile, failure to grant parole or an error of law in the computation of a sentence. It does not include administrative disciplinary proceedings resulting in a loss of time deductions under Title 17-A, section 1253, subsection 5, **revocation of probation or proceedings before the Appellate Division of the Supreme Judicial Court pursuant to chapter 306.**

Sec. 2. 15 MRSA § 2125, as enacted by PL 1979, c. 701, § 15, is amended to read:

§ 2125. Ground for relief

A person who satisfies the prerequisites of section 2124 may show that the challenged criminal judgment or sentence is unlawful or unlawfully imposed, or that the impediment resulting from the challenged post-sentencing procedure is unlawful, as a result of any error or ground for relief, whether or not of record, unless the error is harmless or unless relief is unavailable for a reason provided in section 2126 ~~2127~~ or 2128.

Sec. 3. 15 MRSA § 2126, as enacted by PL 1979, c. 701, § 15, is amended to read:

§ 2126. Exhaustion

A person under restraint or impediment specified in section 2124 must also demonstrate that he has previously exhausted remedies incidental to proceedings in the trial court, on appeal or administrative remedies. A person who has taken an appeal from a judgment of conviction or a juvenile adjudication ~~shall~~ is not be precluded from utilizing the remedy of this chapter while the appeal is pending, provided that ~~the~~ post-conviction review **proceeding shall be limited to those issued which may not be raised on appeal.** ~~The court before which the direct appeal is pending in its discretion may order that either the appeal or portions of this action be held in abeyance while the other action proceeds or that both actions proceed simultaneously~~ is automatically stayed pending resolution of the appeal unless the Law Court on motion and for good cause otherwise directs.

Sec. 4. 15 MRSA § 2127, as enacted by PL 1979, c. 701, § 15, is repealed.

Sec. 5. 15 MRSA § 2129, as enacted by PL 1979, c. 701, § 15, is repealed and the following enacted in its place:

§ 2129. Petition and procedure

1. Filing of petition. Petitions shall be filed as follows.

A. A proceeding for post-conviction review shall be commenced by filing a petition in the Superior Court in the county specified in section 2123.

B. If the petitioner desires to have counsel appointed, he shall file an affidavit of indigency in the form prescribed by the Supreme Judicial Court. If the petitioner is incarcerated, the affidavit shall be accompanied by a certificate of the appropriate officer of the institution in which the petitioner is incarcerated as to the amount of money or securities on deposit to the petitioner's credit in any account in the institution. The failure to include an affidavit of indigency with the petition does not bar the court from appointing counsel upon a subsequent filing of an affidavit of indigency.

C. Once the petition has been filed, the clerk shall forward a copy of the petition and any separate documents filed with it to the Chief Justice of the Supreme Judicial Court and to the Attorney General.

2. Assignment of case. On receipt of a copy of the petition, the Chief Justice shall assign the case to any Justice of the Supreme Judicial Court or to a Regional Presiding Justice of the Superior Court, who may in turn assign the case to another Superior Court Justice.

3. Representation of respondent. In all proceedings for post-conviction review, the State shall be represented by the Attorney General. On agreement between the Attorney General and a district attorney, a district attorney may represent the State.

4. Bail pending disposition of petition. Pending final disposition, the assigned justice may order the release of the petitioner on bail at such time and under such circumstances and conditions as the Supreme Judicial Court shall by rule provide.

5. Procedure in proceedings pursuant to this chapter. In all respects not covered by statute, the procedure in proceedings under this chapter shall be as the Supreme Judicial Court shall by rule provide.

Sec. 6. 15 MRSA § 2130, last sentence, as enacted by PL 1979, c. 701, § 15, is amended to read:

When relief is granted to the petitioner and release is appropriate, the justice may release a petitioner on bail pending the proceedings specified in section 2131 appeal.

Sec. 7. 15 MRSA § 2131, sub-§ 1, last sentence, as enacted by PL 1979, c. 701, § 15, is repealed as follows:

~~An appeal after the issuance of a certificate of probable cause shall be in the same manner as a criminal appeal from a judgment of conviction~~

Sec. 8. 15 MRSA § 2131, sub-§§ 2 and 3, as enacted by PL 1979, c. 701, § 15 are repealed and the following enacted in their place:

2. Appeal by State. If an appeal is taken by the State, neither a certificate of probable cause nor a certificate of approval of the Attorney General is required.

3. Procedure on appeal. The time for appeal and the manner of taking an appeal shall be as the Supreme Judicial Court shall by rule provide.

Sec. 9. 17-A MRSA § 1207, as enacted by PL 1979, c. 701, § 29, is amended to read:

§ 1207. Review

Review of a revocation of probation pursuant to section 1206 shall be by post conviction review as provided in Title 15, sections 2121 to 2132 appeal.