

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 26, 1997

FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1997

of members of the Panel
of Mediators.

See title page for effective date.

CHAPTER 413

S.P. 274 - L.D. 882

An Act to Require Defendants to Pay Restitution, Monetarily or Through Work Restitution

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

Sec. 1. 17-A MRSA §1325, sub-§1, ¶C, as enacted by PL 1977, c. 455, §3, is amended to read:

C. The present and future financial ~~ability~~ capacity of the offender to pay restitution.

Sec. 2. 17-A MRSA §1325, sub-§2, ¶D, as enacted by PL 1977, c. 455, §3, is amended to read:

D. When the amount and method of payment of monetary restitution or the performance of service restitution ~~will create~~ creates an excessive financial hardship on the offender or dependent of the offender. In making this determination, all relevant factors ~~shall~~ must be considered, including, but not limited to the following:

- (1) The number of the offender's dependents;
- (2) The ~~usual~~ minimum living expenses of the offender and ~~his~~ the offender's dependents;
- (3) The special needs of the offender and ~~his~~ the offender's dependents, including necessary travel expense to and from work;
- (4) The offender's present income and potential future earning capacity; and
- (5) The offender's resources, from whatever source.

Sec. 3. 17-A MRSA §1325, sub-§4 is enacted to read:

4. Burdens of proof. An offender who asserts a present or future incapacity to pay restitution has the burden of proving the incapacity by a preponderance of the evidence. On appeal of a restitution order, the offender has the burden of demonstrating that the incapacity was proven as a matter of law.

Sec. 4. 17-A MRSA §1328, as enacted by PL 1977, c. 455, §3, is repealed and the following enacted in its place:

§1328. Postconviction relief

If, in any judicial proceeding following conviction, a court issues a final judgment invalidating the conviction, the judgment may include an order that any or all of a restitution payment that the convicted person paid pursuant to the sentence for that conviction be returned to the convicted person.

Sec. 5. 17-A MRSA §1328-A is enacted to read:

§1328-A. Modification of restitution

A convicted person who can not make restitution payments in the manner ordered by the court shall move the court for a modification of the time or method of payment or service to avoid a default. The court may modify its prior order to reduce the amount of each installment or to allow additional time for payment or service.

Sec. 6. 17-A MRSA §1329, sub-§2, as amended by PL 1989, c. 502, Pt. D, §15, is further amended to read:

2. Reports. A probation officer having knowledge of a default in restitution by an offender shall report the default to the office of the ~~prosecutor~~ attorney for the State. ~~A prosecutor~~ An attorney for the State having knowledge of a default in restitution by an offender shall report the default to the court. If the restitution was a condition of probation, the attorney for the State may file a motion to enforce payment of restitution or, with the written consent of the probation officer, a motion to revoke probation under section 1205. If the restitution was not a condition of probation, the attorney for the State may file a motion to enforce payment of restitution.

Sec. 7. 17-A MRSA §1329, sub-§§3, 4 and 5 are enacted to read:

3. Motion to enforce payment of restitution. Either the attorney for the State or the court may initiate a motion to enforce payment of restitution. Notification for the hearing on the motion must be sent by regular mail to the offender's last known address. If the offender does not appear for the hearing after proper notification has been sent, the court may issue a bench warrant.

A. Unless the offender shows by a preponderance of the evidence that the default was not attributable to an intentional or knowing refusal to obey the court's order or to a failure on the offender's part to make a good-faith effort to obtain

the funds required to make payment, the court shall find that the default was unexcused and may commit the offender to the custody of the sheriff until all or a specified part of the restitution is paid. The length of confinement in a county jail for unexcused default must be specified in the court's order and may not exceed one day for every \$5 of unpaid restitution or 6 months, whichever is shorter. An offender committed for nonpayment of restitution is given credit toward the payment of restitution for each day of confinement that the offender is in custody, at the rate specified in the court's order. The offender is also given credit for each day that the offender has been detained as the result of an arrest warrant issued pursuant to this section. An offender is responsible for paying any restitution remaining after receiving credit for confinement and detention. A default on the remaining restitution is also governed by this section.

B. If it appears that the default is excusable, the court may give the offender additional time for payment or may reduce the amount of each installment.

4. Collection. Upon any default, execution may be levied and other measures authorized for the collection of unpaid civil judgments may be taken to collect the unpaid restitution. A levy of execution does not discharge an offender confined to a county jail under subsection 3 for unexcused default until the full amount of the restitution has been collected.

5. Organizations. When restitution is imposed on an organization, the person or persons authorized to make disbursements from the assets of the organization shall pay the restitution from the organization's assets. Failure to do so may subject the person or persons to court action pursuant to this section.

See title page for effective date.

CHAPTER 414

S.P. 108 - L.D. 387

**An Act to Amend the Laws
Pertaining to Wine Tasting**

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

Sec. 1. 28-A MRSA §1205, sub-§1, as amended by PL 1995, c. 30, §4, is further amended to read:

1. Taste testing on off-premise retail licensee's premises; fine wine stores. Subject to the conditions

in subsection 2, the commission may authorize an off-premise retail licensee, 50% or more of whose gross income is derived from the sale of wine or malt liquor or spirits, or a fine wine store to conduct taste testings of wine on that licensee's premises. Any other consumption of alcoholic beverages on an off-premise retail licensee's premises is prohibited.

Sec. 2. 28-A MRSA §1205, sub-§2, ¶E, as amended by PL 1995, c. 30, §5, is further amended to read:

E. Taste testing is limited to a designated area. ~~In a fine wine store, the taste testing must be conducted in an area that is separate from the retail sales floor and not readily accessible to the general public;~~

Sec. 3. 28-A MRSA §1205, last ¶, as enacted by PL 1995, c. 30, §6, is amended to read:

For the purposes of this section, "fine wine store" means a store that sells wine from at least 50% of the world's wine regions and carries at least ~~500~~ 250 different wine labels.

See title page for effective date.

CHAPTER 415

H.P. 839 - L.D. 1144

**An Act Pertaining to Parental Access
to School Records**

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

Sec. 1. 19 MRSA §214, sub-§6, ¶B, as amended by PL 1995, c. 172, §1, is further amended to read:

B. A statement that each parent must have access to records and information pertaining to a minor child, including but not limited to, medical, dental and school records and other information on school activities, whether or not the child resides with the parent, unless that access is found not to be in the best interest of the child or that access is found to be sought for the purpose of causing detriment to the other parent. If that access is not ordered, the court shall state in the order its reasons for denying that access; and

Sec. 2. 19 MRSA §752, sub-§6, ¶B, as amended by PL 1995, c. 172, §5, is further amended to read:

B. A statement that each parent must have access to records and information pertaining to a